

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. C501557

LAWRENCE GARY TURNER, EMPLOYEE	CLAIMANT
HUMMELSTEIN IRON & METAL, EMPLOYER	RESPONDENT
TRANSPORTATION INSURANCE CO., CARRIER	RESPONDENT

OPINION FILED JANUARY 22, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on October 25, 2006, at Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE GARY DAVID, Attorney at Law, Little Rock, Arkansas.

Respondent represented by the HONORABLE LEE J. MULDROW, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above style claim to determine the claimant's entitlement to additional workers' compensation benefits.

On September 12, 2006, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties's contentions relative to the issues. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

The issue before the Commission is the claimant's entitlement to reimbursement for 744

hours of services during the period beginning August 2002 and continuing through July 2003; and that of that total 413 hours represent nursing skilled services and 331 hours represent attendant type services at hourly rates of \$35.00, and \$10.00, respectively, as well as controverted attorney fees. Respondents contend that the claimant has received and is receiving all medical and associated benefits to which he is entitled, and for which there is documentation of medical necessity.

The testimony of Lawrence Gary Turner, the claimant, and Darcy Turner coupled with medical reports, photographs, a DVD, and other documents comprise the record in this claim.

DISCUSSION

Lawrence Gary Turner, the claim, with a date of birth of May 1, 1949, had been employed by respondent-employer for approximately three (3) years when sustained a compensable injury on January 7, 1975. The claimant injured his spinal cord in the accident and he was rendered paraplegic.

The compensability of the claimant's January 7, 1975, injury is not disputed. In describing the mechanics of his injury, claimant testified:

I was sawing a press that compressed scrap metal into a bale at Hummelstein Iron and Metal. And we worked that morning, we were basically putting the press down in a concrete pit. Imagine a cracker box cut into three sections with these big sections were put back together up to floor level. And the, they were being lowered into this pit with like an eight foot, 400 pound H beam across the portion of the forklift. And they changed it up during lunch. My main job was I was foreman in the steel warehouse, but I did a lot of welding there too. I was welding the thing together as we put it together. And any rate, right after lunch we got back to working. And the beams pulled just by trying to manipulate a, actually a section of this press that was manufactured out of square. They were trying to wiggle it around and get it lined up, and the beam was wiggled off the fork and one end of it hit my hard hat, and knocked me out and I

had dislocated my thoracic 5 and 6 vertebra. (T. 41).

The claimant has been wheelchair bound since the accident.

The claimant's January 7, 1975, accidental injury occurred on the premises of respondent-employer in Jonesboro, Craighead County, Ar. At the time of the accident claimant also resided in Jonesboro. The claimant has lived in Pineville, which is located in IZARD County since 1985. In 1991, claimant purchased a house in Pineville.

The claimant and his wife were married in December 2004. The testimony in the record reflects that the claimant initially became acquainted with his wife in 1989, and more closely acquainted in 1997. As a consequence of the afore, claimant maintains that practically every day since 1997, he has been with his wife. As noted in the contentions above, the present claim centers on a claim for attendant and skill care services rendered to the claimant by his wife for the period August 2002 through July 2003.

The testimony in the record reflects that the claimant has had left shoulder surgery. Claimant provided testimony regarding the notes he compiled from Professional Home Health Care's calender, IZARD County calender and his personal calender regarding attendant and nursing services rendered to him. The notes of the claimant provide information as to when and what was done and how much time was spent providing the service. (CX. #2). Regarding the skilled and attendant care services, the testimony of the claimant reflects that while someone from Professional Home Healthcare Agency had come out to see him and provided needed services on Monday, the same services were also needed Tuesday through Sunday, however they were not rendered by the professional agency, but by his wife. Claimant denies that either he or his wife directed the professional agency not to provide the services.

The testimony of the claimant reflects that when he had his left shoulder surgery he was in the hospital overnight. Claimant testified that within a week of getting home he had someone that would commit to coming out to see him. The testimony of the claimant reflects that IZARD County Home Health came out to his residence the day he got home from the hospital, however relayed that they were unable to meet his needs. Thereafter the claimant's wife went on the internet and located Professional Home Healthcare Agency.

The testimony reflects that respondent-carrier paid for the services of nurse with Professional Home Healthcare Agency to render services to the claimant bi-weekly. Claimant asserts that the agency was getting \$125.00, per visit for the nurse. Claimant testified that there were approximately five days that he had attendant care, someone other than a nurse. The testimony of the claimant reflects that the attendant quit and he never saw another attendant.

