

Legal Issues
Relating to
Catastrophic Injury Cases
Under the
Illinois Workers' Compensation Act
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Home Care

It is generally recognized that home care services provided by a relative of an injured employee are compensable under workers compensation law. 2 Larson, Workmen's Compensation Law (1987) § 61.13(d)(2). However, courts have struggled with a number of issues including: non-family members who care for an injured person, medical care as opposed to household duties, and determining the rate of compensation.

First, courts have grappled with the issue of a non-family member caring for an injured party. This was seen in Burd v. IL Industrial Commission, 207 Ill.App.3d 371, 566 N.E.2d 35, 152 Ill.Dec. 507 (Ill.App.Ct.3d Dist.1991). In this case, the Claimant was injured in a work-related incident and was rendered a paraplegic. Prior to his accident, he resided with his fiancée in a house. Following the incident, Claimant's primary physician (who specialized in rehabilitation) opined that Claimant required house modifications in order to live independently. However, Claimant's house was evidently not worth the cost of the modifications. Alternatively, the doctor stated that Claimant could not reside independently and required assistance by a nursing service or a significant other. Claimant's fiancée remained in the house to care for him. The issue before the court was whether the fiancée, as a non-family member, was entitled to compensation.

The fiancée testified that she assisted Claimant with his entry and exit into the house, as well as help with bathing, putting on shoes and socks, and in normal household chores. She stated that she does the laundry, the cooking, and takes out the garbage.

The Arbitrator determined that the fiancée was not entitled to payment for her care of Claimant because they shared a residence prior to the accident. Further, the Arbitrator stated that the fiancée continued to work outside the home full-time, as she had prior to the accident. On review, the Industrial Commission determined that Claimant required either house modifications or round-the-clock care. The Commission further stated that the fiancée was not obligated to provide home care to the Claimant. Therefore, the Commission awarded \$21,924 for the fiancée's services. The Circuit Court reviewed this decision and stated the award was against the manifest weight of the evidence and remanded to the Commission. The Commission then affirmed the original decision of the Arbitrator.

The current appeal to the Illinois Appellate Court 3rd District evaluated section 8(a) of the Workers Compensation Act. This court recognized that there was a lack of appellate cases in Illinois which dealt with this topic. Thus, the court looked to other jurisdictions that awarded compensation for home care services rendered by a non-relative.

Such cases distinguished between nursing services and housekeeping services. Normal housekeeping tasks included cleaning, preparation of meals, and washing and mending clothes. Compensable tasks included serving meals in bed, bathing and dressing, administering medication, and assisting with sanitary functions. The general rule is that shopping, cooking, and other household services performed by the spouse or other family member are considered gratuitous and cannot be the basis for an award of attendant care services. However, when services were performed by a non-family member, compensation was acceptable because it departs from that person's daily routine to care for the claimant.

In this case, the Appellate Court ruled that the many tasks that the fiancée performed were necessitated by the Claimant's injury and thus, they were not household duties. Further, the couple intended to marry and the fact that she was not a legal spouse and does not automatically bar her from compensation. The evidence supports an award of \$21, 924 for the fiancée.

Likewise, in Dobson v. Bolingbrook Construction, Co., 00 IIC 00629 (Aug.14, 2000) the injured party's girlfriend/wife was awarded compensation for home care services that she provided. In this case, the injured party expired from renal failure after burns on his feet aggravated his diabetic condition and forced dual amputations below the knees. His girlfriend, who later married him, cared for him by performing household duties as well as caring for his wounds. She changed the dressings on his wounds and took him to the doctor. The Commission determined that she was entitled to \$64,960 based on a 10 hour per day at \$7.00 per hour for 928 day calculation.

Contrast Rousey v. Industrial Commission, 224 Ill.App.3d 1096, 587 N.E.2d 26, 167 Ill.Dec. 144 (Ill.App.Ct.4th Dist.1992) where the court determined that Claimant's wife was not entitled to compensation. In this case, Claimant fell from a 35-40 foot height and suffered a brain injury. After being discharged from the hospital, Claimant returned home to his wife and two children. They then moved in with Claimant's father and have lived together continuously. Claimant operates at a level of a 6-7 year old and requires constant care. However, Claimant can leave home on his own to visit friends and an auto repair garage a short distance from the home. Further, Claimant is capable of driving an automobile and can hunt and use a weapon. At home, Claimant helps around the house by folding clothes and washing windows. He is able to dress and feed himself and tend to his own personal hygiene.

