U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA F. REID and DEPARTMENT OF THE ARMY, ANNISTON ARMY DEPOT, Anniston, AL

Docket No. 03-700; Submitted on the Record;
Issued May 22, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied payment of an attendant's allowance to appellant's former spouse on the grounds that he was not qualified as an attendant under 5 U.S.C. § 8111(a).

On September 3, 1969 appellant, then a 29-year-old trade's helper, sustained an injury while installing a waste line on an engine at work. The socket slipped off the wrench and hit her above the right eye and nose. The Office accepted her claim for contusion to the right supraorbital nerve, postconcussion syndrome and conversion reaction. Appellant received compensation for temporary total disability on the periodic rolls.

The Office approved appellant's claim for a constant attendant. On August 6, 2001 the personal caregiver service notified the Office that it was no longer able to provide service for appellant but would continue to do so through August 10, 2001 to allow her sufficient time to contract with another agency. On January 15, 2002 appellant notified the Office that her former spouse had been staying with her and taking care of her since November 1, 2001. She did not see why he could not be authorized as an attendant. The Office replied that her former spouse could be paid only if he were certified and billed the Office directly.

Appellant's former spouse billed the Office directly for services provided. On March 29, 2002 the Office advised appellant that, although attendant services were authorized in her case, she still needed to provide information on her caregiver. The Office requested that she submit a copy of her former spouse's certification as a home health aide or a copy of his nursing license.

On April 11, 2002 appellant expressed her dissatisfaction with the attendants previously assigned to her case. She explained that her former spouse did the job, she felt safe and secure with him, nothing was being taken from her home and she was no longer upset.

In a decision dated May 15, 2002, the Office denied payment of an attendant's allowance to appellant's former spouse. The Office found that appellant provided no documentation of

training or certification that would indicate her former spouse's qualifications to provide personal care services.

Appellant requested a review of the written record. She asserted that her former spouse provided excellent attendant care services regardless of credentials.

In a decision dated September 20, 2002, the hearing representative affirmed the denial of an attendant's allowance for appellant's former spouse. The hearing representative found no evidence that the former spouse was a suitably qualified professional who could be recognized as an attendant.

On October 23, 2002 appellant requested reconsideration. She submitted a certificate dated September 23, 2002, signed by the owner of Home Options, Inc.: "This certificate is presented to [appellant's former spouse] for the completion of four hours of caregiver training certification."

On November 14, 2002 the Office advised appellant that the September 23, 2002 certificate was insufficient to allow the Office to rule on her former spouse's qualifications. The Office requested that appellant submit additional information: "Please have a curriculum for this training submitted, along with documentation of [his] licensure as a certified home health aide or nursing license. Please have this documentation submitted within 30 days."

On December 16, 2002 the Office conducted a merit review of appellant's claim and denied modification of its prior decision. The Office found that the certificate did not substantiate that appellant's former spouse was a qualified attendant. The Office found that appellant failed to submit a curriculum of the training or documentation that he was a certified home health aide or licensed practical nurse or that he was similarly trained.

The Board finds that the Office properly denied payment of an attendant's allowance to her former spouse on the grounds that he was not qualified as an attendant under 5 U.S.C. § 8111(a).

Section 8103 of the Federal Employees' Compensation Act provides for the furnishing of "services, appliances and supplies prescribed or recommended by a qualified physician" that the Office, under authority delegated by the Secretary of Labor, "considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of monthly compensation."[1]

In interpreting section 8103, the Board has recognized that the Office, acting as the delegated representative of the Secretary, has broad discretion in approving services provided under the Act to ensure that an employee recovers from his or her injury to the fullest extent possible, in the shortest amount of time.[2] The Office has administrative discretion in choosing

[1] 5 U.S.C. § 8103.

