

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. D201010

HOWARD CARR,
EMPLOYEE

CLAIMANT

COOPER TIRE & RUBBER COMPANY,
EMPLOYER

RESPONDENT

CENTRAL ADJUSTMENT COMPANY, INC.,
INSURANCE CARRIER/TPA

RESPONDENT NO. 1

DEATH & PERMANENT TOTAL
DISABILITY TRUST FUND

RESPONDENT NO. 2

OPINION FILED MARCH 30, 2022

Upon review before the FULL COMMISSION in Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE EDDIE H. WALKER, JR.,
Attorney at Law, Fort Smith, Arkansas.

Respondents No. 1 represented by the HONORABLE KAREN H.
McKINNEY, Attorney at Law, Little Rock, Arkansas.

Respondents No. 2 represented by the HONORABLE CHRISTY L. KING,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed in part, reversed in part.

OPINION AND ORDER

The respondents No. 1 appeal and the claimant cross-appeals an administrative law judge's opinion filed July 29, 2021. The administrative law judge found that the claimant proved he was entitled to handicapped-accessible home modifications. The administrative law judge found that the claimant proved he was entitled to additional home health care. After reviewing the entire record *de novo*, the Full Commission finds that the

claimant proved some modifications to his bedroom and bathroom are reasonably necessary in accordance with Ark. Code Ann. §81-1311(Repl. 1976). The claimant did not prove that he was entitled to “additional home health care.”

I. HISTORY

The parties stipulated that Howard Carr, now age 69, “sustained a compensable injury to his spine” on January 4, 1982. The record indicates that Dr. George Bohmfalk performed a cervical discectomy in February 1982, and that Dr. Bohmfalk assessed a 50% permanent anatomical impairment rating on February 8, 1983. The respondents accepted the 50% rating.

Dr. Baer I. Rambach reported in part in February 1991, “This patient does have obvious findings of spasticity in the lower extremities with his clonus and with the very peculiar gait that he has.” Dr. Jorge Martinez opined in October 1992 that additional diagnostic testing and surgery was reasonably necessary.

An administrative law judge filed an opinion on May 5, 1994. The administrative law judge found, among other things, that the claimant proved he was entitled to additional medical treatment recommended by Dr. Martinez. A majority of the Full Commission affirmed and adopted the administrative law judge’s May 5, 1994 decision in an opinion filed

November 28, 1994. The Arkansas Court of Appeals affirmed the Full Commission's May 5, 1994 decision in an unpublished opinion delivered March 6, 1996. *Cooper Tire & Rubber Co. v. Carr*, No. CA-268.

Dr. Martinez performed a cervical discectomy and fusion in May 1996. The claimant testified that he had not been able to return to work following surgery performed in 1996. The record indicates that Dr. Martinez prescribed the claimant a "firm mattress bed" in July 1996. Dr. Martinez prescribed a "stationary bicycle" in October 1996.

An administrative law judge filed an opinion on June 23, 1999. The administrative law judge found, in pertinent part:

6. The claimant's healing period ended May 19, 1997.
7. The claimant has a permanent physical impairment in the amount of 55% to the body as a whole.
8. The claimant has been rendered totally and permanently disabled as a result of his January 4, 1982, compensable injury pursuant to the wage loss considerations of Glass v. Eden, and the odd-lot doctrine.
9. The prescriptions for a stationary bicycle and a replacement mattress are reasonable, necessary and related in the treatment of claimant's compensable injury.
10. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of January 4, 1982.

A majority of the Full Commission affirmed the administrative law judge's June 23, 1999 decision in an opinion filed February 15, 2000. The parties thereafter stipulated that the claimant was "permanently and totally disabled and receiving disability at the rate of \$140.00 per week." The claimant testified on cross-examination that he could not recall whether the

respondents had provided a replacement mattress in accordance with the Commission's award.

