



## ISSUE

The issue is whether OWCP abused its discretion by denying appellant's request for an attendant's allowance.

## FACTUAL HISTORY

On September 23, 2015 appellant, then a 52-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on June 1, 2015 he tore his aorta when lifting boxes while in the performance of duty. On the reverse side of the claim form, the employing establishment indicated that he stopped work on June 1, 2015, and had not returned.

Appellant was hospitalized on June 1, 2015 for a thoracic aortic aneurysm. He underwent surgery on June 2, 2015, which included an ascending aorta dissection. Appellant's hospital course was noted to have been complicated by respiratory failure, acute renal failure, atrial fibrillation, critical illness myopathy, and pneumonia. He underwent further surgery on June 26, 2015, which consisted of a tracheostomy and bronchoscopy. On July 21, 2015 appellant was discharged from the hospital to a rehabilitation facility.

On December 19, 2017 OWCP accepted appellant's claim for thoracic aorta dissection, chronic obstructive pulmonary disease (COPD), dysphagia, atrial fibrillation, heparin-induced thrombocytopenia (HIT), and right lower extremity acute embolism and thrombosis of unspecified deep veins.<sup>4</sup> OWCP paid appellant wage-loss compensation for temporary total disability beginning June 2, 2015, and placed him on the periodic compensation rolls effective June 24, 2018.

On July 24, 2018 appellant telephoned OWCP inquiring whether he was entitled to payment for "spousal assistance."

In a letter dated July 27, 2018, counsel requested authorization for payment for home healthcare services provided to appellant by his wife. In support of the request for payment, he submitted a March 1, 2018 report from Dr. Marcus St. John, a Board-certified cardiologist.

Dr. St. John noted a history of injury on June 1, 2015 and hospital course which lasted 51 days followed by a 14-day stay at a rehabilitation hospital. He indicated that during appellant's days in the critical care unit, his wife spent approximately 15 hours a day at his bedside and her duties included bathing him; turning and repositioning him every two hours; performing skin breakdown prevention techniques, therapeutic communication, therapeutic touch, and guided imagery; she met daily with the case worker; she was present and collaborated in the daily multi-disciplinary rounds with the medical team; provided input for the development of the daily plan; and was present for family education for case management, nursing, respiratory and physical therapy providers. Dr. St. John further noted that when appellant entered the step-down pulmonary unit and was released to a rehabilitation facility, appellant's wife spent approximately 24 hours a day performing the above-noted duties, including assisting with eating and wheelchair transportation. Appellant was released from the rehabilitation facility on August 3, 2015 and his wife's duties were expanded to include taking him to medical appointments and preparing and

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<sup>4</sup> OWCP later expanded appellant's claim to include consequential diabetes mellitus and consequential elevated blood pressure.

administering medication. Dr. St. John opined that appellant was totally disabled from work. He indicated that appellant's wife spent a total of 7,208 hours assisting her husband from June 2, 2015 to February 25, 2018.

In a letter dated August 24, 2018, OWCP reviewed the March 1, 2018 letter from Dr. St. John and indicated that the criteria for home healthcare service is billed and paid directly to the professional providing attendant services and those services must be rendered by a home health aide, licensed practical nurse, or similarly trained individual.

On October 3, 2018 appellant, through counsel, indicated that although appellant's wife was not a home health aide or home health professional, her services provided from August 4, 2015 to February 25, 2018 should be paid as she provided services of an attendant. Counsel asserted that Dr. St. John's March 1, 2018 letter noted specific services rendered by appellant's wife, the necessity, the dates, and the hours involved. He further indicated that the specific services provided on these specific dates would not require specific qualifications, and therefore, it could not be said that she was not competent to perform such duties.

In a letter dated February 1, 2019, OWCP advised appellant that the criteria for home healthcare services is one that is billed and paid directly to the professional providing attendant services.

By decision dated February 1, 2019, OWCP denied appellant's request for an attendant's allowance. OWCP advised him that 20 C.F.R. § 10.314 allowed payment for services of an attendant where medical documentation supported that he required assistance to care for basic personal care needs. It advised that services must be rendered by a home health aide, licensed practical nurse, or similarly trained individual, and found that the evidence of record did not support that a licensed professional provided appellant with the noted services as required under FECA.