Claimant testified that there was one nurse that came. Claimant maintains that the visiting nurses were paid \$35.00 per hour and that the attendant was paid \$10.00, per hour. In using the IZARD County Home Health agency claimant acquired information about charges for Medicare and Medicaid. Claimant's testimony reflects:

The Medicaid waiver program pays \$10.00 and about 75 cents something like that for just attendant care. That's untrained, trained on site attendant care. My brother received attendant Medicare waiver pay or attendant care. Darcy was paid by Medicaid waiver program for caring for my brother. But yes, \$10 an hour. (T. 46).

Claimant is seeking similar reimbursement rates for his wife relative to the services she has rendered on his behalf growing out of his injury. Claimant characterized the figures compiled in pursuant of the present claim as "very conservative numbers":

I mean there's actually more time that nursing performed services

that is not on there. But these I was presenting this as getting no argument. There's no argument about the fact that it was done. (T. 47).

Claimant confirmed that he had read the letter authored by Ms. Susan Harding, and had identified and divided the services, attendant and skilled nursing, rendered by his wife in accordance with same. (CX, A).

Regarding his inability to take care of himself following the left shoulder surgery, claimant's testimony reflects:

This goes back to Mr. Muldrow's question to Darcy. The few occasions that, I do use the suppository but at my toilet, I have a grab bar on the left side. And I can pull on it, and lean up, I use a elevated commode seat, I can reach under the seat. But this is very hard for anyone to understand unless you're in my position. That thoracic five injury, my whole body I use with my upper arms and abdominal muscles. I can't hold a gallon of milk out to the side. But I can use this arm to hold on to and reach under and I can do digital stimulation or put a suppository in. (T. 48).

The afore was possible prior to the left shoulder surgery. However, following the left shoulder surgery claimant was not physically able to grab the bar and hold it while holding his weight against it with his left arm:

No. I was actually laying in the bed with just as far as this arm would reach. That was the ability of my, that was the end of that. (T. 49).

Claimant noted that he was unable to care for the wound on his buttock, which is depicted in the photographs and on the DVD. Claimant's testimony reflects:

It was life threatening. Without someone there, I would have literally, I don't know, crawled to the refrigerator with one arm. I can't imagine dragging my whole body with one arm. Just that simple. (T. 49).

Regarding the existence of the photographs and DVD, which depicts services being rendered to the claimant by his wife, the claimant testified:

Yes. If you'll look at the DVD, you'll understand that she would much rather have been court reporting than what she's, then is on this tape. And I apologize for it. It's pretty graphic.

Yes. It started off basically so that I could see the wound, the decubitus that I decided to see so we could have a full recording of what happened, how fast it's healing or whatever. That's how it developed. We didn't initiate - that was a told to help us. (T. 44).

The claimant testified that Professional Home Healthcare Agency sent someone out for a period of time to render the attendant care, however he ultimately had to change to another agency:

Actually, Izard County kind of helped fill in after Professional Home care, to my recollection. Professional Home Care had one young woman that could do bathing and she was working a full shift at night to take care of a young girl who had cerebral palsy or something that was on life support. She would try to catch a few hours of sleep and she would come to our house. And the baby was teething, and screaming, and crying constantly. So she was exhausted. And there were times that she would, well, I can't be there until, you know 2:00. Well, I - - she was scheduled at 10:00. So she doesn't have to, because she's only going to be there an hour. So she can't put a suppository in, it takes 45 minutes for it to work and then the cleanup. I mean it's just not possible within one hour. So we were doing part of her job before she got there. But then at 2:00 it was too late. The suppositories worked, I'd cleaned up, and so it wasn't, there were a lot of times it'd just, there would have been no purpose for her to come at all. (T. 49-50).

Claimant testified that while the young woman was skilled she was overwhelmed. Claimant noted that there were times the individual did not show up, or over slept, or had other engagements. Claimant notified respondent-carrier regarding some of the missed appointments. Eventually, she informed the claimant she would not be able to continue to come. Regarding the skilled nursing and attendant services claimant's testimony reflects:

We tried to. We did all sorts of things. We talked to a lady that would come and work with us but she wasn't part of the agency. And the

insurance company said they wouldn't pay anyone that wasn't with that agency. So we had several different nurses that would have come and done nursing skills. But they refused to pay anyone outside of the agency. I'd like to mention that the home health that I had used before, Calico Rock Home Health, it's under a different name now, but anyway they didn't have staff. But we contacted them at first. They said we just don't have - - we can't. (T.51).

