

Did You Know?

Workers' Compensation and AT

Workers' Compensation is an insurance program. Employees injured on the job receive reimbursement for lost wages and medical care, without the need to show employer fault or negligence, in return for which employees generally lose their right to sue the employer for damages, subject to certain exceptions that may vary from state to state

Every state has a Workers' Compensation (Workers' Comp) statute. Even the federal government has a workers' comp system that covers certain categories of workers. This article, however, will only discuss state Workers' Comp laws. Because Workers' Comp laws tend to focus on rehabilitation and function, with a view to returning the employee to the workplace, Workers' Comp can provide benefits, including assistive technology (AT) that may not be available from other funding sources. While it would not be feasible to look at every state Workers' Comp statute, we can look at examples of AT devices or AT services that have been provided to injured workers under various Workers' Comp laws.

In Louisiana, the Workers' Comp insurer in *Laird v. Highpoint Southwest Services*, 2010 WL 3705169 (La.App. 4 Cir. 2010), agreed to provide the employee with a therapeutic mattress, therapeutic shoes, and a shower massage device. In *Cottonham v. Rockwood Ins. Co of Rockwood, PA*, 403 So.2d 773 (La.App. 3 Cir 1981), the employee had a spinal cord injury and used a wheelchair for mobility. The court found that the employer was required to furnish claimant with an emergency telephone device, and ramp and hand controls for his van, which were prescribed by the physicians as necessary for claimant's rehabilitation and safety. In *Pearl v. East Baton Rouge Parish School Bd.*, 665 So.2d 169 (La.App. 1 Cir. 1995), the court noted that the payment for medical expenses is limited to those medically necessary. In light of the employer's payment for membership in the YMCA, where a treadmill was available, an at-home treadmill was not necessary.

In Missouri, a court held that if "artificial devices" included wheelchairs, it logically follows that home modifications needed to make a home wheelchair accessible were also covered. *Hall v. Fru Con Const. Corp.*, 46 S.W.3d 30 (Mo.App. E.D. 2001). In Ohio, an employee received a lumbar support air pillow, an exercise gym ball, and a flexibelt. *State ex rel. Gasons v. Indus. Comm*, 2009 WL 930070 (Ohio App. 10 Dist. 2009).

In South Dakota, the claimant in *Roger M. Johnson v. 3M Company et al*, 1999 WL 492553 (S.D. Dept Lab 1999) asked for TV closed circuit apparatus and audio link equipment that would make certain activities of daily living more convenient or easier to perform, and possibly reduce the effects of the injury. One issue raised in a summary judgment motion was whether the devices were medical "apparatus..." The decision held that the proper test was not strictly whether the devices are medical apparatus but whether they represented "necessary or suitable and proper care" as required by the statute. (SD Codified Laws 62-4-1)

Will Workers' Comp pay for modified vehicles? In North Dakota, the court in *Meyer v. North Dakota Workers Compensation Bureau*, 512 N.W.2d 680 (Sup.Ct. 1994), held that the Bureau was not responsible for purchasing a van, but was responsible for the adaptive equipment and the increased cost associated with the price of a van compared to the price of an average vehicle of the same year. In contrast, the court in *Terry Grantham Co. v. Industrial Com'n of Arizona*, 154 Ariz. 180 (Ariz. 1987), held that in claimant's case, a specially equipped van was not merely a form of transportation, but was "other apparatus" needed to restore any mobility. (Arizona 23-1062).

In *Young v. Ceramic Tile Contractors*, 288 A.D.2d 570 (3rd Dept. 1999), the New York court affirmed a workers' comp board determination that the insurer was responsible for providing a specially equipped van because it was a cheaper alternative than limousine service, which was how the claimant was transported to medical appointments. The court also found the insurer to be responsible for an in-house therapeutic whirlpool and a handicap accessible shower, as well as for damages to the home caused by these modifications.

Some states allow attorneys fees to the claimant's attorney. In Pennsylvania, fees may be awarded to the successful claimant in a contested case, but need not be awarded if the employer had a reasonable basis for contesting the benefits sought. 77 Pennsylvania Statutes 996(a). In interpreting this provision, the Pennsylvania court in *Zuback v. Worker's Compensation Appeals Board*, 892 A.2d 41, 48 (2006), held that an employer had a reasonable basis for the contest if it "was brought to resolve a genuinely disputed issue, not merely to harass the claimant."

This newsletter is not intended to cover Workers' Comp in a comprehensive fashion. Its purpose is to alert attorneys and advocates to another potential funding source for AT for employees injured at the workplace.

Please feel free to contact us for copies of any of the hearing or court decisions we have referenced. Also, if you won a hearing or court appeal/lawsuit regarding Workers' Comp, or any item of AT, please send us copies of the hearing decisions or court decisions/documents, so that we can share them with the AT network.

Those who are reading this post are encouraged to use "reply all" to share comments or questions that they want to reach all participants on the list serve. Use "reply" to communicate only with the person who did the posting.

Posted by:

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