Claimant's spouse stated that she has had no formal medical training and essentially provides "guarding services" to ensure he does not get into trouble. Her cooking and cleaning responsibilities were conceded to be the same regardless of his injury.

The Arbitrator denied the spouse's claim for maintenance expenses because she was not performing necessary medical, surgical, or hospital services. The Arbitrator instead concluded that she was performing the normal duties of a spouse. The Commission affirmed the Arbitrator's decision. On review, the Circuit Court reversed, stating that Claimant's brain injury required full-time supervision and such care is not gratuitous simply due to marriage.

Claimant is self-sufficient in that he can feed and clothe himself and leave the house and interact with kids and watch TV. But his mental capacity is that of a child's and he must be looked after, much like a parent supervises a child. There is a fear that he may undertake a task beyond his capabilities and injure himself.

The Circuit Court referred to the Burd case discussed above and looked at the types of duties and the status of the party rendering them. In Burd, the claimant needed 24 hour per day nursing care due to his paraplegia which his fiancée was not legally obligated to provide. Contrast this case, where assistance is rendered to the injured spouse in the form of "guarding services." The Circuit Court determined that these guarding services were outside the ordinary household duties. However, the Appellate Court disagreed.

The Appellate Court determined that a majority of cases recognize the general rule that shopping, cooking, and other household services performed by spouse or other family members are gratuitous. In fact, a spouse performs such duties as part of the marital relationship. Thus, a spouse is obligated to perform such duties while a person outside the marital relationship is not obligated. Clearly, the type of care here is that which would be given to a child in the home. Professor Larson stated that "attendance in the nursing sense is covered by statutes providing for reimbursement for maintenance expenses, a line has been drawn between nursing attendants and services that are, in essence, housekeeping." Here, claimant is not receiving any sort of medical or nursing services, but merely housekeeping services. Thus, the Industrial Commission decision was reinstated and the wife did not receive payment.

Home Modifications

Another issue facing the courts is that of modifications required in the home for an injured party. Professor Larson stated, "medical benefits ordinarily include not only medical and hospital services and nursing care, which may be compensable even when supplied at home by a member of the claimant's family, but also necessary incidentals such as transportation, apparatus, supplies, and sometimes even special housing facilities." 2 Larson, Workmen's Compensation law (1989) § 61.00.

In Zephyr v. Industrial Commission, 215 Ill.App.3d 669, 576 N.E.2d 1, 159 Ill.Dec. 332 (Ill.App.Ct.1st Dist.1991), the court found that the Workers Compensation Act covered payment for remodeling the claimant's home.

In this case, the claimant sustained a bullet wound at work which severed his spine and left him paralyzed from the chest down. Additionally, his daughter was paralyzed since birth so the home needed to accommodate not one, but two wheelchairs.

The claimant's architect visited the home nearly twenty times to understand the physical needs of the claimant. Furthermore, he consulted textbooks and was a professional in the field of design for the disabled. He proposed adding a ramp to the front door, adding storage locations

for the two wheelchairs, widen the main corridor to accommodate two wheelchairs, remodel the bathroom to allow transfer, remodel the bedroom to allow transfer, remodel the kitchen to allow access for two wheelchairs, add elevator to the basement for safety and access to physical therapy equipment, add ramps to the living and family rooms, and increase the garage size to accommodate the elevator. The total estimated cost of such improvements was \$323,940.

Travelers Insurance evaluated this plan and immediately rejected it. The accessibility consultant hired by Travelers instead proposed remodeling, but not enlarging the kitchen, widening doorways, enlarging and remodeling a bathroom, enlarging the living room, adding a front door ramp, and a lift from the garage. His estimated cost was \$85,000 after evaluating the home for a three hour period.

The Commission awarded claimant \$275, 491 to remodel his home pursuant to Section 8(a) of the Workers Compensation Act. The Commission reached this decision after evaluating the credibility of the designers and weighing the evidence presented. The Court of Appeals upheld this ruling, but admitted the amount was extraordinary. The Court determined that claimant's home was in need of such remodeling given his extraordinary circumstances.

Similarly, in James Foltz v. Diversified Coatings, 00 IIC 0058 (Jan.28, 2002), the Industrial Commission affirmed the Arbitrator's decision awarding Petitioner \$55,912 for a new manufactured home and \$29,900 for the lot to place the home on. In this case, Petitioner was a 30 year old man that fell 50 feet from a water tank onto concrete. He is now wheelchair confined and unable to navigate around his current mobile home due to space constraints. Further, he was notified that the mobile home park was closing and he would have to move to a new location.