### **LEGAL PRECEDENT**

FECA provides for an attendant's allowance under section 8111(a).<sup>5</sup> OWCP may pay an employee who has been awarded compensation an additional sum of not more than \$1,500.00 a month when it 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, is paralyzed and unable to walk, or because of other disability resulting from injury making him or her so helpless as to require constant attendance.<sup>6</sup>

According to 20 C.F.R. § 10.314, in the exercise of discretion afforded by 5 U.S.C. § 8111, the cost of providing attendant's services will be paid by OWCP under 5 U.S.C. § 8103, for personal care services that have been determined to be medically necessary and are provided by a home health aide, licensed practical nurse, or similarly trained individual. Section 8103(a) provides for the furnishing of services, appliances, and supplies prescribed or recommended by a qualified physician which OWCP, 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

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<sup>5</sup> 5 U.S.C. § 8111(a).

<sup>6</sup> See *R.C.*, Docket No. 15-1373 (issued December 22, 2015).

monthly compensation.<sup>7</sup> In interpreting section 8103(a), the Board has recognized that OWCP has broad discretion in approving services provided under FECA to ensure that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time.<sup>8</sup> OWCP has administrative discretion in choosing the means to achieve this goal and the only limitation on its authority is that of reasonableness.<sup>9</sup>

The Board has held that OWCP may pay an attendant's allowance upon a finding that a claimant has established the need of constant care. The claimant is not required to need around-the-clock care, he or she has only to have a continually recurring need for assistance in personal matters. The attendant's allowance, however, is not intended to pay an attendant for performance of domestic and housekeeping chores such as cooking, cleaning, doing the laundry or providing transportation services. It is intended to pay an attendant for assisting a claimant in his personal needs such as dressing, bathing, or using the toilet.<sup>10</sup>

A claimant bears the burden of proof to establish, by competent medical evidence, that he or she requires attendant care within the meaning of FECA.<sup>11</sup> An attendant's allowance is not granted simply upon the request of a disabled employee or upon the request of his or her physicians. The need for attendant care must be established by rationalized medical opinion evidence.<sup>12</sup>

### ANALYSIS

The Board finds that OWCP did not abuse its discretion by denying appellant's request for an attendant's allowance.

Appellant requested payment for the services of a personal attendant, his wife, from June 2, 2015 to February 25, 2018, a total of 7,208 hours, due to the fact that he could not perform the basic activities of daily living as a result of his June 1, 2015 employment injury.

Section 10.314 of the implementing regulations provides that OWCP will authorize payment for personal care services if they are provided by a home health aide, licensed nurse, or similarly trained individual.<sup>13</sup> The evidence of record establishes that appellant's wife did not

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<sup>7</sup> 5 U.S.C. § 8103(a).

<sup>8</sup> *G.M.*, Docket No. 18-1710 (issued June 3, 2019); *Dale E. Jones*, 48 ECAB 648, 649 (1997).

<sup>9</sup> *M.K.*, Docket No. 19-0428 (issued July 15, 2019); *Daniel J. Perea*, 42 ECAB 214, 221 (1990) (holding that abuse of discretion by OWCP is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or administrative actions which are contrary to both logic and probable deductions from established facts).

<sup>10</sup> *Nowling D. Ward*, 50 ECAB 496 (1999).

<sup>11</sup> *Bonnie M. Schreiber*, 46 ECAB 989 (1995).

<sup>12</sup> *See W.J.*, Docket No. 14-0376 (issued May 15, 2014).

<sup>13</sup> 20 C.F.R. § 10.314.

qualify as a home health aide, licensed nurse, or similarly trained individual.<sup>14</sup> Counsel confirmed this on October 3, 2018. The Board therefore finds that OWCP did not abuse its discretion when it determined that the evidence submitted was insufficient to meet the requisite statutory requirements outlined above.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

**CONCLUSION**

The Board finds that OWCP did not abuse its discretion by denying appellant's request for an attendant's allowance.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 1, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 12, 2019  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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<sup>14</sup> See *L.H.*, Docket 15-1239 (issued August 22, 2016); *Lee Haywood*, Docket No. 03-0727 (issued March 30, 2005) (where the Board found that appellant's wife did not meet the regulatory requirements of an attendant as she was not a home health aide, licensed nurse, or similarly trained individual).