The testimony in the record reflects that in 2001 following hip surgery he used Calico Rock Home Health Care.

During cross-examination, claimant acknowledged testifying during his deposition that following the August 2002 surgery his wife had to assist even though there was some home healthcare, and there was some nursing care there. Further, the claimant testified during the deposition that for three (3) months following the August 2002, surgery his wife did everything when the nurse was not there.

Regarding the discrepancy between a March 6, 2003, medical report regarding the decubitus ulcer and his continued need for skilled nursing care thereafter, claimant testified:

The nurse that wrote that hadn't been there in four weeks. She wrote that it's healed. I continued to see Dr. De Young until July. Dr. De Young saw it - - (T. 54).

Mrs. Darcy Turner testified that she and the claimant were married in December 2004, although they first became acquainted in 1989. In 1997, Mrs. Turner and the claimant became closely acquainted. In 2001, Mrs. Turner and the claimant started to co-habitat. Between August 2002 and July 2003, claimant and the future Mrs. Turner resided together though not married. The testimony of Mrs. Turner is corroborative of that of her husband regarding the nature and amount of time she rendered attendant and skilled nursing services to the claimant.

Mrs. Turner testified that in August 2002, the claimant was under the care of Dr. Knox

for left shoulder repair, which left the claimant unable to provide for himself with the services that he had done beforehand. Regarding the surgery and its impact on the claimant, the testimony of Mrs. Turner reflects:

When the doctor performed his surgery, he didn't tell, explain what all it was going to be. And we knew later after his surgery that it was going to be even more prolonged for this surgery - -

On initial 10, eight weeks. His instructions were no lifting heavier than one pound.(T. 19).

Regarding the nature of the services she performed for the claimant during the period August 2002 through July 2003, Mrs. Turner testified:

I was trained to work with the visiting agency which amounts for a visiting nurse to evacuate the bowel. I would administer a suppository prior to her arrival so that would be given in an ample window of time to work. Also during that time I would do his catheter care and maintenance when he was not voiding outside of a bag and those were duties that were performed. Basic general hygiene for those type of things. When he developed his decubitus it became more involved because he had to do log rolls every two hours to keep the pressure off of that to begin healing and problems began and that compounded our situation with decubitus care. (T. 20).

Mrs. Turner explained that the decubitus care entailed monitoring the ulcer, keeping the claimant off of it, cleaning the wound and preventing anything from sticking on it. Mrs. Turner noted that the wound was on the claimant's buttock and he was not visiting the toilets. As a consequence of the afore, the claimant was having a bowel program in bed which entailed evacuation, clean up, and then seeing to the wounds.

While health care personnel for an agency was coming out and providing services for the claimant during the pertinent time period, August 2002 through July 2003, Mrs. Turner testified regarding the lack of daily visit by same:

Availability. In fact of matter, Gary needed a visiting, someone more than once a day because once he started to get up and in a power wheelchair, how was he going to transfer back into the bed. So, those were - - he had multiple services throughout the day, not just a nurse to come in and empty his bowel and tend to his bowel program. (T. 20-21).

The testimony in the record reflects that because there was no one coming on daily basis, Mrs. Turner was the person having to attend to the claimant's needs. Mrs. Turner's testimony reflects regarding the subject-matter of the DVD, which is included in the hearing record as evidence:

I'll apologize at the beginning of it, some of it was placed on a tripod. It's just the condition of his buttock, the condition of his shoulder, what he's able to progress to do. I think there's some physical therapy having both to do with the condition of his decubitus and how he was getting about, how he was getting bathed, how he was hoyering. I believe there is some hoyer activity. It's things, I think of four to six hours. (T. 21).

Mrs. Turner confirmed that the services identified in the September 12, 2006, correspondence of Ms Susan Harding, a RN and medical supervisor with Systemedic Corp., were the same services that she rendered on behalf of the claimant during the August 2002 through July 2003, time period. (CX. A). Mrs. Turner's testimony reflects, regarding the afore:

Yes. Eventually after the year '03, as I call it three timer, when Gary was able to transfer his lateral transfer to the commode himself, he was able to do that. But that was still a dicey scenario because he was in a weakened state and that took a long time to get him to. So, we hoyered him onto the toilet, an dI continued to hoyer him off and back into the chair and into the shower and that would have continued into the early part of April. And then we're basically concerned with the decubitus care.

