

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E107904

DAVID PACK,  
EMPLOYEE

CLAIMANT

CITY OF LITTLE ROCK,  
EMPLOYER

RESPONDENT

RISK MANAGEMENT RESOURCES,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED JANUARY 13, 2011

Upon review before the FULL COMMISSION in Little Rock,  
Pulaski County, Arkansas.

Claimant represented by the HONORABLE THOMAS W. MICKEL,  
Attorney at Law, Conway, Arkansas.

Respondent represented by the HONORABLE BETTY J. HARDY,  
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed in part,  
reversed in part.

OPINION AND ORDER

The respondents appeal an administrative law judge's  
opinion filed July 14, 2010. The administrative law judge  
found that *res judicata* did not bar the issue of nursing  
care. The administrative law judge found that the  
respondents were liable for expenses associated with long-  
term care for the claimant at Timber Ridge Ranch. After  
reviewing the entire record *de novo*, the Full Commission

affirms the administrative law judge's finding that *res judicata* does not bar the claim. We reverse the administrative law judge's finding that the respondents are liable for expenses for long-term care at Timber Ridge.

I. HISTORY

The parties have stipulated that David Pack, now age 51, sustained a compensable injury to his brain on April 16, 1991. The claimant consulted with Dr. Gary T. Souheaver, a clinical neuropsychologist, in July 1991. Dr. Souheaver's impression on July 31, 1991 was "1. Severe Organic Brain Syndrome (310.8) - with bilateral cerebral dysfunction; 2) Amnesic Disorder - severe, from #1 (780.9)." Dr. Souheaver's recommendations were "1) Retesting one year from accident date to document expected improvements. 2) Referral to Counseling Psychology for consideration of Work Readiness."

Douglas A. Stevens, Ph.D., a clinical psychologist, evaluated the claimant and stated in part on October 3, 1991, "In summary we are dealing with a young man who has a work related organic brain injury, apparently due to anoxia....At some point in the not to (sic) distant future I would recommend that he be placed in a head injury

rehabilitation center, where he can receive intensive retraining that may assist him in recovering some cognitive abilities. Based upon the severity of his impairments, at this point I do not believe that employment will ever again be a reasonable possibility. On the other hand it is a possibility that he will need ongoing full time supervision, either by his mother or a practical nurse."

The record indicates that the claimant was admitted to Timber Ridge Ranch Neurorehabilitation Center beginning about June 17, 1993 through approximately August 1, 1993. The parties stipulated that the claimant's healing period ended on October 19, 1993, and that the claimant was permanently totally disabled. Ruth Sirratt, the claimant's mother, was appointed as guardian of the claimant's person and estate by the Pulaski County Probate Court on December 20, 1993.

Dr. Pamela S. Brown reported on January 27, 1994, "Mr. Pack completed a one month evaluation and treatment program as an inpatient at Timber Ridge from June 28<sup>th</sup> to July 27<sup>th</sup>. At the time of discharge his mother was instructed in activities to carry out after discharge. The mother has noted a big improvement in the patient's behavior since

discharge from Timber Ridge....The patient's mother is no longer working full time and is trying to work more with her son at home...."

Dr. Stevens stated on October 5, 1995, "Essentially everything is the same as when he was last seen on 10/19/93. He is long past the recovery phase from his head injury and it is not likely that we will see any significant change, particularly positive. With increasing age we will notice deterioration."

A pre-hearing order was filed on January 17, 1996. The claimant contended, among other things, that he was entitled to "medical expenses, including nursing services for his mother." The respondents contended that the claimant "does not require the services of a nurse." The relevant issue the parties agreed to litigate was "medical expenses (nursing services)."

A hearing was held on February 9, 1996. Ruth Sirratt, the claimant's mother, testified on direct examination:

Q. Tell me now, when David gets home from Baptist Rehab, what is his condition like, and what do you have to do for him now, if anything?