The record indicates that the respondent-employer provided the claimant with a wheelchair in approximately 2003, but that the wheelchair fell from the claimant's truck in 2006. The claimant subsequently received a replacement wheelchair paid for by Medicare. On or about July 23, 2008, the claimant stated, the replacement wheelchair broke and as a result he fell onto his back. The claimant thereafter was provided a third wheelchair. Dr. Martinez diagnosed a herniated lumbar disc in September 2008 and recommended surgery.

An administrative law judge filed an opinion on June 24, 2009. The administrative law judge found, in pertinent part:

4. The claimant proved by a preponderance of the evidence that his fall out of a wheelchair that broke in July of 2008 was a compensable consequence of his compensable injury and not an independent intervening cause of the injury that he sustained.
5. The claimant proved by a preponderance of the evidence that he sustained an L5-S1 lumbar disk injury when he fell from a broken wheelchair....
7. The claimant has established by a preponderance of the evidence that the treatment in the record provided for his lumbar spine injury, including surgery proposed by Dr. Martinez, is reasonably necessary for treatment of his lumbar spine injury.

Dr. Martinez performed lumbar spine surgery on or about September 9, 2009.

An administrative law judge filed an opinion on June 20, 2014. The administrative law judge found, in pertinent part:

4. The claimant has established by a preponderance of the evidence that he is entitled to be reimbursed his \$1,470.00 out-of-pocket expenses to obtain assistance with his wheelchair during medical travel between August 14, 2009, and August 3, 2012.
5. The claimant has established by a preponderance of the evidence that the most appropriate means to accommodate his wheelchair for future medical travel is by the use of assistants to travel with him; the claimant shall select the assistants to travel with him, and those assistants shall be paid \$12.00 per hour by the respondent consistent with the requirements contained in an Interim Order filed on December 20, 2013.

The parties have stipulated that “prior decisions of the Commission are law of the case.”

Karen Miller, a Nurse Case Manager, corresponded with Dr. Richard B. Sharp on September 28, 2016 and queried Dr. Sharp in part:

2. On 08/01/16, you recommended a tub transfer bench and a new elevated commode seat. I discussed these with Mr. Carr, but he stated he did not want these items, rather he wanted a new taller commode installed and a walk-in bathtub as seen on television. In your medical opinion, within a reasonable degree of medical certainty, are the items Mr. Carr requested, in lieu of what you ordered, medically necessary related to his injury on 01/04/82?

The record does not indicate that Dr. Sharp replied to this correspondence.

Dr. Bharat Guthikonda diagnosed the claimant as having “Cervical myelopathy” on January 27, 2017. Dr. Guthikonda performed a cervical laminectomy, fusion, and instrumentation.

The record contains a Proposal dated March 1, 2019 from Home Safe AccessNSM, a company based in Tampa, Florida:

We performed the home evaluation via phone conversation and pictures for Howard Carr located at 5332 Buchanan Rd. Texarkana, TX 75501. I propose to remove the existing toilet and install a new elevated toilet. Mr. Carr refused the grab bars in the bathtub area.

On cross-examination, the claimant disputed the note indicating that he had “refused the grab bars in the bathtub area.” The claimant’s testimony also indicated that he was unaware of the proposal for an elevated toilet. In any event, the estimated cost of the March 1, 2019 Proposal was \$575.00.

The respondents’ attorney examined Judith A. Bourne, an adjuster for the respondent-carrier:

Q. We discussed back in 2016 there’s a letter from – was it Karen Miller? No. Who was the nurse case manager?

A. Rhonda Fleming.

Q. Rhonda Fleming. There’s a letter from Rhonda Fleming to Dr. Sharp regarding some home maintenance – home remodeling. Do you recall that transpiring on this case?

A. Yes.

Q. And what is your recollection of what occurred at that time?

A. We had Ms. Fleming go and take pictures because of – there was questions about not remodeling but modifications.

Q. All right. And as a result of that did this Home Safe estimate – was that prepared?

A. Yes.

Q. And what is your recollection of what transpired with regard to what was offered to Mr. Carr and what was done?

A. We offered a new elevated commode and installing safety bars around the tub, and according to this he refused the grab bars in the bathtub area.