It continued to be - - sometimes he had some kind of, dragged over the top of the chair or some kind of compromise on it. (T. 22).

Mrs. Turner had been a court reporter since 1991. During the time that she rendered services to the claimant, August 2002 through July 2003, the testimony of Mrs. Turner reflects regarding her court reporting activity:

I quit keeping my calendar. I was referring work to a woman that she and I do that frequently and I had some work standing on my calendar in August that I called that person and she covered it for me. (T. 23).

Mrs. Turner testified that the first court reporting job that she took during the time period in question, August 2002 through July 2003, was an October 2002 deposition of Dr. Allen, which was at 5:00 P.M. Regarding court reporting jobs after the October 2000 deposition of Dr. Allen, claimant testified:

I recall keeping, starting to keep my calendar more aggressively, things that were going to be, I get a lot of workmen's comp, Mr. Spencer is in my area. Mountain Home is only 20 miles for me to drive. And then at Christmas - - my mind isn't real clear but I can tell you that between August and October I cannot recall anything except Dr. Allen. (T. 24).

Mrs. Turner also recalls taking a deposition at the courthouse in September 2002. Regarding her courting reporting business prior to August 2002, Mrs. Turner testified:

I wasn't giving work away. I wasn't calling a reporter around the community to say would you help me with my calendar. (T. 24-25).

Mrs. Turner's testimony reflects that she averaged \$30,000.00, annually as a court reporter. Mrs. Turner's court reporting earnings were adversely affected during the period in question while she was providing services on behalf of Mr. Turner relative to his compensable injury.

The testimony of Mrs. Turner reflects that she had provided similar services in the past as she provided to the claimant during the August 2002 through July 2003, time period. Mrs. Turner explained that she has a brother that is a high level quadriplegic:

He's three years now, I think it's very safe, an incomplete C4. And he had his accident similar to the shallow water dive and he went through his rehab and he's been transferred to the Mountain Home area and lived in a nursing home. And his Social Security funds are very restrictive ? ? independent, my brother is a very young man. And just recently, actually a year ago, he ?? and is a participant in the Medicare

Waiver Program. And he too has someone who comes in, a nursing attendant and then an attendant who would come and dress him. He's real limited to what he can do. Once he's in his bed, that's where he stays. And once he's in his chair that's where he stays. And Gary's brother, David, who has passed away, he too was a high level quad. So, I would transfer and tend to his needs. And I didn't ever perform all programs for either of them. (T. 26).

Mrs. Turner testified that she was familiar with the services needed before she had to provide them to the claimant:

The person in the chair is very knowledgeable in training you in what to do and what not to do and how to take care and watch for this and don't drop me, you know. They are very good teachers. (T. 27).

Mrs. Turner noted that while she did not gain experience in skilled nursing services or attendant care relative to her brother, who sustained his injury in July 2002, in Illinois, she did gain it with the claimant's brother, David. Since the claimant's left shoulder surgery was in August 2002, Mrs. Turner did not visit her brother in Illinois following his July 2002, accident.

Mrs. Turner explained that as a court reporter a part of her work included going and making copies or going to the post office in addition to recording testimony and transcribing same. The November 20, 2002, entry in the medical records regarding her having to go to work is consistent with the claimant's testimony that by September/October 2002 she was taking court reporting jobs.

Mrs. Turner acknowledged that the only medical training she has is what she has learned in caring for the claimant and her brother. The testimony of Mrs. Turner also reflects that she gained experience caring for the claimant's brother:

We transferred David Turner from Our Way in Little Rock to our home, Gary's home. And he transitioned with us for one month. (T. 35).

The afore occurred prior to the claimant's 2001, hip surgery. Mrs. Turner also gained experience assisting during the claimant's recover from the 2001 hip surgery. (T. 36).

Regarding her knowledge of any medical reports from either Dr. Knox or Dr. De Young reflecting the need for attendant care in addition to nursing services relative to the claimant, Mrs. Turner testified:

I believe there is, yes. And if I could elaborate. When Mr. Turner had to be examined on a table, that Hoyer lift wasn't in the doctor's office. That's where a lift came - - so that I could put him on the table so the doctor could examine him. But it was obvious that he was being assisted. And is it in the record that he needed it, I would have to look through them thoroughly to tell you. I think it is. (T. 33).

