

MEDICAL CONTESTED CASE HEARING NO. 13093

DECISION AND ORDER

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and Rules of the Division of Workers' Compensation adopted thereunder.

ISSUES

A medical contested case hearing (MCCH) was held on May 10, 2013 to decide the following disputed issue:

Is Self-Insured subject to liability under the Texas Workers' Compensation Act for modifications under the Americans with Disabilities Act (ADA) requested by Claimant?

Following a request from Claimant and upon a finding of good cause, the issue, above, was amended as follows:

Is Self-Insured subject to liability under the Texas Workers' Compensation Act for home modifications requested by Claimant?

PARTIES PRESENT

Claimant's wife, BD, holds a power of attorney over Petitioner/Claimant's affairs. She appeared at the MCCH and was assisted by AW, ombudsman. Respondent/Self-Insured appeared and was represented by WS, attorney.

BACKGROUND INFORMATION

The evidence presented in the hearing revealed that Claimant sustained a compensable injury on (Date of Injury) and that, as a result of this injury, Claimant is dependent upon the use of a wheelchair for mobility purposes. In order to make their home more accessible to Claimant, Claimant's wife paid for certain home improvements. The evidence indicated that Self-Insured reimbursed Claimant for a total of \$16,301.79 for these improvements. In seeking additional reimbursement for the home modifications at issue in this case, Claimant's wife, who holds power of attorney over Claimant's affairs, filed a DWC Form-060 ("Medical Fee Dispute Resolution Request/Response"), which was received by the Division on March 30, 2010. A source of confusion in this case appeared to be the reference to upgrades and a request for payment based on home living area and structural percentages under the Americans with Disabilities Act (ADA). The ADA reference appears to be derived from information provided in a letter dated October 21, 2009 from Ralph Martinez with Custom Residential Design & Remodeling in San Antonio. *See* Self-Insured's Exhibit CR-CC. The evidence presented,

particularly Carrier's Exhibit CR-BB, was compelling that the ADA does not apply to the home modifications at issue in this case. The ADA provides "civil rights protections to individuals with disabilities" and also "guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, State and local government services, and telecommunications." *See* Self-Insured's Exhibit CR-BB, p. 1. The ADA does not, however, cover strictly residential private homes. *See* Self-Insured's Exhibit CR-BB, p. 19. The evidence available indicates that the reference to the ADA as part of the request for additional reimbursement in this case was made by Claimant's wife as the result of a good-faith misunderstanding.

The issue to be addressed in this case is whether Self-Insured is subject to liability under the Texas Workers' Compensation Act (the Act) for the home modifications requested by Claimant. This issue is purely jurisdictional – to ascertain whether the Division has the legal authority to determine Self-Insured's liability for the home modifications – and a decision on Self-Insured's actual liability, if any, for reimbursement of those home modifications will not be made in this decision.

The following provisions of the Act were found to be of particular relevance to the jurisdictional determination to be made in this case. Texas Labor Code Section 401.011(19) defines "health care" as including "all reasonable and necessary medical aid, medical examinations, medical treatments, medical diagnoses, medical evaluations, and medical services. The term does not include vocational rehabilitation. The term includes:

- (A) medical, surgical, chiropractic, podiatric, optometric, dental, nursing, and physical therapy services provided by or at the direction of a doctor;
- (B) physical rehabilitation services performed by a licensed occupational therapist provided by or at the direction of a doctor;
- (C) psychological services prescribed by a doctor;
- (D) the services of a hospital or other health care facility;
- (E) a prescription drug, medicine, or other remedy; and
- (F) a medical or surgical supply, appliance, brace, artificial member, or prosthetic or orthotic device, including the fitting of, change or repair to, or training in the use of the appliance, brace, member, or device."

"Medical benefit" is defined at Texas Labor Code Section 401.011(31) to mean "payment for health care reasonably required by the nature of a compensable injury and intended to:

- (A) cure or relieve the effects naturally resulting from the compensable injury, including reasonable expenses incurred by the employee for necessary treatment to cure and relieve the employee from the effects of an occupational disease before and after the employee knew or should have known the nature of the disability and its relationship to the employment;
- (B) promote recovery; or
- (C) enhance the ability of the employee to return to or retain employment.

Texas Labor Code Section 408.021 (“Entitlement to Medical Benefits”) provides at subsection (a) that, “[a]n employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to health care that:

- (1) cures or relieves the effects naturally resulting from the compensable injury;
- (2) promotes recovery; or
- (3) enhances the ability of the employee to return to or retain employment.”

The version of Division Rule 133.307 (“MDR of Fee Disputes”) in effect at the time Claimant’s DWC Form-060 was filed in March 2010 provided as follows in pertinent part at subsection (a) – “Applicability. The applicability of this section is as follows.