Q. All right. What about the commode? That was never installed?

A. The floor had apparently softened up, and a new commode could not be installed on top of it.

Q. Okay. So it's your understanding that home maintenance needs to be performed first –

A. Correct.

Q. – before any remodeling or upgrading to the handicap accessible needs can take place?

A. Correct.

The claimant's attorney cross-examined Judith Bourne:

Q. What is your job responsibility in regard to this case, Ms. Bourne?

A. I handle the claim and make payments – medical payments.

Q. Do you make decisions or does somebody –

A. No.

Q. – else make decisions?

A. Somebody else makes the decisions.

Q. So who makes the decisions?

A. The corporate office of Cooper Tire.

Q. Do you know why, if the floor was soft and needed fixing in order to install the commode, that wasn't done as part of the installation of the commode?

A. No. It was maintenance.

Q. So who made the decision that it was maintenance?

A. Cooper Tire made the ultimate decision.

Q. So are you aware that Dr. Sharp has written a report indicating that a handicap bathroom is medically necessary because of Mr. Carr being in this wheelchair?

A. No.

Q. You're not aware of that?

A. No.

Q. If that is in fact correct, what would you do as the person who handles the claim?

A. I would pass it along up the chain of command.

Q. And then let them decide?

A. Yes....

Q. So we just don't know why Mr. Carr is not being provided this handicap accessible bathroom although the company physician has said that it's reasonable and necessary. We don't know why that's not being done. Is that right?

A. Do we not know why?

Q. Do you know why it's not being done in light of the fact that page 9 of Respondents' exhibit says their own doctor says it's reasonable and necessary?

A. We offered the elevated commode and we offered the bars in the shower, but the flooring has to be replaced first. That is maintenance.

Q. So you offered to repair the shower or put bars in the shower –

A. Correct.

Q. – but the floor in the bathroom had to be replaced before you could do that?

A. Yes.

Dr. Sharp reported on May 18, 2020:

This is a 67-year-old with a work injury at Cooper Tire & Rubber Company in 1982. The patient was lifting iron skids and developed acute onset of neck pain in January of that year with bilateral arm numbness. The patient was followed by Dr. Bohmfalk and in February of 1982 underwent cervical surgery. He returned back to work but in 1996, he began to have increased neck pain with burning pain down the arms and shoulders. He began to have gait abnormality with excessive falling. In 2003, he underwent repeat cervical surgery. Unfortunately, postoperatively, he developed infection and bilateral leg clots. Around 2009, he was coming out of his house when his wheelchair broke and his lower back struck a door frame. An MRI of the lower lumbar spine in 2009 showed abnormality and he underwent lumbar fusion. He developed a urinary tract infection subsequently and hydrocele with subsequent repair in 2010. Cervical spine MRI

that showed stenosis. The patient was followed in Shreveport, Louisiana and had decompressive surgery at LSU in Shreveport 1/20/17. He subsequently underwent inpt rehab. He states his last surgery was done by Dr. G in Shreveport. He takes baclofen up to TID, Tylenol #3 up to 6 per day, bowel medications. He utilizes a wheelchair for mobility. Still with spasticity. No hospitals. His legs collapsed in the bathroom last year and he has a hole in his wall which he expects workers comp to pay for. Increased neck, shoulder and low back pain. Some hand numbness. He requests neurosurgery follow up. Most recent neck and back x-rays with degenerative changes and intact fusions. He wants Workers compensation to pay for a new bathroom, bedroom, bed, neck and leg pillow. I stated this will not happen as it is not medically necessary. He requests handicap accessible bedroom, bathroom, orthopedic neck and leg pillows. A prescription is written that will help only with taxes. He feels he has increased arm numbness. Recent gastritis.