Mrs. Turner testified regarding an instance of being in Dr. Knox's office with the claimant on November 13, [2002] and explaining to the doctor that she was continuing to hoyer the claimant.

As a consequence of the afore, the testimony of Mrs. Turner reflects:

That I'm continuing to hoyer Gary off the toilet, in the shower and in and out of the bed because his shoulder is still in a weakened state. The doctor wrote a prescription, and I recall it being the 13th of November, for an overhead power system to be installed. And that was not performed in our home until 2004.

Is when it came. Somewhere in there it's stated that Mr. Turner needed help with attendant care. (T. 36).

Mrs. Turner recalled the November 13, 2002, date because it was at that point that the claimant went into rehab. Mrs. Turner testified that the claimant went in and out of rehab three days and was followed up by Dr. Knox. Regarding her understanding of the claimant's hospitalization, which was in the end of October and the beginning of November 2002, Mrs. Turner testified:

My understanding was Gary was placed in the rehab unit of Baxter General because I had to be away from home for a court reporter's convention at Little Rock, and the alternative would be to place him in a five day nursing home. (T. 37).

Elaborating on the medical report of November 1, 2002, which set forth the basis for the hospital admission of the claimant as one of starting him on transfer training, Mrs. Turner's testimony reflects:

He was, Dr. Knox put him in rehab because the CNA Insurance Company wanted to put him in a nursing home so I could go away for a court reporter's convention. (T. 38).

Mrs. Turner testified, based on the evidence in the record, that the home health care people only came one time a week to render services to the claimant, and never on the weekend. The services required by the claimant on the date that the home health care personnel was present, was also required on the dates that they did not come. Mrs. Turner further testified that the Arkansas Department of Health Home Care System provided services to the claimant in January 2003. Mrs. Turner noted that there was no visiting nurse after Christmas. Further, Mrs. Turner observed that the visiting nurse would not be the person who would hoyer the claimant.

Mrs. Turner denies that there was a request made to Professional Home Healthcare that there be no weekend visits:

No, sir. We never made a request. The woman who came was only one woman who came from Professional Home Care. She came at the conclusion of her all night shift at (inaudible) and she came to the home in the morning. (T. 39).

Regarding the no weekend visits, Mrs. Turner testified:

We agreed to the, we agreed to that. We didn't request - - we understood she was not - - she was a young mother with a teething child, newly married. (T. 39).

A September 12, 2006, correspondence of Ms. Susan Harding, RN, M.Ed, CRRN, CCM, who is a medial supervisor with Systemedic Corporation, characterizes the various services rendered in home care services. The correspondence reflects, in pertinent part:

It had been my experience that attendant care for personal services which would include activities such as bathing/hygiene, feeding, and assistance with transfers can be provided in the home by nursing assistants.

Procedures which require the use of medications or involve skilled nursing care are provided by home health nurses. This would include activities such as bowel and bladder care as well as decubitus care, depending on the specifics of services required. (CX. A).

The record reflects documentation from several health care providers regarding the cost for skilled nursing services and attendant care services. The cost of skilled nursing services range from \$135.00 to \$155.00 per visit, while attendant care/personal care aide services range from \$13.00 per hour, with a minimum of two hours per visit, St. Bernards Home Healthcare to \$65.00 per visit for qualified nurses aide assist with numerous personal care needs to include hygiene, feeding and changing linen. (CX. B3-D1).

The record reflects the claimant's journal of services rendered on his behalf by Mrs. Turner during the pertinent time period, August 2002, through July 2003. (CX.#3). On note is the fact that at the time the afore services were rendered on behalf of the claimant, he and Mrs. Turner were not married. The claimant and Mrs. Turner were not married until December 2004.

A review of the records of Professional Home Care relative to the claimant reflects that on August 16, 2002, a registered nurse and a licensed practical nurse rendered services to the claimant. (CX. #1, p. 1-2). Thereafter documentation contained in the record reflects the presence of only the Licenced Practical Nurse. Further, the duration of time rendered to the

claimant was reduced from two hours to one hour by the Professional Home Care beginning August 27, 2002. A telephone order on stationary of Professional Home Care, Inc., reflects that on August 19, 2002, personal care aide services for the claimant were omitted from August 19, 2002 through September 1, 2002, and were to resume September 2, 2002, six times per week for four weeks. (CX. #1, p. 40).