A. David was almost like a newborn baby. You changed his clothes if he needed it. You washed his hair. You changed his bed. He couldn't

control his kidneys and bowels because he hadn't learned how....I had to do almost everything for David because he just didn't know what to do....

An administrative law judge filed an opinion on April 29, 1996. The administrative law judge found in relevant part, "6. Respondents are not liable for nursing services. Although the claimant's injuries are devastating, he does not require continuing medical treatment, is not physically helpless, and does not require constant supervision." Both parties appealed to the Full Commission, which affirmed the administrative law judge's decision in an opinion filed March 10, 1997. The Full Commission found that the claimant "failed to prove by a preponderance of the evidence that nursing services were reasonably necessary for his compensable injury for any period after his release from Baptist Rehabilitation Institute in July of 1991." The Arkansas Court of Appeals, which affirmed the Commission. *Little Rock Convention & Visitors Bur. v. Pack*, 60 Ark. App. 82, 959 S.W.2d 415 (1997).

Katherine Volpert, now age 70, testified that the claimant began living in her home in February 2003. Katherine, Ruth SIRRATT's sister, testified that Ruth passed away in March 2003. Katherine Volpert testified that the

claimant was able to make his bed and dress himself. Ms. Volpert testified that the claimant could bathe himself and brush his teeth, "but you have to stay there with him." The respondents' attorney questioned Katherine Volpert in a deposition taken January 17, 2007:

Q. Has his condition gotten better, or gotten worse, or stayed about the same since he moved in with you in 2003?

A. It's been the same.

Q. What about during the last few years that he was living with his mother, did you see him on a regular basis?

A. Almost daily.

Q. Has his condition changed any since -

A. No.

Q. - that point in time?

A. And I know it's because of us, but I think his personal appearance has improved, and he was a smoker, and he's no longer a smoker. He smoked two packages of cigarettes a day.

Q. What about medication, I know he takes some medication on a daily basis?

A. He takes Diazepam, one tablet, I believe it's two milligrams, and Trazodone, it's 100 milligrams. That's one tablet nightly.

Q. One each night?

A. Yes, and it's just for sleep.

Q. Who is his general practitioner that he goes to if he gets as far as a cold or something like that?

A. We have been taking him to the VA since we -

Q. Even for general stuff like colds and so forth?

A. Yes.

Q. Is he a veteran?

A. Yes....

Q. Are you appointed as his legal guardian at this point in time?

A. My husband and I.

Dr. Souheaver evaluated the claimant on June 6, 2007 and provided a Neuropsychology Report:

This 48 year-old divorced Caucasian male with 9 years education (plus GED) has been declared totally and permanently disabled from an anoxic brain injury that occurred during an on-the-job injury over 16 years ago. He lives with an elderly aunt and uncle in Conway, AR. His aunt was declared his guardian after the death of his mother in 2004....

He was 32 at the time of the severe brain injury, for which he was hospitalized for two months, with several days of coma and intractable seizures and life-support....Currently, he is dependent upon his guardian for transportation, meal preparations, and financial decisions. According to the guardians, he requires assistance for personal hygiene, and has to be reminded about toileting in order to prevent incontinence. Household chores were said to be markedly deficient....

Mr. Pack was brought to the appointment on time with his guardian aunt (Hazel Volpert) and uncle (Clement Volpert) who participated in the history and interview. Mr. Pack was neatly groomed, clean shaved, in casual attire, and good hygiene. He was very pleasant and quite (sic) He had no spontaneous speech, but would respond in brief answers to questions, often impulsively saying "don't know" but with encouragement extend his answers in order to obtain scorable data....On the formal tests of effort and motivation, he passed the ones that were not related to memory, such as the UCLA Dot Counting (effort)Test. However, even recognition memory was impaired for this patient and his score on the effort tests related to memory were consistent with dementia, rather than malingering. Thus, the test results were considered valid, and reliable for interpretation....