Dr. Sharp's assessment included "Paraplegia, incomplete....He requests handicap accessible bedroom, bathroom, orthopedic neck and leg pillows. A prescription will help only with taxes. Wheelchair bound." The claimant testified on cross-examination that he had received the orthopedic pillows recommended by Dr. Sharp.

Dr. Guthikonda stated on December 15, 2020:

It is my medical opinion that Mr. Carr requires a handicap accessible bedroom and bathroom due to his physical limitations that were acquired as a [result] of his work related injury. I also believe continuous daytime (8 hours/day) Home Health including weekends is necessary for his recovery. If you have any questions or concerns do not hesitate to call.

The claimant testified on direct examination:

Q. Now, you have requested that the insurance company or the respondents in this case have to provide you eight-hour a day home health care?

A. Yes, sir.

Q. And that's a result of your neurosurgeon, Dr. Guthikonda, recommending that?

A. Yes, sir.

Q. Would having that service available eight hours a day, seven days a week, benefit you in any way?

A. Yes, sir.

Q. How?

A. It would be able for me to have breakfast, lunch, and supper and be able to go run my errands and pay my bills. And if I was in therapy, I would be able to go back and forth to therapy, and I wouldn't have to rush....

Q. How many hours a week do you have home health available right now?

A. Four hours.

Q. A week?

A. A week. Well, no, 12. 12 hours total.

Q. So if they're only there 12 hours right now, they would not be able to help you with your breakfast meals. Is that right?

A. That's true.

Q. And some days, according to Exhibit 2, they wouldn't be there to help you with your lunch meal?

A. No....

Q. What about your personal needs as far as like going to the bathroom and taking baths and stuff like that? Are you able to do – are you able to take baths every day?

A. No, sir. I take a bath once a week.

Q. So what would having somebody available eight hours a day, seven days a week, do for that situation?

A. I would be able to take a bath more often. I would be able to go to the bathroom and do whatever I need to do as far as the bathroom and be able to get in and out of the bathtub because I have somebody to help me.

The respondents' attorney cross-examined the claimant:

Q. Now, with regard to nursing services, you said you want somebody there to feed you?

A. Yes.

- Q. Okay. You can feed yourself, can't you?
A. Yes. But I can't – when I cook and stuff or try to cook, I get burnt....
Q. Can you clean up after yourself?
A. No.
Q. You can't clean up your –
A. No.
Q. - dishes in the sink?
A. No. It's hard for me to get up there to do it.
Q. Now, you don't – you don't have a catheter, do you?
A. No.
Q. So you don't need a nurse to help with catheter – to put in a catheter?
A. No. But sometimes I have mishaps....
Q. And you said you want somebody – you live out in the country –
A. Yes.
Q. – and you want somebody to get you to town to pay your bills?
A. Yes.
Q. What bills do you need to pay in town?
A. My electric bill, my loans, my credit cards that I have to pay....I need to go by the bank.
Q. All right. Do you have a computer?
A. Yes.
Q. Do you have internet access at your home?
A. Yes.
Q. Are you aware that these bills can be paid online?
A. I don't care for that much because I don't know how to operate a computer that well....
Q. And Cooper Tire is paying for your transportation to the doctor's office; correct?
A. To go see Dr. Sharp. They don't pay for me to go see my family doctor.
Q. Okay. But for you just to go to the doctor for workers' comp purposes, they pay for that?
A. They pay for that.
Q. And they pay for somebody to go with you?
A. Yes.

A pre-hearing order was filed on February 23, 2021. The claimant contended, “a. The Claimant contends that his treating surgeon, Dr. Guthikonda is recommending a handicap accessible bedroom bathroom as well as continuous day time home health care and that said recommendation constitute reasonably necessary medical benefits. b. The Claimant contends that the Respondents are denying reasonably necessary medical benefits and therefore are controverting said benefits. Such controversion entitles the claimant’s attorney to an attorney’s fee. c. The Claimant contends that although it was ordered in an Opinion filed June 20, 2014 that the Claimant’s attorney is entitled to an attorney’s fee in regard to mileage reimbursement benefits it appears that such fees have not been paid and therefore the Claimant’s attorney contends entitlement to said fees.”

