

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CHRISTOPHER J. ROBINSON)	
Claimant)	
)	
VS.)	
)	
MARTIN MARIETTA AGGREGATES)	
Respondent)	Docket No. 237,078
)	
AND)	
)	
ACE USA/CIGNA)	
Insurance Carrier)	

ORDER

Respondent requests review of a preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict on April 16, 2002.

ISSUES

The Administrative Law Judge determined claimant's wife, Lois Robinson, provided attendant care and nursing services to claimant at least 8 hours a day and that \$11.25 an hour was the reasonable value for such services. The Judge ordered respondent to reimburse claimant's wife at the rate of \$90 per day from the date claimant filed his notice of intent which requested reimbursement for such services. The Administrative Law Judge also ordered the respondent to continue to pay \$630 per week thereafter. In addition, the Administrative Law Judge denied claimant's request that respondent provide a handicapped accessible van.

Respondent appeals contending the Administrative Law Judge exceeded his jurisdiction because the services provided by claimant's wife do not constitute medical treatment within the meaning of K.S.A. 44-510h(a).

Claimant argues the Board does not have jurisdiction to review the preliminary order. Claimant argues an award of medical compensation is within the jurisdiction of an Administrative Law Judge and not an issue subject to review by the Board from a preliminary hearing. Claimant argues the appeal should be dismissed or, in the alternative, the Administrative Law Judge's decision should be affirmed.

FINDINGS OF FACT & CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

It is undisputed claimant suffered severe injuries in a work-related accident on February 19, 1998. Claimant suffered a broken neck, was blinded, both feet and his left arm were amputated. In addition, claimant suffered abdominal injuries which still require dressings on the enterocutaneous fistula.

Thomas E. Hicks, M.D., in a letter dated November 6, 2000, indicated claimant was totally disabled and required care 24 hours a day. In a letter dated November 20, 2001, Dr. Hicks noted claimant continued to require a great deal of care at home because he was unable to perform most of the activities of daily living. The doctor specifically noted claimant's wife had been taking care of claimant and was very capable of providing such care. The doctor concluded claimant continues to require care 24 hours a day.

Claimant's wife detailed the nature of care she provides for claimant. Initially, she had to assist claimant on and off the toilet as well as chairs, now she just occasionally assists with those activities. She was trained by the doctor to change the dressing on his abdomen and performs that activity from one to three times daily. She constantly has to monitor the drainage from the abdomen wound. She assists with bathing, dressing and feeding claimant. In addition, she must assist claimant with all the normal daily activities, including but not limited to transporting him in and out of vehicles, making telephone calls and placing radios and other items where he can reach them.

Claimant requested respondent to provide a handicapped accessible van and to reimburse his wife for the reasonable value of care she has provided. Respondent denied the requests and the matter proceeded to preliminary hearing.

Before the Board can consider the issue dealing with the award of medical compensation it must first consider whether it has jurisdiction to decide this issue at this stage of the proceedings. This matter did come before the Board based upon respondent's appeal from a preliminary hearing.

K.S.A. 44-534a restricts the jurisdiction of the Board to consider appeals from preliminary hearing orders to the following issues:

- (1) Whether the employee suffered an accidental injury;
- (2) Whether the injury arose out of and in the course of the employee's employment;
- (3) Whether notice is given or claim timely made;

(4) Whether certain defenses apply.

These issues are considered jurisdictional and subject to review by the Board upon appeals from preliminary hearing orders. The Board can also review a preliminary hearing order entered by an administrative law judge if it is alleged the administrative law judge exceeded his or her jurisdiction in granting or denying the relief requested.¹

Respondent argues the Administrative Law Judge exceeded his jurisdiction because the services provided by claimant's wife neither comprised medical treatment nor nursing services within the meaning of those terms in K.S.A. 44-510h(a).

The dispositive issue, in determining whether the Board has jurisdiction to review the respondent's appeal, is whether the services provided by claimant's wife fall within the meaning of the term "medical treatment" as used in K.S.A. 44-510h. The statute specifically includes "nursing" within the services it is the duty of the employer to provide. If the services provided by claimant's wife comprise such medical treatment or nursing then the Administrative Law Judge was within his authority and this appeal should be dismissed. But if the services provided are not medical treatment or nursing then the Board has jurisdiction to hear this appeal.

The Workers Compensation Act requires respondent to provide an injured worker such medical treatment as may be reasonably necessary to cure and relieve the injured worker from the effects of his injury.

It shall be the duty of the employer to provide the services of a health care provider, and such medical, surgical and hospital treatment, **including nursing**, medicines, medical and surgical supplies, ambulance, crutches, and apparatus, and transportation to and from the home of the injured employee to a place outside the community in which such employee resides . . . as may be reasonably necessary to cure and relieve the employee from the effects of the injury.² (Emphasis added)

Respondent argues the statute does not provide that services performed by a family member constitutes medical treatment. Respondent further argues the statute clearly contemplates nursing services be rendered by a trained professional.

The argument advanced by respondent fails to recognize that in this jurisdiction nursing services provided by a family member are contemplated and allowed. K.A.R. 51-9-10(c) specifically provides that nursing services by a family member shall be provided if

¹See K.S.A. 44-551.

²K.S.A. 44-510h(a).

approved in advance by the treating physician. The record contains the letter from the treating physician indicating claimant's wife was capable of performing the necessary care claimant required.

K.S.A. 44-510h(a) includes nursing as medical treatment respondent must provide an injured employee. K.A.R. 51-9-10(c) specifically allows nursing services to be provided by a family member. The Administrative Law Judge did not exceed his jurisdiction in ordering claimant's wife to be reimbursed for providing such services. Accordingly, the Board finds it does not have jurisdiction to consider the issue raised by respondent at this juncture of the proceedings.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the respondent's appeal from the Order entered by Administrative Law Judge Bryce D. Benedict on April 16, 2002, should be, and the same is hereby, dismissed.

IT IS SO ORDERED.

Dated this _____ day of June 2002.

BOARD MEMBER

c: Stanley R. Ausemus, Attorney for Claimant
Gary R. Terrill, Attorney for Respondent
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Workers Compensation Director