As can be seen, Mr. Pack scored in the mentally retarded ranges on the IQ tests....his intellectual abilities have declined markedly and are now in the Retarded range. We computed his estimated pre-injury IQ using the Oklahoma IQ estimate(2002) and his estimated Pre-Morbid IQ = 82 (See = 76 - 88), which compares favorably to the IQ obtained in October 1991 just after the accident. Thus, the current IQs are reflecting a major loss of abilities....

The patterns of data in this case strongly support the need for supervision monitoring of most daily activities. To be in the lest (sic) restrictive environment, such as his current home situation seems best. Otherwise, he would be a good candidate for an assisted living arrangement that provides meals, minimal nursing attention, household cleaning, controlled (usually bus or van) transportation would be indicated at this time. Placement in a 24-hour nursing home is not indicated as he is not bed-ridden, delusional, or in need of hourly medical nursing attention at this time.

IMPRESSION:

1. Organic Brain Syndrome, with moderate to severe impairment of neuropsychological functions.
2. Severe memory disorder, from #1, consistent with Dementia.
3. Organic Personality Syndrome (frontal lobe syndrome) without evidence of psychosis or depression.

The respondents' attorney questioned Dr. Souheaver in a deposition taken December 13, 2007:

Q. It looked like [the claimant's] guardians told you they provided his transportation. In other words, he didn't drive independently. Is that right?

A. That's what I was told.

Q. Also, that they prepared his meals and made his financial decisions?

A. Yes.

Q. Additionally, it looks like they might cue him as far as his personal hygiene and toileting. Is that right?

A. Yes. I think it was somewhat embarrassing for the guardians to point these things out because he was in the room, but it's part of what we have to determine. He apparently is incontinent and has to be reminded even to comb his hair and brush his teeth. He will do it. I'm told he's very compliant, but he's not self-directed....

Q. Since Mr. Pack's IQ was at 69, it looked like he was at the high range of mental retardation. Is that an appropriate assessment; are there high, low and medium levels of mental retardation?

A. Yes. This would be called mild. 65 to 69 would be called mild mental retardation.

Q. What kind of functioning would you expect someone with mild retardation to have?

A. Well, they're able to carry on the activities of daily living with training. They're able to perform most activities so long as instructions are brief and not abstract and so long as they are able to learn the task. He is capable of learning. It simply takes him a long time to demonstrate new knowledge and to acquire new knowledge. He has very impaired memory, too, as our data indicated. So he's going to require constant verbal and visual reminders to function with routine activities that aren't essentially rote....So were he in a repetitive situation where things didn't change and he did the same thing every day at exactly the same time, he should be able to function.

Q. So Doctor, it sounds like what he needs are cues and maybe someone to kinda watch over him and make sure he follows through with the cues; is that right?

A. Correct, and also to make sure he takes his medication. His memory is essentially - well, he scored below - it was so low we couldn't test it. Therefore, he would need somebody or some thing such as a bell or some visual or auditory device to remind him to take medication. But he clearly is not nursing home material. He does not need 24-hour care.

Q. Is he able to stay by himself for short periods of time?

A. Yes.

The claimant's attorney questioned Dr. Souheaver:

Q. If he had a personal care assistant trained and supervised by a third party to come in and assist with ADL's in the place of residence such as grooming, bathing, laundry, housekeeping, meal

preparation and shopping, monitoring health and medication assistance and the general well-being of the individual, would you say that those are the kinds of services that David might need if they were provided in the home?

A. Yes. One thing left out of that was transportation.

Q. Right. If this entity could provide transportation for medical appointments and other necessary things, would that also be appropriate for him?

A. Yes, including the ability to go out once a week to a movie or some enjoyable activity of his choice....

The record includes a Timber Ridge Neurorestorative Center Proposed Plan Of Care, dated December 8, 2008:

Mr. David Pack is a 49 year-old male who has a past medical history of closed head injury....Mr. Pack was independent in all areas of self care, ambulation, and household management. He now has significant difficulties with self-care, communication, memory, safety judgment, attention and concentration, and problem solving skills.

