

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F501098

LARRY D. ROBERTS, Employee	CLAIMANT
WHIRLPOOL CORPORATION, Employer	RESPONDENT #1
GALLGHER BASSETT SERVICES, Carrier	RESPONDENT #1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT #2

OPINION FILED JUNE 30, 2021

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Fort Smith, Sebastian County, Arkansas.

Claimant represented by EDDIE H. WALKER, JR., Attorney, Fort Smith, Arkansas.

Respondent #1 represented by R. SCOTT ZUERKER, Attorney, Fort Smith, Arkansas.

Respondent #2 represented by CHRISTY L. KING, Attorney, Little Rock, Arkansas; although not participating in hearing.

STATEMENT OF THE CASE

On June 7, 2021, the above captioned claim came on for hearing in Fort Smith, Arkansas. A pre-hearing conference was conducted on April 7, 2021 and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked as Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The claimant is permanently totally disabled as a result of a September 9, 2014 work-related injury.

At the pre-hearing conference the parties agreed to litigate the following issue:

1. Claimant's entitlement to payment to his son for care giver assistance from 6:00 p.m. to 6:00 a.m., seven days per week.

Respondent #1 is currently providing claimant 12 hours of care per day from 7:00 a.m. to 7:00 p.m. through Home Instead. Claimant's treating physician, Dr. Speake, has recommended that claimant receive 24-hour care. Respondent #1 has agreed to provide 24-hour care, but contends that the additional 12 hours of care from 7:00 p.m. through 7:00 a.m. should be provided by Home Instead, not the claimant's son. On the other hand, claimant contends that his son should be authorized to provide the additional 12 hours of care, and that Home Instead is not capable of providing the requested care because their care givers have a lifting restriction which prevents them from lifting claimant out of his wheelchair when he needs to go to the bathroom in the middle of the night. Thus, the issue in this case is whether the additional 12 hours of care services are to be provided by Home Instead or claimant's son.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on April 7, 2021 and contained in a pre-hearing order filed that same date are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that 12 hours of additional care should be provided by his son. Instead, the additional care should be provided by Home Instead.

FACTUAL BACKGROUND

The parties have stipulated that claimant is permanently totally disabled as a result of a September 9, 2014 work-related injury. Claimant lives by himself in a home in Hackett and is in a wheelchair. As a result of his compensable injury, claimant does not have the strength to get himself in and out of his wheelchair.

Claimant's primary treating physician, Dr. Joseph Speake, had previously opined that claimant should have a care giver in his home during the day to assist him with his personal care, meal preparation, light housekeeping to ensure clutter free pathways and transfer assistance when no one else was at home. As a result, respondent provides home health care with Home Instead during the hours of 7:00 a.m. to 7:00 p.m.

In a report dated January 21, 2021, Dr. Speake stated:

Due to medical reasons, Larry D Roberts is unable to safely transfer himself and needs assistance to go to bathroom. Also needing to go to bathroom several times a night due to medical issues. For this reason I would recommend someone to be with him 24 hours per day.

Claimant has filed this claim contending that the additional 12 hours of home health care services should be provided by his son. Respondent is willing to provide the additional 12 hours of home health care services, but contends that those services should be provided by Home Instead who is already providing those same services 12 hours a day.

ADJUDICATION

Claimant contends that the additional 12 hours of home health care services should be provided by his son, not Home Instead. In fact, claimant contends that Home Instead is not capable of providing the needed services because Home Instead's care givers have a 25-pound lifting restriction which prohibits them from lifting claimant out of his wheelchair.

After my review of the evidence presented in this case, I find that the additional 12 hours of home health care services should be provided by Home Instead, not claimant's son.

First, it should be noted that Home Instead is already providing claimant with 12 hours of home health care from 7:00 a.m. to 7:00 p.m. These services are provided by care givers who have undergone 40 hours of training. Testifying at the hearing was Todd Tatum, a home care consultant and client care coordinator for Home Instead. Tatum knows the claimant and has been to his home on several occasions. In fact, Tatum has been coordinating care for claimant since 2019. According to Tatum's testimony the respondent provides 40 hours of training for its care givers that is equivalent to a CNA program. He testified that Home Instead's care givers are trained to change bedsheets and that they have been trained to use a Hoyer lift which allows clients to be lifted up and sat down and moved from wheelchair to shower chair. He also testified that the care givers are trained in dementia, redirecting, and Alzheimer's care.

Tatum did acknowledge that the care givers have a 25-pound lifting restriction. However, Tatum also indicated that a Hoyer lift is currently in place in the claimant's home

and that the care givers are capable of using that Hoyer lift to lift claimant as needed.