The respondents contended, “Claimant is demanding payment for a complete bathroom and bedroom remodel and continuous daytime home health care. Dr. Richard B. Sharp noted on May 18, 2020 that claimant’s requests for a remodeled bedroom and bathroom, a new bed, and neck and leg orthopedic pillows are not medically necessary. Nevertheless, Respondents provided the claimant with the requested orthopedic pillows and Respondents have offered the claimant a new elevated commode and new grab bars in the bathroom area. The claimant refused these requests

and is asking for a complete bathroom and bedroom remodel.

Respondents contend they are not responsible for maintenance and repairs to claimant's home that must be performed prior to modifying the home to make it more handicapped accessible. Respondents further contend that a remodeled bathroom is not reasonable and necessary for the treatment of claimant's compensable injury. Respondents further contend claimant's request for continuous daytime home health care is also not reasonable or medically necessary for the treatment of claimant's compensable injury."

The parties agreed to litigate the following issues:

1. Whether the Claimant is entitled to additional benefits as recommended by his treating neurosurgeon, Dr. Guthikonda (eight hours of home healthcare).
2. Attorney fees for additional benefits.
3. Whether Claimant's attorney is entitled to fees from an Opinion filed June 20, 2014.

Carolyn Covington, Care Coordination Supervisor for Hearts &

Hands Homecare, corresponded on March 16, 2021:

Mr. Howard Carr receives non-medical aide services through our agency for 12 hours per week. Mr. Carr's current schedule is Mon and Wed 12-4p, Thur 4-6p, and Fri 12-2p.

He is listed to need assistance with:
Showering/Dressing
Transfer asst with transfer board
Meal Prep
Light housekeeping
Errands/Transportation in clients modified vehicle.

Please let us know if you have any further questions.

Dr. Sharp corresponded on April 12, 2021:

I am in receipt of questions January 29, 2021 by Donna Lankford, RN. I recalled seeing a letter written by Dr. Guthikonda regarding his medical opinion for the necessity of a handicap accessible bedroom and bathroom and continuous [at] home health therapy during the daytime. I was not aware of a request for my medical opinion. Certainly a handicap bathroom would be optimal and would be medically necessary given his wheelchair bound status. I cannot see where a handicap accessible bedroom would add much more to his function. Based on his reported functional deficits, exam and current functional level, I cannot see where continuous home health is needed during the days and weekends for his recovery. No further recovery is likely to be made.

A hearing was held on May 11, 2021. The claimant's daughter, Kellisha Goodwin, testified that she had measured spacing in the claimant's bedroom and bathroom. The claimant's attorney examined Kellisha Goodwin:

Q. Will you tell us what those measurements are please.
A. The bathroom dimensions are 85 and a half width and by 96 length.
Q. Are those inches?
A. Yes.
Q. Okay.
A. And then the bathroom door is 29 and a half width and 84 length, and those are inches. And the wheelchair is actually 29 and a half –
THE WITNESS: I apologize. Your honor, I made a mistake.
A. On the bathroom door it's 35 and a half width by 84 length, and on the wheelchair it's 29 and a half inches wide.
Q. And what about the bedroom door?
A. The bedroom door is 170 width by 135 length, and the bedroom door is 30 and a half inches width and 84 length.
Q. So the bedroom door is only an inch wider than his wheelchair?
A. Yes, sir.

Q. Have you ever personally observed him trying to get into his bedroom with his wheelchair?

A. Yes, sir. He has a difficult time....

Q. Have you ever seen him fall?

A. I have....

Q. What have you actually seen in terms of his activity level?

A. He's not able to move his hands. Like, he's not able to position himself to transfer himself like he used to be able to. He's losing weakness. Weakness in his hands, being able to transfer himself. It takes him time to even get across the board....He has a very difficult time getting in and out of the bed. He has to – he has to scoot himself. Then he has to lay for a minute, and then he takes an actual belt that is a lift belt. He has it hooked on the other side of the bed in order for him to be able to pull himself up in the center of the bed. And then he has to wait a little bit and then he has the bar that he pulls himself up on, but then he – it takes – it takes him about an hour just for him to get himself positioned where he can get in the bed.

