

**United States Department of Labor
Employees' Compensation Appeals Board**

J.M., Appellant

and

PEACE CORPS, Washington, DC, Employer

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Docket No. 07-1075

Issued: May 21, 2008

Appearances:

Appellant, pro se

No appearance, for the Director

Oral Argument March 6, 2008

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 14, 2007 appellant filed a timely appeal from a March 14, 2006 merit decision of the Office of Workers' Compensation Programs denying reimbursement of expenses. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office properly denied appellant's request for reimbursement for healing and recovery books and compact discs, meals, exercise clothing and yoga and meditation sessions pursuant to 5 U.S.C. § 8103.

FACTUAL HISTORY

The Office accepted that appellant sustained psoriatic arthritis causally related to his work for the employing establishment in the 1960s. The Office subsequently expanded acceptance of his claim to include obesity, hypertension, malignant melanoma, squamous and basal cell carcinoma, osteoarthritis, lumbago, prostate cancer and obesity.

In a report dated July 10, 2003, Dr. Stephen E. Smiles, a Board-certified internist, related that he had treated appellant beginning in 1987 for psoriatic arthritis. He noted that appellant required exercise both at a health club and in the outdoors walking, swimming and bicycle riding. Dr. Smiles explained that exercise improved appellant's motor strength, range of motion, cardiovascular system and helped control obesity. He described the medical treatment appellant received for his accepted conditions and recommended psychiatric or psychological services to improve his functioning.

On August 14, 2003 appellant submitted a request for reimbursement for medical care activities from July 26 through August 14, 2003. He noted that he had "daily three or more medically necessary health care activities each workday" since the end of his last submission on July 25, 2003. Appellant listed his activities during this time period on a calendar. During this time he walked outside, attended medical appointments and swam at Palm Beach and West Palm Beach.

In another letter dated August 14, 2003, appellant related that he claimed medical care from July 26 through August 14, 2003 and "per diem meal and travel expenses during that time and other essential submissions." He thanked the Office for paying his July 25, 2003 submission for the same expenses. Appellant also submitted a description of the medical treatment, activities and purchases for which he requested reimbursement. He noted that the Office had authorized and paid for 7,978 medical treatments and activities from 1994 to the present, including his exercise, physical therapy and rehabilitation sessions. From January to August 2003, appellant participated in 619 "time intensive and medically necessary, required and essential health care activities." He described his visits in 2003 to physicians, physical therapists and sports clubs and his participation in outdoor walking, swimming at West Palm Beach and Palm Beach, bicycle riding, spiritual healing services, support groups, meditation sessions and healing seminars. Appellant asserted that he purchased books, pharmacy supplies, exercise clothes and equipment which were "medically required." He also purchased music for healing and recovery. From July 26 through August 29, 2003, appellant indicated that he engaged in outdoor ambulation, swimming 12 times at Palm Beach and West Palm Beach, purchased books and medical/pharmaceutical supplies and purchased medically required exercise clothing.

On August 29, 2003 appellant specified that from August 15 to 29, 2003 he claimed no per diem compensation but \$1,000.49 for meals and transportation. He incurred expenses for healing and recovery books and compact discs (CDs) of \$452.83 on August 26, 2003, \$152.65 on August 28, 2003 and \$67.00 on August 29, 2003. Appellant spent \$488.79 at Paragon Sports on August 27, 2003. He further incurred pharmaceutical and health club expenses.

By letter dated September 29, 2003, appellant requested that the Office reimburse him for expenses of \$4,634.23. He noted that such expenses were previously approved on a "pay as billed" basis for the past nine years.¹

In a report dated October 1, 2003, Dr. Jeffrey L. Marx, an attending Board-certified dermatologist, diagnosed psoriasis, psoriatic arthritis, status post malignant melanoma and

¹ On August 29, 2003 Dr. Smiles requested authorization for chiropractic and nutritional services by Dr. Linda Li, a chiropractor. By letter dated September 2, 2003, the Office approved physical therapy treatments with Dr. Li.

surgery for squamous and basal cell carcinoma. He requested that the Office authorize appellant “to continue to purchase books and CDs on an ongoing basis for his medically required healing, recovery and rehabilitation process for his multiple [Office] authorized and approved medical conditions. These healing books and CDs are medically essential to [his] healing, health and well-being process.”