[2] *Marla Davis*, 45 ECAB 823, 826 (1994).

the means to achieve this goal and the only limitation on the Office's authority is that of reasonableness.[3]

Section 8111(a) of the Act provides:

> "The Secretary of Labor may pay an employee who has been awarded compensation an additional sum of not more than $500.00 a month, as the Secretary considers necessary, when the Secretary finds that the service of an attendant is necessary constantly because the employee is totally blind; or has lost the use of both hands or both feet; or is paralyzed and unable to walk; or because of other disability resulting from the injury making him so helpless as to require constant attendance."[4]

Federal regulations implement this provision of the Act as follows:

> "Section 10.314 Will the Office pay for the services of an attendant?
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> "Yes, [the Office] will pay for the services of an attendant up to a maximum of $1,500[.00] a month, where the need for such services has been medically documented. In the exercise of the discretion afforded by 5 U.S.C. § 8111(a), the Director has determined that, except where payments were being made prior to January 4, 1999, direct payments to the claimant to cover such services will no longer be made. Rather, the cost of providing attendant services will be paid under section 8103 of the Act and medical bills for these services will be considered under section 10.801. This decision is based on the following factors:
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> > "(a) The additional payments authorized under section 8111(a) should not be necessary since [the Office] will authorize payment for personal care services under 5 U.S.C. § 8103, whether or not such care includes medical services, so long as the personal care services have been determined to be medically necessary and are provided by a home health aide, licensed practical nurse or similarly trained individual.
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> > "(b) A home health aide, licensed practical nurse or similarly trained individual is better able to provide quality personal care services, including assistance in feeding, bathing and using the toilet. In the past, provision of supplemental compensation directly to injured employees may have encouraged family members to take on these responsibilities even though they may not have been trained to provide such services. By paying for the services under section 8103, [the Office] can better determine whether the services provided are necessary and/or adequate to meet the needs of the injured employee. In addition, a system requiring

[3] *Daniel J. Perea*, 42 ECAB 214, 221 (1990) (holding that abuse of discretion by the Office is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or administrative actions that are contrary to both logic and probable deductions from established facts).

[4] 5 U.S.C. § 8111(a).

> the personal care provider to submit a bill to [the Office], where the amount billed will be subject to [the Office's] fee schedule, will result in greater fiscal accountability."[5]

The issue in this case is not whether appellant is entitled to the services of an attendant. The Office has approved appellant's claim for such services. The issue is whether the Office properly denied payment of an attendant's allowance to appellant's former spouse on the grounds that he was not qualified as an attendant under 5 U.S.C. § 8111(a).

As section 10.314 of the regulations states, the Office will authorize payment for personal care services under 5 U.S.C. § 8103 "so long as the personal care services … are provided by a home health aide, licensed practical nurse or similarly trained individual." The question for determination, therefore, is whether the weight of the evidence in this case establishes that appellant's former spouse is a home health aide, licensed practical nurse or similarly trained individual.

The only evidence submitted to support the qualifications of appellant's former spouse is the Home Options, Inc., certificate dated September 23, 2002. This certificate states that appellant's former spouse completed four hours of "caregiver training certification." On its face this evidence is supportive of appellant's request that an attendant's allowance be paid to her former spouse, but she submitted no curriculum or other evidence documenting the specific training her former spouse received. Without this information, it is impossible to determine whether her former spouse received training that was similar to that of a home health aide or licensed practical nurse, as is required by 20 C.F.R. § 10.314.

The Office has broad discretion in approving services provided under the Act.[6] It was well within the Office's discretion to request additional evidence needed to make an informed decision on whether appellant's former spouse met regulatory requirements. The Office allowed appellant a reasonable amount of time to gather and submit this evidence, but she failed to do so. The Board finds, therefore, that the Office properly denied the payment of an attendant's allowance to appellant's former spouse.

[5] 20 C.F.R. § 10.314 (1999).

[6] *See, e.g., James R. Bell,* 49 ECAB 642 (1998).

The December 16, September 20 and May 15, 2002 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
May 22, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member