

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MATTHEW J. KELLY and U.S. POSTAL SERVICE,
POST OFFICE, Colorado Springs, CO

*Docket No. 98-271; Submitted on the Record;
Issued August 9, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying authorization for the purchase of a home hot tub.

The Board has duly reviewed the record on appeal and finds that the Office did not abuse its discretion.

Section 8103 of the Federal Employees' Compensation Act provides for the furnishing of "services, appliances, and supplies prescribed or recommended by a qualified physician" which the Office, under authority delegated by the Secretary, "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 a report dated February 6, 1997, Dr. Kenneth Kurica stated that he was treating appellant for degenerative lumbar spinal disease.² Noting that appellant's long-term management required a consistent exercise regimen, Dr. Kurica recommended approval of a membership at a health club, which would provide the necessary equipment to perform most of appellant's rehabilitative exercises. He added: "I am also recommending the approval of a home hot tub for daily whirlpool therapy for treatment of myofascial lumbar muscle spasms and pain relief. By maximizing all modalities of conservative management, [appellant] may be able to avoid surgical intervention in the near future."

On March 31, 1997 the Office authorized a one-year membership at a health club but denied payment for a home spa. The Office explained that it appeared appellant had this or very

¹ 5 U.S.C. § 8103(a).

² The Office accepted that appellant sustained an aggravation of his lumbar degenerative disc disease while in the performance of his duties.

similar equipment available at the club.³ The Office advised that appellant check out a less expensive alternative such as a whirlpool attachment for his shower or tub.

Appellant responded that the times Dr. Kurica indicated therapeutic treatment was most required were not consistent with the health club's hours. He also stated that the system used by the health club was not therapeutically focused and did not concentrate on the area of his injury. Appellant added that attachments for his tub did not afford the therapeutic advantages that a spa offers and that it was physically impossible for him to position himself in a tub to gain the needed benefit.

On May 22, 1997 the Office issued a formal decision denying appellant's request for approval of a home spa. Appellant requested a review of the written record.

In a decision dated September 10, 1997, the Office affirmed the May 22, 1997 decision disapproving appellant's request for a home spa. The Office found that appellant's arguments in support of a home spa might have merit but that these arguments were not supported by medical documentation.

As the Office correctly observed, Dr. Kurica recommended the approval of a home hot tub for daily whirlpool therapy but did not address whether less expensive means, such as the whirlpool shower or tub attachment mentioned in the Office's March 31, 1997 letter, could achieve the same or acceptably similar benefit. Nor did he explain the need for a home hot tub when the appellant's approved health club membership included daily access to hot tubs. Without such support from Dr. Kurica, the Board finds that the Office did not abuse its discretion in finding that the evidence of record failed to support that the purchase of a home spa is "likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation."

³ The record indicates that services offered by the health club included two hot tubs.

The September 10, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
August 9, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member