On October 7, 2003 appellant asserted that the Office had approved obesity treatment with Dr. Louis Aronne, a Board-certified internist, beginning May 2001. Dr. Aronne prescribed a nutritional program. Appellant requested reimbursement for the nutritional program and cited past Office practice. In another letter dated October 7, 2003, he requested reimbursement for healing lectures and events in the amount of \$105.00 from January to May 2003. Appellant submitted an updated description of his treatment, activities and purchases for the year to date. On October 28, 2003 he requested reimbursement for expenses claimed from July 26 through August 29, 2003 in the amount of \$4,634.23 and expenses from August 30 through October 7, 2003 in the amount of \$2,167.74. Appellant again noted that the Office had previously paid similar claimed expenses.

In a report dated October 29, 2003, Dr. Smiles described appellant’s medical treatment by various physicians necessitated by his accepted conditions. He related that it was “medically necessary” for appellant to use a health club and participate in “outdoor ambulation exercise, bike riding exercise and swimming.” Dr. Smiles stated, “[Appellant] continues to medically require, on a specific prescription basis, the continuing of his [Office] ongoing reimbursement for particular exercise equipment, specialized athletic/exercise clothing and shoes for his medically necessary daily exercise program.” He further noted that he required continuing reimbursement for Dr. Aronne’s weight maintenance program and for books, CDs and events that promoted healing, meditation and recovery.

On November 17, 2003 appellant requested a written explanation describing why his previously paid expenses were now denied.

By decision dated November 19, 2003, the Office denied appellant’s request for reimbursement for “healing/recovery CDs and books, per diem costs (meals), athletic and exercise clothing and healing/meditation (yoga) sessions.” The Office determined that the Federal Employees’ Compensation Act² did not provide authorization for these types of expenses.³

On November 25, 2003 appellant submitted a calendar of expenses incurred from 2003 to date. On December 18, 2003 he requested an oral hearing before an Office hearing representative. By decision dated January 29, 2004, the Office denied appellant’s request for a hearing under 5 U.S.C. § 8124. The Office noted that as appellant’s injury occurred before July 4, 1966 he was not entitled to an oral hearing or review of the written record as a matter of right, and found that the matter could be equally well addressed through the reconsideration process.

² 5 U.S.C. §§ 8101-8193.

³ On November 21, 2003 the Office placed appellant on the periodic rolls.

In a report dated May 28, 2004, Dr. Smiles asserted that appellant required exercise, physical therapy and rehabilitation sessions at a health club and outdoor swimming, and outdoor walking and biking. The exercise increased appellant's strength, flexibility, cardiovascular system and helped control his obesity. He required exercise clothing to participate in the exercise and rehabilitation. Dr. Smiles noted that appellant required "reimbursement for per diem (meals) to exclusively pay for his medically necessary unique physician prescribed nutritional regimen." In another letter dated May 28, 2004, Dr. Smiles noted that Dr. Aronne last evaluated him in 2001 and requested authorization for appellant to see the physician again for a nutritional consultation.⁴

On November 16, 2004 appellant requested reconsideration. He maintained that his healing and recovery books, CDs and meditation sessions benefited his health. Appellant noted that the Office previously paid for a nutritional program prescribed by Dr. Aronne in 2001. He requested that the Office pay per diem meal costs to reimburse him for the nutritional program.

By decision dated December 10, 2004, the Office denied modification of the November 19, 2003 decision.⁵ It found that the services for which appellant requested reimbursement were not for medical treatment and thus required advanced authorization. The Office found that, while a claimant may have an expectation for a continuation of medical treatment, he did not have an expectation of reimbursement for ancillary services. It further determined that there was no basis for paying meal expenses as appellant received local medical treatment.

In a report dated December 6, 2005, Dr. Smiles described the medical benefits of losing weight. He also explained that appellant needed physical exercise, including outdoor exercise. Dr. Smiles indicated that he used "high technology performance clothing in his medically necessary athletic club environment" and compressible, waterproof, insulated, layered clothing for outdoors. He recommended acupuncture, acupressure, mind-body medicine, imagery and visualization techniques, meditation, massage, tai-chi, yoga, sound healing and music therapy. Dr. Smiles generally described the benefit of each activity and maintained that they would reduce the degree of appellant's disability. He further recommended medically required CDs which he asserted would have a "positive impact on the quality of [appellant's] life." Dr. Smiles stated:

"I have previously prescribed various medically necessary books which will give [appellant] relief and reduce his degree of disability. [He] should be retroactively reimbursed for these expenses. [Appellant] uses the books on healing, recovery, meditation, contemplation and assorted other related books as part of his daily healing and recovery practice; and as a means to help him relax and to reduce his endemic stress."

⁴ The record does not contain a 2001 report from Dr. Aronne.