Mr. Pack has been declared totally and permanently disabled from an anoxic brain injury that occurred during an on the job injury....

Mr. Pack currently is on several medications including, Trazodone HCL, Diazepam, Hydrochlorothiazide and Zyrtec. He is on a regular diet and has had an increase in weight of 50 pounds over the last four years. He currently is 5' 9 ½ " and weighs 216 pounds.

Mr. Pack's speech is intelligible when he speaks single word responses but very difficult to understand when attempting sentences. He doe

(sic) not initiate communication. His attention and concentration, memory and problem solving skills are severely impaired. Mr. Pack's verbal expression, reading and writing abilities are moderately impaired. His balance and endurance is limited and is often clumsy. He is oriented to person and place only.

Mr. Pack requires minimum assistance to dry off after bathing and to complete upper and lower extremity dressing. When reminded, Mr. Pack is continent of bowel and bladder however he requires a second shower at times due to lack of thorough cleaning after toileting and needs reminders to wash hands. He requires supervision to complete grooming and personal hygiene tasks such as a denture cleaning.

Mr. Pack is very confused requiring assistance to put on clean clothes after showering, cues to take medications, and instructions to wear warm clothing when cold outside. He is at risk for wandering due to poor safety judgment and has sat in a house filled with smoke making no attempt to exit....

As a component of our Supported Living program, our medical director, Clay Breshears, M.D. and Health Management Associates, will follow Mr. Pack. He will be provided routine medical management as appropriate. Additionally, a registered dietician will monitor his nutritional status and work with staff to ensure that Mr. Pack receives the appropriate diet and caloric intake.

Based on this assessment, it appears that Mr. Pack will continue to be dependent upon the care and assistance of others on an ongoing basis....The Supported Living program at Timber Ridge Ranch NeuroRestorative Center offers structured living with ongoing therapeutic, recreational, and educational activities for clients who are unable to return to the family or community living....

Sara McDonald, Program Representative for Timber Ridge Ranch, evaluated Mr. Pack on November 24, 2008. After a review of the evaluation and available medical records, Mr. Pack has been clinically accepted for admission to Timber Ridge Ranch NeuroRestorative Center's Supported Living Program, and a specific service plan will be developed following his admission. A more structured environment would increase his functional abilities, increase his independence, and provide opportunities for a more socially productive lifestyle....

The parties deposed Rob McDaniel, administrator of Timber Ridge Ranch, on February 27, 2009. Rob McDaniel described Timber Ridge as a post-acute brain injury rehabilitation facility and also a residential care facility. The respondents' attorney questioned Rob McDaniel:

Q. Tell me a little bit about your supported living program. Do you have housing for the individuals and kind of the staffing and just a daily routine for someone that would be in that program?

A. Okay. Well, that program is part of our continuum of care. Supported living clients can certainly range in their functional abilities. Some are certainly much more capable than others. But, yes, it is part of our continuum of care. We do have housing on site that is available for them, and assistance is provided within that residential setting on a 24-hour, 7-day a week basis. If individuals are to the point that they are appropriate for being assisted with like a self-administration medication program, then they are deemed appropriate for that.

If they are not appropriate, then, obviously, the medications would need to be administered by a nursing staff to do. We do have medical monitoring on an ongoing basis with nursing services available on site 24 hours a day, 7 days a week. There is an attending medical physician who oversees the entire medical treatment plan. And they're here on a weekly basis and available on an ongoing basis on an on-call status. As far as daily routine for supported living clients, obviously, activities of daily living comprise the first part of the day, which is self-care skills, residential upkeep and their self-care types of activities. Following that, they have a planned day that every day is scheduled and planned out....physical conditioning is certainly one activity that they do. Cognitive orientation and orienting them to daily events as far as what is happening, what is going on. They are involved in a component of scheduling activities with things that they may want to do....