The record reflects the presence of an October 14, 2002, correspondence of Professional Home Care relative to the claimant and person care attendant, which reports:

PCA is not available in that area to provide services. PCA is still needed but our agency cannot provide any service other than skilled nurse @ this time. Mrs. Turner was notified by . . . I notified MD's office. (CX. #1, p. 50).

An October 15, 2002, Professional Home Care 60 day Summary relative to the claimant reflects, in pertinent part:

This summary is cert period 8/16/02 - 10/14/02. Mr. Turner is a paraplegic who normally performs his own bowel program daily. But due to a recent surgery on his left shoulder he has been unable to continue with this task. Mr. Tuner had been receiving skilled nurse services 5x/wk to perform his bowel program and wound care to a stage II decubitus ulcer on his coccyx. Initially Mr Turner's wound care originally consisted of cleansing the area with soap and water. On 9/20/02 new orders were received to apply wet to dry dressing on his decubitus ulcer. Mr. Turner has also received assistance with his personal care needs during this recert period. Pt plans on entering into a rehab facility on 10/17/02 for approx. 3 wks before returning home. Goals were met for this cert period. Plans are for agency to recert pt 3xwx1 then reevaluate. (CX. #1, p. 63-64).

On November 4, 2002, Dr. Bruce Deyoung authored a letter of medical necessity regarding the claimant which was directed to IZARD County Health Unit. (CX. #1, p. 69).

Thereafter, the record reflects documentation the IZARD County Health Unit - Arkansas Department of Health, Division of Home Health/Home Care, provided skilled nursing services

on behalf to the claimant through March 6, 2003.(CX. #1, p. 70-205).

After a through consideration of all of the evidence in this record, to include the testimony of the witnessed, review of the medical reports and other documentary evidence, application of the appropriate statutory provisions and case law, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On January 7, 1975, the relationship of employee-employer-carrier existed among the parties.
3. On January 7, 1975, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$66.50.
4. On January 7, 1975, the claimant sustained compensable injuries, including paraplegia, arising out of and in the course of his employment. The claimant has reached maximum medical improvement and has been rendered permanently totally disabled.
5. The preponderance of the evidence provides that a total of 413 hours in skilled nursing services were provided to and on behalf of the claimant by Mrs. Darcy Turner for the period covering August 8, 2002 through July 31, 2003, in connection with the claimant's compensable injury, and should be compensated at the rate of \$30.00, per hour.
6. The evidence preponderates that a total of 331 hours of attendant care services were rendered to the claimant by Mrs. Darcy Turner for the period covering August 8, 2002 through July 31, 2003, in connection with the claimant's compensable injury, and should be compensated at the rate of \$10.00, per hour.
7. The respondents shall pay all reasonable hospital, medical, and other apparatus

expenses arising out of the claimant's injury of January 7, 1975.

8. The respondents have controverted the payment of skilled nursing and attendant care services rendered to the claimant by Mrs. Darcy Turner for the period August 8, 2002, through July 31, 2003.

CONCLUSIONS

There is not a dispute regarding the compensability of the claimant's January 7, 1975, work related accident and resulting injuries, to include paraplegia. The dispute in the present claim centers on a claim for skilled nursing services and attendant care services rendered to the claimant by his wife for the period encompassing August 2002 through July 2003. Respondents assert that the claimant has received all benefits to which he is entitled and for which they have been provided appropriated medical documentation.

The present claim is not governed by the provisions of Act 796 of 1993, but rather the provisions preceding the afore. The claimant sustained his compensable accidental injuries on January 7, 1975. After reaching maximum medical improvement following his injuries, the claimant was rendered permanently and totally disabled.

At the time of his compensable injury claimant resided in Jonesboro, Craighead County, Arkansas. Claimant subsequently moved to Pineville, IZARD County, Arkansas. The severity of the claimant's injury is undisputed. The claimant is paraplegic.

On August 6, 2002, the claimant underwent surgery relative to his left shoulder at Baxter Regional Medical Center under the care of Dr. Knox. The claimant, who is right hand dominate, was unable to perform activities that he had previously performed due to his left shoulder surgery, and weakened state. As a consequence of the afore, the claimant, through this future

wife, sought out the services of skilled nursing and attendant care services providers prior to his discharge from the hospital.