- (1) This section applies to a request for medical fee dispute resolution for non-network or certain authorized out-of-network health care not subject to a contract, that is remanded to the Division or filed on or after May 25, 2008.”

The key inquiry in this case is whether the home modifications requested on behalf of Claimant constitute “health care” or a “medical benefit” as defined by the Act. In support of his position on jurisdiction in this case, Claimant offered two decisions from the State Office of Administrative Hearings (SOAH)¹ concerning disputes over a Carrier’s liability for home modifications in workers’ compensation cases. One of the decisions was in Docket No. 453-04-6044.M2 by SOAH Administrative Law Judge (ALJ) Thomas H. Walston. That case also dealt with home modifications requested to accommodate the wheelchair of an injured employee. ALJ Walston construed the Act as not excluding such modifications from the definition of “health care” at Texas Labor Code Section 401.011(19). He also determined that no Texas cases had addressed the question of whether home modifications of this nature constituted “health care” under the Act. He cited a number of out-of-state cases dealing with this issue. Among that case law was an Oregon case finding that home modifications for a quadriplegic were “compensable medical services” under a state act providing for “prosthetic appliances, braces, and supports.” The court in that case wrote that “. . . structural modifications are an extension of the wheelchair itself, without which the wheelchair could not serve as the tool it was intended to serve. Without the structural modifications, a wheelchair could not assist a person without the use of his or her legs to be independently mobile in the home.” See *SAIF Corp. v. Glubrecht*, 967 P.2d 490 (Ore. App. 1998). A North Carolina case cited by ALJ Walston found that wheelchair-accessible housing came under the “statutory scope of ‘other treatment or care’” and that, “[w]hen structural modification to existing housing is not feasible, ‘other treatment or care’ may include a duty to furnish alternate, wheelchair accessible housing.” See *Derebery v. Pitt County Fire Marshall*, 347 S.E.2d 814 (N.C. 1986). ALJ Walston also cited cases from Nebraska, Georgia, Pennsylvania, New Jersey, and Maryland related to home modifications under the workers’

¹ The hearing officer notes that the Division is not bound by SOAH decisions as precedent.

compensation statutes of those states. Based on his research, ALJ Walston concluded that “reasonable home modifications necessary to make a medical appliance (such as a wheelchair, lift, or special bed) useable to an employee who has sustained a compensable injury constitutes health care and a medical benefit under the Texas Workers’ Compensation Act . . .”

The evidence was found to be persuasive that the home modifications at issue in this case constitute “health care” and a “medical benefit” under the Act. Claimant therefore met his burden of proof to establish that Self-Insured is subject to liability under the Act for the requested home modifications at issue in this case. Pursuant to the version of Division Rule 133.307 in effect at the time Claimant’s DWC Form-060 was filed, the Division’s Medical Fee Dispute Resolution (MFDR) section has jurisdiction to make a determination on Self-Insured’s liability for those modifications.

Even though all the evidence presented was not discussed, it was considered. The Findings of Fact and Conclusions of Law are based on all of the evidence presented.

FINDINGS OF FACT

1. The parties stipulated to the following facts:
 - A. Venue is proper in the (City)Field Office of the Texas Department of Insurance, Division of Workers’ Compensation.
 - B. On (Date of Injury), Claimant was the employee of (Employer), Employer, and sustained a compensable injury.
 - C. On (Date of Injury), Employer provided workers’ compensation insurance coverage as a self-insured.
2. Self-Insured delivered to Claimant a single document stating the true corporate name of Self-Insured, and the name and street address of Self-Insured’s registered agent, which document was admitted into evidence as Hearing Officer’s Exhibit Number 2.
3. Claimant’s wife, who holds power of attorney over Claimant’s affairs, requested reimbursement for modifications made to their home based on Claimant’s compensable injury on this claim.
4. The home modifications at issue in this case constitute “health care” and a “medical benefit” pursuant to Texas Labor Code Section 401.011(19) and (31), respectively.

CONCLUSIONS OF LAW

1. The Texas Department of Insurance, Division of Workers' Compensation, has jurisdiction to hear this case.
2. Venue is proper in the (City) Field Office.
3. Self-Insured is subject to liability under the Texas Workers' Compensation Act for home modifications requested by Claimant.

DECISION

Self-Insured is subject to liability under the Texas Workers' Compensation Act for home modifications requested by Claimant.

ORDER

Claimant is entitled to the relief at issue, and it is so ordered. Claimant also remains entitled to medical benefits for the compensable injury in accordance with §408.021.

The true corporate name of the self-insured carrier is **SOUTHWESTERN BELL TELEPHONE LP** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST PAUL STREET
DALLAS, TEXAS 75201**

Signed this 16th day of May, 2013.

Jennifer Hopens
Hearing Officer