Q. Are they all in a house, are they in apartments, kind of give me an idea of the living arrangement?

A. Well, it's a residential setting, which would resemble a house in a group living situation....There would be a large common area and then, yes, obviously, a kitchen area and then the bathrooms and bedrooms that would be separated off of those areas.

Q. Okay. And is this the type of setting where you would anticipate Mr. Pack being, or would he be one of the more higher functioning individuals that could be in a two-room apartment or something like that?

A. Well, no, I would say he would be more in a group living situation....

Q. In your document you indicated at the time of the evaluation, which I guess was in December of

2008, that the rate for Mr. Pack to be at your facility would be \$600 per day.

A. Correct.

Q. Okay. Can you give me a breakdown on that that \$600 a day would go toward as far as the various activities, or the food, the shelter, that sort of thing?

A. Well, that's a comprehensive per diem amount that is paid, which would include, the room and board, any of the therapies, the counseling, the supervision needs, any of the transportation to necessary appointments, or to and from community members. It would include behavioral observation, and if necessary, behavioral intervention. What it would not include would be prescription or over-the-counter medications. If any lab work needed to be completed or any outside medical consultation or durable medical equipment, that would not be included in the comprehensive per diem rate....

Q. Does your facility accept any kind of Medicare payment for patients?

A. No, ma'am, we are not a Medicare provider.

Q. What about Medicaid, the same?

A. We are Medicaid approved up to the age of 21. We also have a separate dedicated pediatric program, and we are a pediatric Medicaid provider.

Q. Okay. But for someone like Mr. Pack, he would not fall into either one of those categories, is that correct?

A. Correct.

Q. And as I understand, there's no breakdown on how much of the daily charge goes for room and

board, meals, transportation, outings, anything like that?

A. It's a comprehensive per diem rate.

A pre-hearing order was filed on April 14, 2010. The claimant's contentions were, "The claimant was cared for by his mother until her death. His present caregivers and guardians, his aunt and uncle, are advancing in age and are no longer able to care for him. The claimant's medical condition has deteriorated according to Dr. Souheaver and inpatient medical care can best be provided at Timber Ridge based on Robbie McDaniel's testimony. The claimant further contends this claim for medical treatment is not barred by *res judicata* due to a change in the claimant's circumstances."

The respondents contended that all appropriate benefits were being paid, and that assisted living facilities did not qualify as nursing care. The respondents contended that the claim was barred by the doctrine of *res judicata*.

The parties agreed to litigate the following issues: "Long-term medical/custodial care at Timber Ridge Ranch, *res judicata* on the issue of nursing services, and attorney's fees. All other issues are reserved."

An administrative law judge filed an opinion on July 14, 2010. The administrative law judge found that the claimant's medical condition had deteriorated, so that "the issue of nursing care is not barred by the doctrine of res judicata." The administrative law judge found that an assisted living facility "qualifies as nursing care," and that the respondents were "liable for expenses associated with long-term care at Timber Ridge Ranch which is best suited for the claimant's care." The respondents appeal to the Full Commission.

## II. ADJUDICATION

### A. Res judicata

The purpose of the *res judicata* doctrine is to put an end to litigation by preventing a party who had one fair trial on a matter from relitigating the matter a second time. *Cox v. Keahey*, 84 Ark. App. 121, 133 S.W.3d 430 (2003), citing *Brandon v. Arkansas W. Gas Co.*, 76 Ark. App. 201, 61 S.W.3d 193 (2001). *Res judicata* applies where there has been a final adjudication on the merits of the issue by a court of competent jurisdiction on all matters litigated and those matters necessarily within the issue which might have been litigated. *Beliew v. Stuttgart Rice Mill*, 64 Ark.

App. 334, 987 S.W.2d 281 (1998). *Res judicata* applies to decisions of the Commission. *Harvest Foods v. Washam*, 52 Ark. App. 72, 914 S.W.2d 776 (1996).

