

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F410313

JOSEPH POWELL, EMPLOYEE	CLAIMANT
PRODUCERS RICE MILL, INC., EMPLOYER	RESPONDENT
LIBERTY MUTUAL, CARRIER	RESPONDENT

OPINION FILED JANUARY 10, 2008

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on October 12, 2007, at Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE JUDSON C. KIDD, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE GUY A. WADE, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was conducted to determine the claimant's entitlement to payment of nursing services and attorney's fees.

At issue is whether or not the nursing services provided by the claimant's wife constitute reasonable and necessary medical expenses pursuant to Ark. Code Ann. §11-9-508. All other issues are reserved.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence preponderates in favor of the claimant.

STATEMENT OF THE CASE

The parties stipulated to an employer-employee-carrier relationship on September 30, 2004 at which time the claimant sustained compensable injuries. The respondents have accepted the claimant as permanently and totally disabled.

The claimant seeks payment of nursing services for his spouse from the date of injury to a date yet to be determined. It was necessary for her to quit her job (\$5.75 per hour) in order to take care of her husband.

Respondents contend all appropriate benefits are currently being paid and further medical expenses are unreasonable and unnecessary. Respondents also contend the care provided by the claimant's spouse is part of her marital obligations.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the transcript.

The following witnesses testified at the hearing: the claimant and his wife, Ona, who were both emotionally distraught; and case manager, Laura Larson.

The claimant, age 35 (D.O.B. February 11, 1972) has an eleventh grade education. He had worked for the respondent-employer for two years before sustaining devastating injuries to his legs and pelvis in a horrific accident at work when he fell into an auger. The claimant has permanent impairment for bilateral amputations of the legs, anal sphincter dysfunction with colostomy, erectile dysfunction, and bladder fistula with leakage. He was hospitalized two months and required one year of occupational therapy. Due to the extent of his injuries, the claimant is unable to wear prosthetic devices and is confined to a wheelchair.

The carrier modified the claimant's home and car to make them handicapped accessible. Home health nurses were sent to attend to his wound care. The nurses did not testify at the hearing and there is no documentary evidence of the nurses' duty logs showing their attendance or records of the claimant's care.

According to the case manager, Laura Larsen, the claimant should be able to care for himself without his wife's assistance. He was trained in wound care, use of a TENS unit, catheter and colostomy bag during rehabilitation. The home health nurses provided daily help with changing the dressings of his wounds for two months. Since his discharge on December 7, 2004, the claimant has become more active, damaging two wheelchairs. Ms. Larsen testified a wheelchair should last 4-5 years but the claimant bent the frame of his wheelchairs. Ms. Larsen was unaware of any continuing order for physical therapy and the carrier has followed the advice of the specialists in providing

services and the wheelchair to the claimant.

The claimant testified he needed his wife's assistance with bathing, driving, massages, wound care, home exercises and use of a TENS unit, (Tr. p. 7-18). The claimant explained that he had open wounds in his groin, scrotum and rectum which required dressing changes. Due to the location of the injuries, it was awkward for him to change the dressings by himself and the dressings did not stay in place. The dressings had to be changed frequently and the home health nurse only visited two or three times a week, not daily as Ms. Larsen testified, (Tr. p. 37-39).

The claimant also testified he needed his wife's assistance while bathing as he has fallen from the shower chair on two occasions. The claimant stated that his home was not made handicapped accessible until April. The claimant testified that he was not provided with the correct type of wheelchair and that is why they didn't last long. In his report of November 16, 2005, Dr. Kiser described the wheelchair as "heavyweight" with amputee plates to provide stability. He noted the claimant had fallen with "aggressive" activity. The claimant's wife also helps him with physical therapy (theraband home exercises 3-4 times weekly). She massages him, applies Biofreeze to his back and helps him set up the TENS unit. Because of leakage his wife has to change linens several times a week.