⁵ On October 11, 2005 Dr. Smiles requested authorization for a health club membership for appellant. On October 21, 2005 the Office approved a six-month gym membership, a personal trainer and a heart rate monitor.

On December 9, 2005 appellant again requested reconsideration. He maintained that the Office had the burden of proof to terminate previously reimbursed services. Appellant submitted prescriptions from Dr. Smiles dated July 25, 2003 for books and CDs for healing and recovery hardware for outdoor exercise and a jacket.⁶

By decision dated March 14, 2006, the Office denied modification of its December 10, 2004 decision.⁷ The Office noted that it had denied per diem costs for meals as appellant sought local medical treatment. The Office noted that medical expenses for a prescribed diet may be paid if supported by medical evidence.

LEGAL PRECEDENT

Section 8103 of the Federal Employees' Compensation Act⁸ provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Office considers likely to cure, give relief, reduce the degree of the period of disability or aid in lessening the amount of monthly compensation.⁹ In interpreting this section of the Act, the Board has recognized that the Office has broad discretion in approving services provided under section 8103, with the only limitation on the Office's authority being that of reasonableness.¹⁰ Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.¹¹ In order to be entitled to reimbursement for medical expenses, a claimant must establish that the expenditures were incurred for treatment of the effects of an employment-related injury.¹²

Proof of causal relationship in a case such as this must include supporting rationalized medical evidence. Thus, in order for a surgery to be authorized, appellant must submit evidence to show that the requested procedure is for a condition causally related to the employment injury and that it is medically warranted. Both of these criteria must be met in order for the Office to authorize payment.¹³

⁶ Dr. Smiles July 25, 2003 prescriptions are nearly illegible.

⁷ The Office cited "clear evidence of error" language, applicable to untimely requests for reconsideration, in its March 14, 2006 decision. The Office, however, found that the evidence submitted did not possess "substantive probative value" and denied modification of the December 10, 2004 decision, thereby conducting a merit review.

⁸ 5 U.S.C. §§ 8101-8193.

⁹ 5 U.S.C. § 8103; *see Thomas W. Stevens*, 50 ECAB 288 (1999).

¹⁰ *Joseph P. Hofmann*, 57 ECAB 456 (2006); *James R. Bell*, 52 ECAB 414 (2001).

¹¹ *Claudia L. Yantis*, 48 ECAB 495 (1997).

¹² *Cathy B. Mullin*, 51 ECAB 331 (2000).

¹³ *Id.*

Pursuant to this delegation of statutory authority, the Office has promulgated regulations implementing this section of the Act. Section 10.310(a) of the pertinent federal regulation, states:

“The employee is entitled to receive all medical services, appliances or supplies which a qualified physician prescribes or recommends and which [the Office] considers necessary to treat the work-related injury. The employee need not be disabled to receive such treatment. If there is any doubt as to whether a specific service, appliance or supply is necessary to treat the work-related injury, the employee should consult [the Office] prior to obtaining it.”¹⁴

Regarding the authorization of nonmedical equipment, the Office’s procedure manual provides:

“Items such as waterbeds, saunas, weight-lifting sets, exercise bicycles [*etc.*,] may be authorized only if recommended by the attending physician and if [the Office] finds that the item is likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation. Procedures for developing and adjudicating requests for such equipment are provided in [Procedure Manual Chapter 2.810.15].”¹⁵

Regarding the authorization of special equipment and furnishings, section 2.810.15 of the Procedure Manual provides:

“The [claims examiner] should obtain the following information:

(1) *From the treating physician:*

- (a) A full, specific description of the basic equipment/furnishing required to treat effects of the job-related condition;
- (b) An explanation of how the item will address the effects of the job-related condition, and an opinion as to the anticipated effectiveness of the item in treatment;
- (c) The anticipated duration of the need for the item (to determine whether rental or purchase is appropriate);
- (d) A suggested supplier, if any.

¹⁴ 20 C.F.R. § 10.310.

¹⁵ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.3(d) (September 1995).

(2) *From the claimant:*

(a) The full name and address of two or three suppliers:

(b) From each potential provider, a signed statement describing in detail the basic, unadorned item meeting the physician's specifications, and a breakdown of all costs, including delivery, installation, *etc....*"

ANALYSIS

Appellant requested reimbursement for activities and purchases beginning July 26, 2003 which he asserted were required due to his accepted employment conditions. He maintained that he spent \$4,634.23 from July 26 through August 29, 2003 and \$2,167.74 from August 30 through October 7, 2003 on meals, books and CDs. Appellant also requested reimbursement for healing lectures and sessions he attended from January to May 2003.