An administrative law judge found in the present matter, "2. Over the last nineteen years the claimant's medical condition has deteriorated. Based on this change in circumstances, I find the issue of nursing care is not barred by the doctrine of res judicata." The Full Commission affirms this finding. The parties stipulated that the claimant sustained a compensable injury to his brain on April 16, 1991. The parties stipulated that the claimant's healing period ended on October 19, 2003 and that the claimant was permanently totally disabled. Ruth Sirratt was appointed as the claimant's guardian in December 1993. Ms. Sirratt testified that she provided care for the claimant "almost like a newborn baby." Such care included changing the claimant's clothes, washing his hair, and taking care of the claimant's toileting needs. The claimant contended in a January 1996 pre-hearing order that he was entitled to medical expenses, "including nursing services for his mother." An administrative law judge filed an opinion on April 29, 1996 and found that the respondents

were not liable for nursing services provided by Ruth SIRRATT. The Full Commission determined that Ruth SIRRATT's home-care of the claimant, including "verbal cues" to help the claimant with activities such as dressing and bathing, were not "nursing services" as defined by the Arkansas judiciary. The Court of Appeals affirmed the Commission's finding.

The claimant began living with Katherine and Clement Volpert in about February 2003. A pre-hearing order was filed on April 14, 2010. The claimant contended that the Volperts were "advancing in age and are no longer able to care for him." The respondents contended that the claim was barred by *res judicata*. The Full Commission notes, however, that Dr. Stevens opined in October 1995 that the claimant's condition would change and deteriorate as the claimant aged. Dr. Souheaver evaluated the claimant on June 6, 2007 and reported, "Mr. Pack scored in the mentally retarded ranges on the IQ tests....his intellectual abilities have declined markedly and are now in the Retarded range." *Res judicata* bars relitigation of an issue unless there is evidence of change following the previous order. *Castleberry v. Elite Lamp Co.*, 69 Ark. App. 359, 13 S.W.3d 211 (2000). In the

present matter, Dr. Souheaver's testing in June 2007 showed a decline in the claimant's IQ, "reflecting a major loss of abilities." We find that Dr. Souheaver's testing in June 2007 was probative evidence demonstrating change following the previous order from the Commission. The Full Commission therefore affirms the administrative law judge's finding that *res judicata* does not bar the instant claim.

B. Nursing Services

The Arkansas Supreme Court has said that the services contemplated under "nursing services" are those rendered in tending or ministering to another in sickness or infirmity. *Little Rock Convention & Visitors Bur. v. Pack*, 60 Ark. App. 82, 959 S.W.2d 415 (1997), citing *Pickens-Bond Constr. Co. v. Case*, 266 Ark. 323, 584 S.W.2d 21 (1979). Nursing services do not include assistance with household and personal tasks which the claimant is unable to perform. *Pine Bluff Parks & Recreation v. Porter*, 6 Ark. App. 154, 639 S.W.2d 363 (1982). Benefits for nursing services have been allowed where the services consisted of medical care, including changing bandages and cleaning a wound, (*Tibbs v. Dixie Bearings, Inc.*, 9 Ark. App. 150, 654 S.W.2d 588 (1993)), giving injections, enemas, and hot baths, (*Dresser*

*Minerals v. Hunt*, 262 Ark. 280, 556 S.W.2d 138 (1977)), physical therapy, (*Wasson v. Losey*, 11 Ark. App. 302, 669 S.W.2d 516 (1984)), and where the claimant was mentally and physically helpless with no control over his bodily functions and needed 24-hour per day care (*Sisk v. Philpot*, 244 Ark. 79, 423 S.W.2d 871 (1968)).

An administrative law judge found in the present matter, "4. The respondents are liable for expenses associated with long-term care at Timber Ridge Ranch which is best suited to provide for the claimant's care." The Full Commission reverses this finding. The instant claimant did not prove that residential placement at Timber Ridge Ranch qualified as compensable nursing care. The parties stipulated that the claimant sustained a compensable injury to his brain on April 16, 1991. The parties stipulated that the claimant was permanently totally disabled, and Ruth Sirratt, the claimant's mother, was appointed as the claimant's guardian in December 1993. In an opinion filed April 29, 1996, an administrative law judge found that the respondents were not liable for nursing services provided by the claimant's mother.