Due to medical complications, the claimant returned to the hospital in February, 2007 for bone removal from his left leg. This procedure required use of a wound vacuum, more dressings, and 3-1/2 months of recovery, (Tr. p. 12-13).

The claimant conceded that he was taught how to take care of his needs in rehabilitation, however, he maintains that because of the location and extent of his injuries, he requires assistance. The claimant also admitted that he drives a truck, and hunts and fishes with a four wheeler and a boat.

Ona Powell, age 30, has a high school education. She worked for Riceland Foods, full time, for six years earning \$8.78 per hour until July, 2001. In February, 2002, she married the claimant and did not return to work for three years. In 2004, she was re-hired, working twelve hours a day for

seven days a week at \$5.00-\$6.00 per hour. She was laid off shortly before her husband's injury. (Tr. p. 14-15, 26-27, 47-48, 56-58). The Powell family income presently consists of workers' compensation benefits and Social Security Disability benefits (\$166.00 for the claimant and \$17.00 for his dependents).

Ms. Powell testified she spent the night with her husband while he was hospitalized and assisted in his care. After he returned home, she helped him with bathing, applying the TENS unit, home exercises, back massages and drove him to physical therapy three times a week. Ms. Powell has no medical training or experience in nursing care, (Tr. p. 49-55, 58-62).

MEDICAL EVIDENCE

In his report of June 15, 2005, Dr. Stephen Hudson assessed the claimant's impairment at 60%. Dr. Thomas Kiser assessed 71% in his report of November 16, 2005. In addition to the wounds from the auger, the claimant has also complained of back pain. The claimant attributes this injury to twisting his back when he was pulled into the auger. However, various opinions in the medical records attribute the back complaints to poor posture and tightening of the muscles following amputation.

Dr. Kiser has authored two letters dated January 30, 2006 and November 2, 2006 regarding nursing services. With the exception of the home exercise program, the activities described in Dr. Kiser's letters do not constitute nursing services.

Mr. Powell is a 33-year-old white male who sustained traumatic injuries to his pelvis and lower extremities in an accident at work resulting in bilateral above-knee amputations, significant trauma to his pelvis. He has been unable to get back to ambulating activities due to his injury, and is getting around at a wheelchair level. He also has had some bladder trauma and has a small bladder fistula, which is somewhat problematic, and is being managed conservatively. Because of his injury, he can only stand for short periods in a right lower extremity prosthesis and needs a wheelchair for mobility. Because of his disability, he needs a lot of help from his wife for simple household tasks, such as getting things off the floor and things from high shelves, and for long distance mobility with his wheelchair.

* * *

Mr. Powell has contacted me concerning all of the help that he needs

at home. His wife is unable to get a job due to the help that she is providing him since his injury. As you are aware, he has bilateral above-knee amputations and some pelvic abnormalities due to pelvic fractures. This makes sitting for prolonged times difficult for him. He has been unable to advance to any type of prosthetic wear due to heterotopic ossification in the left hip and pelvis region. He gets around at a wheelchair level. His wife has to do all the heavy household tasks that he previous did, such as mowing the yard, taking care of the vehicles, and any heavy lifting. She also is doing all of the household chores around the house and is helping him with his home exercise program. Due to these activities, she is unable to get a job to help support the family. Mr. Powell is wanting the insurance company to help pay her to do these tasks for him within the home.

FINDINGS & CONCLUSIONS

Precedent establishes that relatives or friends of an injured employee are entitled to compensation for nursing services. Pickens-Bond Construction Co. v. Case, 266 Ark. 323, 584 S.W.2d 21 (1979), Dresser Minerals v. Hunt, 262 Ark. 280, 556 S.W.2d 138 (1977), Sisk v. Philpot, 244 Ark. 79, 423 S.W.2d 871 (1968). Tibbs v. Dixie Bearings, Inc. 9 Ark. App. 150, 654 S.W.2d 588 (1983).