As reflected in the evidence above, while respondents secured the services of Professional Home Care, Inc., to provide the needed skilled nursing and some attendant care services, the extent of the services rendered by the agency fell substantially short of meeting the claimant's needs. The agency ultimately ceased providing both skilled nursing and attendant care services.

The evidence preponderates that Mrs. Turner, who married the claimant in December 2004, provided skilled nursing services to the claimant during the period August 8, 2002 through July 31, 2003. While Mrs. Turner has not attend nursing school, the evidence reflects that he obtained skilled nursing care training through observation and application of same in caring for the claimant following his 2001, hip surgery, and the care of the claimant's brother, David Turner, who was quadriplegic. The evidence further reflects that the claimant's need for skilled nursing services subsequent to his August 6, 2002, left shoulder surgery, was on a more frequent basis than that provided by professional health care agencies utilized by respondents.

The claimant has submitted a detailed journal of the services, dates, and time expended by Mrs. Turner in providing both skilled nursing and attendant care services to him and on his behalf for the time period in question. Additionally, the record reflects evidence of the cost of skilled nursing services and attendant care services charged by professional health care providers and agencies in the area of the claimant's residence.

Ark. Stat. Ann. § 81-133 (Repl. 1976), requires the employer to provide nursing services for an injured employee. During the pertinent time period of the present claim, August 2002 through July 2003, the claimant was not married to Mrs. Turner. Mrs. Turner is a court reporter

during the pertinent time period. The credible evidence reflects that from August to late September/early October 2002, Mrs. Turner either declined court reporting jobs or passed those already scheduled to other court reporters while she attended to the claimant in connection to his compensable injury. Thereafter, Mrs. Turner substantially reduced her court reporting services to attend to the claimant. Indeed, the credible evidence in the record reflects that the claimant was admitted to a rehab program for five days to allow Mrs. Turner to attend a court reporter's meeting in Little Rock.

The Arkansas Supreme Court has recognized that a wife should be compensated for nursing services rendered to her husband when she has found it necessary to leave her employment to do so. *Picken-Bond Construction Co. v. Case*, 266 Ark. 323, 584 S.W.2d 21 (1979); *Dresser Minerals v. Hunt*, 262 Ark. 281, 556 S.W.2d 138 (1977). As previously note, in the instant claim, the claimant was not marred to his care giver at the time the skilled nursing services and attendant care services were being performed. The record reflects credible documentation, to include photographs and a DVD, of the services rendered to the claimant by Mrs. Turner, during the pertinent time period.

The claimant has sustained his burden of proof by a preponderance of the evidence that at a minimum Mrs. Turner provided 413 hours of skilled nursing service in connection with his compensable injury from August 8, 2002 through July 31,2003. Further, the evidence preponderates that the hourly rate as which Mrs. Turner should be compensated for the skilled nursing service care is \$30.00. Further, the claimant has sustained his burden of proof by a preponderance of the evidence that at a minimum Mrs. Turner provide 331 hours of attendant care services in connection with his compensable injury from August 8, 2002 through July 31,

2003. Respondents have controverted the claimant's entitlement to claimed skilled nursing and attendant care services rendered in connection with the January 7, 1975, compensable injury by Mrs. Turner.

AWARD

Respondents are herein ordered and directed to pay to Mrs. Darcy Turner, the cost of skilled nursing care services rendered in connection to the claimant's compensable injury of January 7, 1975, at the rate of \$30.00, per hour for 413 hours covering the period August 8, 2002 through July 31, 2003. Said sums accrued shall be paid in lump without discount.

Respondents are further ordered and directed to pay to Mrs. Darcy Turner the cost of attendant care services rendered to the claimant in connection to the claimant's compensable injury of January 7, 1975, at the rate of \$10.00, per hour for 331 hours covering the period August 8, 2002, through July 31, 2003. Said sums accrued shall be paid in lump without discount.

The claimant's attorney is herein award attorney fees on the controverted portion of this award, pursuant to the applicable statutory provision .

This award shall bear interest at the legal rate pursuant to Ark. Code Ann. §11-9-809, until paid.

IT IS SO ORDERED.

Andrew L. Blood, ADMINISTRATIVE LAW JUDGE