The claimant began living with Katherine and Clement Volpert in February 2003. Katherine Volpert testified that the claimant was able to perform daily living activities such as bathing and brushing his teeth, "but you have to stay there with him." Ms. Volpert described a limited number of daily medications that the claimant took, and testified that the claimant received periodic medical treatment at the Veterans Administration. Dr. Souheaver reported in June 2007 that the claimant depended on the Volperts "for transportation, meal preparations, and financial decisions. According to the guardians, he requires assistance for personal hygiene, and has to be reminded about toileting in order to prevent incontinence." Dr. Souheaver stated that the claimant was "a good candidate for an assisted living arrangement that provides meals, minimal nursing attention, household cleaning, controlled (usually bus or van) transportation would be indicated at this time." Dr. Souheaver opined, however, that "Placement in a 24-hour nursing home is not indicated as he is not bed-ridden, delusional, or in need of hourly medical nursing at this time." Dr. Souheaver testified at deposition that the claimant "does not need 24-hour care."

The Full Commission finds that placing David Pack in Timber Ridge Neurorestorative Center does not qualify as "nursing services" as defined by Arkansas' appellate courts. We note that the Proposed Plan Of Care at Timber Ridge included primarily a Supported Living program "with ongoing therapeutic, recreational, and educational activities for clients who are unable to return to the family or community living." We find that such activities at Timber Ridge do not qualify as "nursing services." See *Pine Bluff Parks & Recreation, supra*. We also note Rob McDaniel's testimony that the per diem rate to pay for the claimant's placement at Timber Ridge would not even include prescription or over-the-counter medications, outside laboratory work, or medical equipment. The costs of prospective medical treatment for the claimant at Timber Ridge were not covered. The record in the present matter does not demonstrate that the Supported Living program at Timber Ridge qualifies as nursing services.

Based on our *de novo* review of the entire record, the Full Commission affirms the administrative law judge's finding that *res judicata* did not bar the issue of nursing care. The Full Commission reverses the administrative law

judge's finding that the respondents are liable for expenses associated with long-term care at Timber Ridge Ranch. We find that residential placement at Timber Ridge does not qualify as compensable nursing services. This claim is denied and dismissed.

IT IS SO ORDERED.

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A. WATSON BELL, Chairman

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KAREN H. McKINNEY, Commissioner

Commissioner Hood dissents.

**DISSENTING OPINION**

I must respectfully dissent from the majority opinion. After a de novo review of the record, I find that the claimant is entitled to care at Timber Ridge Ranch under the nursing services provision found in Ark. Code Ann. §11-9-508(a).

In my opinion, the case cited by the majority to deny benefits, Pine Bluff Parks & Recreation v. Porter, 6 Ark. App. 154, 639 S.W. 2d 363 (1982), actually supports an award of benefits, albeit an apportioned award. However, as the claimant does not have a spouse to provide housekeeping

and personal tasks as contemplated by Pickens-Bond Const. Co. v. Case, 266 Ark. 323, 584 S.W. 2d 21 (1979), I find that this case cannot be analyzed as a traditional nursing services case.

Here, the claimant is being cared for by an aunt and uncle. The claimant should not have to rely on the kindness of aging relatives who have no legal duty to care for the claimant. He sustained a compensable brain injury and the respondent should be responsible for all care required resulting from that injury. Timber Ridge Ranch has a facility to provide the claimant with the services he needs. As the claimant does not have a spouse to provide the basic services contemplated by Pickens-Bond, Id., these services should fall under the nursing services provision of Ark. Code Ann. §11-9-508(a).

For the aforementioned reasons I must respectfully dissent.

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PHILIP A. HOOD, Commissioner