Q. Have you had occasions to observe him trying to use the bathroom?

A. Yes, sir.

Q. And to take a bath?

A. Yes, sir.

Q. What kinds of observations have you seen in that regard?

A. Just the difficulties of being able to transfer himself. Him falling in the bathtub trying to transfer himself over....

Q. I'm going to show you a copy of what has been identified as Exhibit 3 and ask you if you took all of these pictures....Did you take all those pictures?

A. Yes, sir, I did.

Q. And have you modified those pictures in any way, or do those pictures represent a true and correct depiction of what's shown on those photos?

A. I have not modified anything, and, yes, sir, it does show everything that he goes through to get in and out of the bed....

Q. And then what is this Picture 24? What are you trying to show on that?

A. Well, that toilet seat he's had since – I have a 25-year-old son and he's had that for 25 years, and it has duct tape around it because it was never replaced.

Q. And then what's this other thing here?

A. It was the new one that was sent over, but it is too small for him to fit in. He's afraid he's going to fall, and the arms don't move like the one in the front; so he can't even transfer into it with the board –

Q. And that's –

A. – because he has to use that board to transfer over from one because he can't physically lift himself to hold himself up to transfer.

Q. So it's taller than the regular seat, but it's not usable because of these instability issues that you're talking about?

A. Yes, sir....

Q. And then what is Picture 26?

A. Twenty-six is just showing the bathtub that he has to get in and out of. The chair, you turn it around where it goes half into the tub and half in the middle of the bathroom floor, and so I just wanted to show how it fits in that bathtub.

Q. So have you ever seen him get into this bathtub out of his wheelchair?

A. Not without assistance.

The respondents' attorney cross-examined the claimant:

Q. Now, your attorney has introduced the report from Karen Miller where she wrote Dr. Sharp back in 2016, and you were asking for a tub transfer bench and a new elevated commode seat. Do you remember that?

A. Yes.

Q. And did you get the transfer bench?

A. Yes.

Q. And a new elevated commode seat?

A. Yes.

Q. So when asked, those are replaced?

A. Sometimes.

Q. And have you ever had anybody come into your house and prepare an estimate for the work you want done?

A. No.

Q. You have not? And what is it exactly that you're wanting done in your bedroom, because we don't know? We've just been told a remodel.

A. I need it where I can be able to get in and out of my bed easier and move around better.

Q. All right. Would you agree with me that if you had a hospital bed that would make it a whole lot easier?

A. Yes.

Q. But they don't come in king-size, do they?

A. I don't know.

Q. You haven't checked on that?

A. No, ma'am.

Q. So if they were willing to get you a hospital bed, do you have a – do you have a –

A. No, I don't have no objection to that.

An administrative law judge filed an opinion on July 29, 2021. The administrative law judge found that the claimant proved he was entitled to home modifications consistent with the Americans With Disabilities Act. The administrative law judge found that the claimant proved he was entitled to additional home health care. The respondents appeal to the Full Commission and the claimant cross-appeals.

II. ADJUDICATION

The Full Commission first notes that the administrative law judge found that the claimant proved he was entitled to home modifications “consistent with the American Disabilities Act (sic) in regard to access for disabled people.” This finding was error. The Americans With Disabilities Act of 1990 (ADA) contains general definitional provisions relating to what constitutes a “disability” and an “individual with a disability” for purposes of the ADA. *See Americans With Disabilities Act, Analysis And Implications*, C. Angela Van Etten (Lawyers Cooperative Publishing 1993). The United States Department of Justice and other agencies responsible for enforcing

the ADA have issued regulations implementing the titles for which they are responsible and have provided guidance on the definition of “disability” and “individual with a disability.” *Id.* The ADA applies to “Public Accommodations,” and a private home, by itself, does not fall within any of the 12 public accommodation categories. *Id.* Moreover, the claimant does not cite any federal or state statutory provision which brings this case within the ambit or scope of the Americans With Disabilities Act of 1990. Nor does the claimant identify any federal regulation emanating from the ADA which purportedly applies to remodeling the claimant’s private home.