Appellant also contends that he was entitled to reimbursement for meals associated with a nutritional program recommended by Dr. Aronne in 2001. In its decisions, the Office denied reimbursement for *per diem* meal expenses associated with medical treatment as he did not seek medical treatment outside his geographical area. Appellant has not claimed per diem meal expenses but instead claimed reimbursement for his nutritional program. The Board's jurisdiction, however, is limited to reviewing final decisions of the Office.¹⁶ As the Office has not addressed this issue, it is not before the Board at this time.

Appellant also claimed reimbursement for books and CDs on healing, exercise clothing and various healing activities such as meditation. He did not, however, obtain authorization from the Office before purchasing the claimed items, provide a description of the actual items purchased or fully document his expenses by providing receipts. In prescription pads notes dated July 25, 2003, Dr. Smiles found that appellant required healing books and CDs and various other items. In a report dated October 1, 2003, Dr. Marx requested that the Office allow appellant to purchase books and CDs which he opined were "medically essential to his healing, health and well-being process." Neither Dr. Smiles nor Dr. Marx, however, provided adequate medical opinion describing the specific healing book or CD recommended or rationale for their opinions. A medical opinion not fortified by rationale is of diminished probative value.¹⁷

On October 29, 2003 Dr. Smiles opined that it was medically necessary for appellant to ambulate, bike ride and swim outdoors. He asserted that he required specialized exercise clothing for that purpose and also required continued reimbursement for books, CDs and other events that promoted healing and meditation. In a report dated May 28, 2004, Dr. Smiles described the health benefits of exercise, swimming, outdoor walking and biking. He again noted that appellant required exercise clothing to participate in these activities. Dr. Smiles,

¹⁶ 20 C.F.R. § 501.2(c).

¹⁷ *Mary E. Marshall*, 56 ECAB 420 (2005).

however, did not explain why he required specific clothing for exercise or the exact items to be purchased. As discussed, without rationale a medical opinion has little probative value.¹⁸

On December 6, 2005 Dr. Smiles opined that appellant required “high technology performance clothing” for use in athletic clubs and waterproof, lightweight clothing for outside. He did not recommend any specific item or explain why a specific article of clothing was necessary due to an accepted condition. Dr. Smiles also recommended that appellant participate in acupuncture, acupressure, mind-body medicine, imagery and visualization techniques, meditation, massage, tai-chi, yoga, sound healing and music therapy as an aid to reducing the degree of disability. He did not, however, prescribe any specific program for appellant but instead generally commented on the benefits of such activities. Dr. Smiles further recommended medically required CDs to reduce disability and books on healing to reduce stress and improve quality of life. The procedure manual provides that the attending physician, in recommending special equipment or furnishings, should provide a full description of the equipment or furnishings, how it will affect the job-related condition and the anticipated duration of the need for the item.¹⁹ Dr. Smiles failed to specifically identify the items or quantity to be purchased or the anticipated duration of the need for the items.

As discussed, the Office has the discretion to authorize medical services, appliances and supplies pursuant to section 8103.²⁰ The function of the Board on appeal is to determine whether there has been an abuse of discretion. Generally, abuse of discretion is shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logical and probable deductions from known facts.²¹ The Board finds that the Office acted within its discretion in denying appellant’s request for reimbursement for various expenses beginning July 26, 2003.

On appeal, appellant argues that, as the Office had previously reimbursed him for similar expenses, it had the burden of proof to terminate authorization for services. This is not the case. Appellant seeks reimbursement for nonmedical expenses such as books, music, meditation and yoga sessions, and incidental expenses such as exercise clothing. He must establish that the expenditures are for treatment of his accepted conditions by submitting rationalized medical opinion evidence that it is necessary and reasonable.²²

Appellant further contends that an Office medical adviser should have reviewed his request for reimbursement for expenses. As discussed, however, the Office acted within its discretion in denying his requests for reimbursement for undocumented expenses beginning July 26, 2003.

¹⁸ *Id*; see also *Willa M. Frazier*, 55 ECAB 379 (2004).

¹⁹ See *supra* note 15.

²⁰ See *Joseph P. Hofmann*, *supra* note 10.

²¹ See *Lottie M. Williams*, 56 ECAB 302 (2005).

²² See *Glen E. Shriner*, 53 ECAB 165 (2001).

CONCLUSION

The Board finds that the Office properly denied appellant's request for reimbursement for healing and recovery books and compact discs, meals, exercise clothing and yoga and meditation sessions pursuant to 5 U.S.C. § 8103.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 14, 2006 is affirmed.

Issued: May 21, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board