To be compensable, nursing services rendered by the relative or friend must be those services needed to care for the injured employee's sickness or infirmity, Pickens-Bond, supra. Examples of compensable nursing services include cleaning wounds and changing bandages, Tibbs, supra; giving injections, enemas and hot baths, Dresser, supra; physical therapy, Wasso v. Losey, 11 Ark. App. 302, 669 S.W.2d 516 (1984), and supervision of invalids, Sisk, supra.

To be compensable, nursing services must be more than the ordinary care a spouse is expected to render to a sick husband or wife, Dresser, supra. Nursing services do not include assistance with household and personal tasks which the claimant is unable to perform. Pickens-Bond, supra, Pine Bluff Parks & Recreation v. Porter, 5 Ark. App. 154, 639 S.W.2d 363 (1982) To be compensable, it is unnecessary for the care giver to quit employment; there is no need for a physician to prescribe nursing services; and it is unnecessary that the care giver be a trained nurse, Tibbs, supra.

There is no provision in the statute for attendant care, J.P. Price Lumber Co. v. Adams, 258

Ark. 631, 527 S.W.2d 932 (1975), Little Rock Convention and Visitors Bureau v. Pack, 60 Ark. App. 82, 959 S.W.2d 415 (1997). In these cases the claimant's suffered brain damage but had no physical injuries requiring ongoing care.

The claimant did not specify the amount of compensation he is seeking for nursing services. I assume it is 24 hours a day at \$5.75 per hour, (the wages his wife earned at her last job), since the date of injury. Of course, part of this time the claimant was hospitalized. Although the claimant's wife stayed with him during his hospitalizations, I find that services performed during that time were part of the ordinary care of a spouse.

I find the duties performed by the claimant's wife in this case after he returned home fall within the category of "nursing services" as established by case precedent. Due to the nature and extent of the claimant's injuries, it is understandable that the dressings and linens would have to be changed frequently. These tasks could not wait until the nurses' visits. Since the nurses are not visiting daily, it is also understandable that the claimant may need assistance with exercises, setting up the TENS unit and massages. However, I also find that the claimant has a certain amount of independence and these nursing services would not be required around the clock.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed on September 30, 2004 at which time the claimant sustained compensable injuries. The claimant is permanently and totally disabled.
2. The claimant's wife is entitled to compensation for nursing services which are reasonable and necessary in relation to the claimant's compensable injury at a rate of \$5.75 for 5 hours a day, seven days a week, excluding the dates the claimant was hospitalized from the date of injury to a date yet to be determined..
3. This claim has been controverted and the claimant's counsel is entitled to the maximum attorney's fees to be paid in accordance with A.C.A. §11-9-715, §11-9-801, and WCC Rule 10.

Pursuant to the Full Commission decisions of Coleman v. Holiday Inn, (November 21,1990) (D708577), and Chamness v. Superior Industries,

(March 5, 1992)(E019760), the claimant's portion of the controverted attorney's fee is to be withheld from, and paid out of, indemnity benefits, and remitted by the respondent, directly to the claimant's attorney.

As a reminder, Ark. Code Ann. §11-9-715 was amended by Act 1281 of 2001, limiting attorney's fees on medical benefits and services for injuries after July 1, 2001.

4. The respondents are directed to pay the court reporter's fees and expenses associated with transcribing this hearing within thirty days pursuant to Commission Rule 20.

AWARD

Respondents are directed to pay benefits in accordance with the Findings of Fact above. All accrued sums shall be paid in a lump sum without discount and this award shall earn interest at the legal rate until paid, pursuant to A.C.A. §11-9-809, and Couch v. First State Bank of Newport, 49 Ark. App. 102, 898 S.W.2d 57 (Ark. Ct. App. 1995), and Burlington Industries, et al v. Pickett, 64 Ark. App 67, 983 S.W.2d 126 (1998), 336 S.W. 515, 988 S.W.2d 3 (1999).

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge