

In a report dated July 30, 2002, Dr. Mark Bernhardt, Board-certified in orthopedic surgery, stated:

“I first saw [appellant] on February 1, 2000, and recommended surgical treatment for his acute cervical myelopathy. When he fell, he bruised his spinal cord causing permanent injury to his spinal cord.

“The bruising of his spinal cord is responsible for the numbness in his arms and hands and weakness causing difficulty reaching above his head. It also effects his lower extremity balance and is the reason why he drags his feet. It causes him weakness in the lower extremities causing difficulty to climb up or go down stairs. It makes walking any distance longer than one block difficult and has effected his standing abilities such that he cannot stand more than 10 minutes without difficulty. Because of his weakness in his hands, he cannot hold a knife or fork properly. He has sharp pain in the back of his neck when he turns his head to his right or left. All of these symptoms have a physiologic basis connected to his spinal cord injury. I consider him to be totally disabled from being able to work.”

No additional medical reports were received from Dr. Bernhardt until a treatment slip dated July 17, 2006. He prescribed a four-wheel motorized scooter to assist with appellant’s mobility. On July 28, 2006 appellant requested authorization to purchase a motorized wheelchair scooter from the Scooter Store; the purchase price was \$4,460.80.

By letter to appellant dated August 1, 2006, the Office requested a medical report establishing the medical necessity of the motorized wheelchair scooter.

On August 25, 2006 Dr. Bernhardt submitted handwritten responses to an Office questionnaire requesting medical rationale in support of the motorized wheelchair scooter. When asked to explain how appellant’s medical condition necessitated the use of a wheelchair, Dr. Bernhardt responded, “Difficulty walking due to cervical myelopathy.” When asked to discuss whether a powered wheelchair was required or if a standard nonmotorized chair was adequate, he stated, “Given his age a powered wheelchair would allow better community ambulation.”

In a report dated October 16, 2006, Dr. Daniel O. Zimmerman, an Office medical adviser and a Board-certified orthopedic surgeon, reviewed the medical record. He recommended that the Office deny authorization for a motorized wheelchair scooter. Dr. Zimmerman stated:

“There is no medical documentation from Dr. Bernhardt or any other medical care provider which would permit the Office to authorize a motorized scooter.

“For the Office to authorize the purchase of a motorized scooter, it must be demonstrated, considering signs and symptoms, the cervical spine condition if a motorized scooter is needed at all, is the reason for the need. The nonwork-related conditions discussed in the statement of accepted facts would be the condition[s] which cause this claimant to request through Dr. Bernhardt a motorized scooter.

“[The Office] has no documentation in recent years to allow, based on consideration of signs and symptoms whether this person needs any kind of assistance equipment.”

By decision dated October 18, 2006, the Office denied authorization for the purchase of a motorized scooter.

On February 14, 2007 appellant requested an oral hearing.

By decision dated March 19, 2007, the Office denied appellant’s request for an oral hearing. The Office stated that appellant’s request was postmarked February 14, 2007, which was more than 30 days after the issuance of the Office’s October 18, 2006 decision, and that he was therefore not entitled to a hearing as a matter of right. The Office nonetheless considered the matter in relation to the issue involved and denied appellant’s request on the grounds that the issue was factual and medical in nature and could be addressed through the reconsideration process by submitting additional evidence.

LEGAL PRECEDENT -- ISSUE 1

Section 8103 of the Federal Employees’ Compensation Act¹ 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 or the period of disability, or aid in lessening the amount of the monthly compensation.² In interpreting this section of the Act, the Board has recognized that the Office has broad discretion in approving services provided under the Act. The Office has the general objective of ensuring that an employee recovers from his injury to the fullest extent possible in the shortest amount of time. The Office therefore has broad administrative discretion in choosing means to achieve this goal. The only limitation on the Office’s authority is that of reasonableness. 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.³

ANALYSIS -- ISSUE 1

The Office accepted that appellant had sustained contusions of the spinal cord myelopathy; fracture of the radial head and neck of the left forearm and elbow; and authorized surgery for C3, C4, C5 decompression and laminectomies. Dr. Bernhardt recommended surgery for appellant’s work-related cervical myelopathy in his July 30, 2002 report. He described appellant’s condition and noted some difficulties in ambulation. No additional medical reports addressing appellant’s condition were submitted until four years later. On July 17, 2006 Dr. Bernhardt recommended the purchase of a four-wheel motorized scooter to assist with

¹ 5 U.S.C. § 8101 *et seq.*

² 5 U.S.C. § 8103.

³ *Daniel J. Perea*, 42 ECAB 214 (1990).

appellant's mobility. He indicated that appellant required the use of the motorized wheelchair because he had difficulty walking due to cervical myelopathy. Dr. Bernhardt asserted that a motorized wheelchair was preferable to a standard nonmotorized wheelchair. In light of appellant's advanced age, the motorized wheelchair would allow "better community ambulation." Appellant's authorization request was reviewed by Dr. Zimmerman, the Office medical adviser, who recommended that the Office deny the request because appellant had failed to submit a report based on a recent medical examination to establish that appellant's work-related cervical myelopathy condition required the use of a motorized scooter. The Office accordingly denied authorization for the purchase of a motorized scooter in its October 18, 2006 decision.

As noted above, the only restriction on the Office's authority to authorize medical treatment is one of reasonableness. Dr. Bernhardt, appellant's treating physician, did not provide a recent, updated medical opinion complete with findings on examination or explaining the need for the motorized scooter wheelchair. His most recent medical report, written in July 2002, is not relevant to the request for a motorized wheelchair in 2006. Moreover, Dr. Bernhardt most recent notes merely recommended the purchase of a motorized scooter.⁴ He did not provide updated findings on examination or explain how the accepted cervical condition prevented or limited appellant's ability to walk. The medical evidence from Dr. Bernhardt does not adequately address why appellant requires a motorized wheelchair scooter due to his accepted C6-7 radiculopathy condition. The Office properly denied appellant's request for authorization to purchase a motorized scooter.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of the Act provides that a claimant is entitled to a hearing before an Office representative when a request is made within 30 days after issuance of an Office final decision.⁵ A claimant is not entitled to a hearing if the request is not made within 30 days of the date of issuance of the decision as determined by the postmark of the request.⁶ The Office has discretion, however, to grant or deny a request that is made after this 30-day period.⁷ In such a case, the Office will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.⁸

ANALYSIS -- ISSUE 2

In the present case, because appellant's February 14, 2007 request for a hearing was postmarked more than 30 days after the Office's October 18, 2006 decision denying authorization for the purchase of a motorized scooter, he is not entitled to a hearing as a matter of

⁴ *William C. Thomas*, 45 ECAB 591 (1994).

⁵ 5 U.S.C. § 8124(b)(1).

⁶ 20 C.F.R. § 10.131(a)(b).

⁷ *William E. Seare*, 47 ECAB 663 (1996).

⁸ *Id.*

right. The Office considered whether to grant a discretionary hearing and correctly advised appellant that he could pursue his claim through the reconsideration process. As appellant may address the issue in this case by submitting to the Office new and relevant evidence with a request for reconsideration, the Board finds that the Office properly exercised its discretion in denying appellant's request for a hearing. The Board therefore affirms the Office's March 19, 2007 decision denying appellant an oral hearing by an Office hearing representative.⁹

CONCLUSION

The Board finds that the Office did not abuse its discretion by denying appellant's request for authorization to purchase a motorized scooter. The Board finds the Office properly denied appellant's request for an oral hearing before an Office hearing representative.

ORDER

IT IS HEREBY ORDERED THAT the March 19, 2007 and October 18, 2006 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: January 24, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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

⁹ The Board notes that appellant submitted additional evidence to the record following the March 19, 2007 Office decision. The Board's jurisdiction is limited to a review of evidence which was before the Office at the time of its final review. 20 C.F.R. § 501.2(c).