He was dependent upon his fiancée for assistance including personal hygiene and it was thought he could navigate better in a handicapped accessible home. On one occasion, Petitioner was attempting to cook and experienced burns on his legs due to his complications with a non-accessible kitchen.

Evaluators looked at the mobile home and determined that it was not conducive to the Claimant's needs. For example, he could not utilize the bathroom without assistance due to space constraints. Essentially, the Court awarded him the cost to purchase a new modular home which would meet his space and mobility constraints.

Similarly, in Jesse Bond v. F & E Erection Company, 00 IIC 0008 (Jan.10, 2000) the Petitioner had two doors widened in his home to accommodate Petitioner's wheelchair. Additionally, concrete ramps were installed outside to facilitate Petitioner's entrance and exit to and from the home.

Van Modifications

The Illinois Industrial Commission has interpreted Section 8(a) of the Workers Compensation Act as requiring the respondent to furnish a handicap-accessible van to facilitate mobility and self-sufficiency for a paralyzed individual. However, the Commission had held that van modifications are those reasonable and necessary to the medical needs of the petitioner.

For example, in Jesse Bond v. F & E Erection Company, 00 IIC 0008 (Jan.10, 2000), the Commission determined that a replacement van was necessary and part of Petitioner's medical expenses. In this case, Petitioner was a 46 year old male who fell down a series of steel stairs and later had an above the knee amputation of the left leg. Petitioner's wife testified that they had a wheelchair lift for their van that was disconnected due to recurring problems. This required her to manually crank the wheelchair to load her husband into the vehicle. Petitioner's doctor prescribed a new van lift with hand controls and a seat base for Petitioner. The doctor stated that Petitioner was completely dependent upon his wheelchair and the current lift was not reliable nor working properly.

Petitioner's attorney brought in a person from ADE Industries for a home evaluation who determined that Petitioner was capable of driving himself with a dependable vehicle and proper equipment. His current vehicle was a 1984 Ford van with almost 110,000 miles, weakened suspension, old tires and belts, and torn carpeting. Repairs to the existing van would cost \$14,300. Therefore, the evaluator proposed a new van with adaptations. Such adaptations included: a wheelchair lift, power door operators and exterior/interior switch control stations, power transfer seat bases, hand controls, and a cellular phone.

The Arbitrator awarded Petitioner the \$14,300 necessary to improve his current vehicle. However, the Commission modified this decision and granted Petitioner an additional \$25,663 (totaling \$39,963) pursuant to Section 8(a) of the act for a mid-level replacement van. The Commission opined that the cash value of Petitioner's current van did not merit \$14,300 in repairs. The Commission concluded that under 8(a) Petitioner was entitled to have a van to drive that was in good working order.

Compare Dale Carr v. Techalloy Co., Inc., 00 IIC 0905 (Dec. 22, 2000), in which the Commission awarded Petitioner \$58,500 to purchase a new specially-equipped van. In this case, Petitioner was a quadriplegic and the Arbitrator's decision provided for Respondent's purchase of a new van every four years, with Petitioner having input as to the selection of the van. However, the Arbitrator noted that items such as a television set and video playback with remote were not necessary in providing Petitioner transportation. Instead, Petitioner could input on options that were reasonable and necessary. Any additional options would be paid for by Petitioner.

Petitioner was instructed to meet with the employer's representative to discuss van options. He did not do so and instead sought out a van company on his own. This company provided the estimate that the Commission ultimately adopted. The issue in this case was what options were medically necessary for Petitioner. The employer argued that they merely had to provide a replacement van that was comparable to the old van at a cost of \$41,771.48. However, the Commission awarded Petitioner a substantially different van with alternative options at a cost of \$58,500. The new van had a diesel engine with a 72 inch tri-fold bed, special seats, and an underfloor wheelchair lift. It was unclear whether the new van would also include independent heating and air-conditioning units, a towing package, and a specialized electrical package.

Note there was a substantial dissenting opinion rendered in this case. The dissent indicated that there was no dispute as to the necessity of a replacement van. However, there was disagreement as to the type of van and what options were necessary to the Petitioner's well-being. The dissent indicated that there was no substantial evidence presented regarding the necessity of van options. Instead, the dissent argued that the Commission awarded the van with options that Petitioner wanted, even if they were unnecessary. Furthermore, the dissent argued that Petitioner will receive \$58,500 for a new van and will make a profit off the sale of his current van.