The claimant sustained a compensable injury on January 4, 1982, prior to enactment of Act 796 of 1993. The applicable statute governing this case is Ark. Stat. Ann. §81-1311(Repl. 1976) which provides, in pertinent part:

The employer shall promptly provide for an injured employee such medical, surgical, hospital, and nursing services, and medicine, crutches, artificial limbs and other apparatus as may be reasonably necessary for the treatment of the injury received by the employee....

An administrative law judge found in the present matter, “3. The claimant has established by a preponderance of the evidence his entitlement to modifications to his hallway, bedroom, and bathroom so that they are handicap accessible, consistent with the American Disabilities Act in regard to access for disabled people.” Although the Americans With

Disabilities Act of 1990 has no application to this claim, the Full Commission affirms the administrative law judge's finding that some home modifications are reasonably necessary in accordance with Ark. Stat. Ann. §81-1311(Repl. 1976).

The parties stipulated that the claimant, now age 69, sustained a compensable injury to his cervical spine on January 4, 1982. After undergoing a cervical discectomy, the claimant was assigned a 50% permanent anatomical impairment rating in 1983. Dr. Rambach noted in February 1991 that the claimant was suffering from "spasticity in the lower extremities." The claimant underwent another cervical discectomy in 1996. The claimant was thereafter prescribed a "firm mattress bed" and "stationary bicycle." An administrative law judge found in 1999 that the claimant had sustained a 55% whole-body impairment and that the claimant had been rendered permanently totally disabled. The claimant was confined to a wheelchair beginning in about 2003, and the claimant sustained a compensable low back injury after falling from his wheelchair in 2008. The claimant underwent low back surgery in 2009.

According to a Case Manager's correspondence in 2016, Dr. Sharp had recommended a "tub transfer bench and a new elevated commode seat." A note from Home Safe Access/NSM dated March 1, 2019 indicated, "I propose to remove the existing toilet and install a new elevated toilet. Mr.

Carr refused the grab bars in the bathtub area.” The claimant denied that he had refused installation of grab bars in his bathroom. In any event, an adjuster for the respondent-carrier testified and asserted that the claimant’s bathroom floor had “softened.” The adjuster asserted that a new commode could not be installed due to the soft floor in the claimant’s bathroom.

Ark. Stat. Ann. §81-1311 (Repl. 1976) allows provision only of apparatus that is reasonably necessary for treatment of the compensable injury. *Public Employee Claims Div. v. Keys*, 99 Ark. App. 77, 257 S.W.3d 570 (2007). The statute restricts benefits for mechanical apparatus to those which are necessary for treatment of an injury. *Id.* The statute may require an employer to furnish ramps, rails, wheelchairs, widened doors, special commodes, shower facilities, and “other apparatus” required by an injured employee. *Pine Bluff Parks & Recreation v. Porter*, 6 Ark. App. 154, 639 S.W.2d 363 (1982).

In the present matter, the Full Commission finds that the claimant proved some handicapped-accessible modifications to the claimant’s bedroom and bathroom are reasonably necessary in accordance with Ark. Stat. §81-1311(Repl. 1976) and *Porter, supra*. The claimant proved that widening of his doorways was reasonably necessary as testified to by Kellisha Goodwin. The respondents indicate that they are willing to provide the claimant with a “hospital bed” for his bedroom. If a “hospital bed” can

reasonably fit into the claimant's bedroom and if same is desired by the claimant, the respondents shall provide such a bed. The claimant also proved that he is entitled to "handicapped-accessible" modifications to his bathroom. Such modifications shall include but not necessarily be limited to "grab-bars" and an elevated commode. If it is determined by a knowledgeable, professional carpenter or home remodeler that the claimant's bathroom floor will indeed not support an elevated commode, the respondents shall provide the reasonable costs of restructuring the claimant's bathroom floor.

Dr. Guthikonda stated on December 15, 2020, "It is my medical opinion that Mr. Carr requires a handicap accessible bedroom and bathroom due to his physical limitations that were acquired as a [result] of his work related injury." Dr. Sharp stated on April 12, 2021, "Certainly a handicap bathroom would be optimal and would be medically necessary given his wheelchair bound status." The Full Commission finds that these above-quoted medical opinions are entitled to significant evidentiary weight. *See Jones v. Scheduled Skyways, Inc.*, 1 Ark. App. 44, 612 S.W.2d 333 (1981).

The administrative law judge found, "4. The claimant has proven by a preponderance of the evidence his entitlement to additional home health care (four hours of care on Thursdays and Fridays)." The Full Commission

does not affirm this finding. As we have discussed, the parties stipulated that the claimant sustained a compensable injury in 1982. An administrative law judge found in 1999 that the claimant was permanently totally disabled. A supervisor with Hearts & Hands Homecare reported in 2021 that the claimant was receiving “non-medical aide services” for 12 hours weekly. These services included bathing, meal preparation, light housekeeping, an transportation. The claimant testified that he requested “eight-hour a day home health care.” The claimant testified that such care included assistance with meals, bathing, and transportation to “be able to go run my errands and pay my bills.”

Ark. Stat. Ann. §81-1311(Repl. 1976) requires that the employer provide nursing services for an injured employee. *Pickens-Bond Constr. Co. v. Case*, 266 Ark. 323, 584 S.W.2d 21 (1979). The nursing services for which the employer is responsible are those reasonably necessary for treatment of the injury. *Id.* An employer is not obligated to furnish custodial care, lodging, or other non-medical services such as housekeeping. *Porter, supra*. In the present matter, the additional services requested by the claimant are primarily related to non-medical care which includes transportation and housekeeping. The claimant agreed on cross-examination that the respondents provided transportation to a workers’ compensation physician, Dr. Sharp. The claimant testified that he wished

to have assistance in meal preparation, laundry, and housekeeping. The Full Commission finds that these services are “custodial” rather than “nursing services” and are not compensable.

After reviewing the entire record *de novo*, the Full Commission finds that handicapped-accessible modifications to the claimant’s bedroom and bathroom are reasonably necessary in accordance with Ark. Stat. Ann. §81-1311(Repl. 1976). Such modifications shall include delivery of a “hospital bed” if feasible and widening of the doorways in the claimant’s bedroom and bathroom. Such modifications shall also include “grab bars,” a tub transfer bench, and an elevated commode. If it is determined that the claimant’s bathroom floor will not support an elevated commode, then the respondents shall be liable for the reasonable costs of restructuring the claimant’s bathroom floor. The claimant did not prove that he was entitled to “additional home health care” in the form of housekeeping, laundry services, and transportation.

The claimant’s attorney is entitled to fees for legal services in accordance with Ark. Stat. Ann. §81-1332 (Supp. 1985). For prevailing in part on appeal to the Full Commission, the claimant’s attorney is entitled to an additional fee of one hundred dollars (\$100), pursuant to Ark. Stat. Ann. §81-1332 (Supp. 1985).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Palmer concurs in part and dissents in part.

CONCURRING AND DISSENTING OPINION

I concur with the majority on all points except the obligation to restructure Claimant's bathroom floor to support an elevated toilet. Although employers take employees as they find them, they do not take an employee's house as they find it. An elevated toilet's weight is marginally more (if any) than a standard toilet. Any need to restructure Claimant's bathroom floor due to maintenance issues should be Claimant's responsibility—not Respondents'. Accordingly, I respectfully dissent on this point.

CHRISTOPHER L. PALMER, Commissioner