Tatum described a Hoyer lift as:

A Hoyer lift is a lift that is designed to get people up out of bed, set them into a wheelchair, set them on the commode, the toilet, to get them to a shower chair, to a regular chair, whatever they need. That device helps lift them either electronically or manually with a hydraulic lift.

Tatum went on to testify that the Home Instead care givers were capable of using the Hoyer lift to transfer the claimant.

Q Given the 25 pound lifting restriction that your employees have and taking into account the fact that Mr. Roberts has the Hoyer lift providing - - provided by the insurance company, is there any reason your employees cannot perform the transfers necessary for Mr. Roberts?

A No, sir. They can do whatever he needs.

Q In other words, with the assistance of the Hoyer lift and even with the 25-pound lifting restriction, they could transfer him from the bed to the wheelchair?

A Yes, sir.

Q Given the fact that we have the Hoyer lift, could they transfer him from the wheelchair to the bed?

A Yes, sir.

Q Are they able to, with the assistance of the Hoyer lift, transport him from the wheelchair to the commode?

A Yes, sir.

Q Are you aware of anything out there regarding Mr. Roberts' needs that your employees are unable to provide?

A No, sir, I'm not.

With respect to the use of the Hoyer lift, there appears to be some discrepancy. Claimant testified that the care givers have not attempted to use the Hoyer lift and that the care givers wanted him to leave the Hoyer lift harness on all day which cut off circulation to his legs. On the other hand, Tatum testified that claimant informed the care givers that he did not want the Hoyer lift used, but instead simply wanted his family members to pick him up and move him.

Q So where did you get this information that he refused the Hoyer lift?

A Because I've been out there multiple times, and he says he wants his family members just to pick him up and move him, and I said, "We can't do that." I told him that we cannot lift him, that we have to use a Hoyer lift.

And he says, "I'm not going to use the Hoyer lift. It's not something I want to use."

According to claimant's own testimony, his initial attempt to use the Hoyer lift was not done by Home Instead care givers who are trained in the use of the Hoyer lift, but instead by his family members.

Q Have you ever refused to use the Hoyer lift when somebody actually offered to help you with it?

A They haven't offered, not that I know of.

Q So how did this experience come about when you said they rolled you over in the bed and put it on you and it didn't work out? How did that come about?

A Well, when I first got it, I was going to try it out, but I don't even remember who put it on me, whether it was my family or - - it wasn't Home Instead. I don't remember. But the thing hurt my legs where I was sitting on because I - - they set me in a chair but they couldn't get the harness off of me because it's just too

big. (Emphasis added.)

Thus, it appears that claimant's one-time attempt to use the Hoyer lift was not done with the Home Instead care givers who are trained in the use of the Hoyer lift, but instead was attempted by members of claimant's family.

In fact, claimant admitted that he simply wanted his son to pick him up and move him.

I told them [Home Instead] I wanted my son because he could pick me up and move me and Home Instead can't. So it's just double jeopardy in there because if I got two people in there days and nights and none of them can pick me up, I'm just going to be left helpless.

Basically, it appears that claimant simply wants his son to be able to physically lift him out of his wheelchair and place him in the bed or on the commode or in the shower as necessary. I do not find it reasonable to expect the caregivers from Home Instead to dead lift a 250 pound individual in this manner. While I understand that for claimant this would be the simplest and easiest accommodation, I do not find under the facts presented in this case that it is prudent or reasonable and necessary. Instead, I find that the additional care in this case should be provided by Home Instead and that the Hoyer lift should be used to move the claimant from his wheelchair to bed, commode, or shower as appropriate.

With respect to this issue, I also note that claimant's son did not appear at the hearing to testify. Claimant did testify that his son currently lives in an apartment in Fort Smith and is the single parent of two children. He also testified that his son performed construction work. There was no testimony or evidence presented as to how claimant's

son would provide these services given the fact that he currently lives in an apartment in Fort Smith with his two children.

In summary, I find that claimant has failed to prove by a preponderance of the evidence that his son should be paid for providing home health care services 12 hours per day. Instead, I find that those services should be provided by Home Instead who is currently providing 12 hours of services per day already. The lifting of claimant should be performed by the care givers with the use of the Hoyer lift which is currently in claimant's home.

ORDER

Claimant has failed to prove by a preponderance of the evidence that his son is entitled to payment for home health care services to be provided for a 12 hour period per day. Instead, home health services should be provided by Home Instead for 24 hours per day.

Respondent #1 is responsible for paying the court reporter's charges for preparation of the hearing transcript in the amount of \$538.35.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE