

ISSUE

The issue to be resolved is whether Defendants should be required to immediately provide Claimant a motorized wheelchair from Adaptive Equipment Company in Denver, Colorado. The parties previously reserved the issue of Claimant's entitlement to an award of attorney fees.

ARGUMENTS OF THE PARTIES

Claimant argues that she is entitled to a motorized wheelchair from Adaptive Equipment Company as prescribed by her treating physician. She asserts that Defendants have already committed to provide a motorized chair, but have failed to do so from another supplier within a reasonable time.

Defendants counter that they intend to provide Claimant a motorized chair, but are seeking to arrange for a motorized chair from a less costly supplier and should not be required to purchase a motorized chair from Adaptive Equipment Company.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The written stipulation of facts presented by the parties on April 21, 2006.
2. The Industrial Commission legal file.

After having fully considered all of the above evidence, and the oral arguments of the parties, the Referee submits the following findings of fact and conclusion of law for review by the Commission.

FINDINGS OF FACT

1. In 1997, Claimant suffered a catastrophic paralyzing injury to her spinal cord at the C6-C7 level in an industrial accident and was rendered quadriplegic. Defendants admitted the

industrial accident and have paid substantial benefits since that time.

2. Craig Hospital in Colorado, caring exclusively for patients with spinal cord and brain injuries, provided Claimant's present wheelchair.

3. On August 23, 2005, Indira S. Lanig, M.D., a physician at Craig Hospital, a primary provider of care for Claimant, prepared a report entitled "Letter of Medical Necessity." This letter requested a replacement motorized wheelchair for Claimant.

4. Dr. Lanig's letter establishes the medical necessity of a 3G Ranger X RWD power wheelchair with power recline seating system, pressure relieving cushion, adjustable height armrests, arm pads, elbow stops, solid contoured back, lateral thoracic supports, push handles, lumbar pad, custom back, solid seat, flat free tire inserts, free wheel hubs, shock absorbing forks, swing away detachable footrests, angle adjustable footplates, heel loops, gel leg rest panels, power tilt/recline switch, on/off toggle switch extension, batteries and charger, rear shock absorbers, swing away joystick bracket, positioning belts, headrest and headrest assembly, power seat elevator, and extra cushion cover. These extensive features are medically necessary, and the chair has been specifically measured and prescribed to enable Claimant to avoid significant medical problems including complications due to kyphotic posture, scoliosis, and pelvic obliquity, prevent decubitus ulcers, manage increased respiratory complications, and allow Claimant independent mobility.

5. State Insurance Fund claims it was first made aware that Craig Hospital was recommending a new wheelchair on October 26, 2005, when Teresa Raymond received a call and a fax from Craig Hospital's equipment company, Adaptive Equipment Company, in Denver, for authorization of the chair. Adaptive Equipment Company could have provided the chair at that time. State Insurance Fund did not authorize the purchase of the chair from Adaptive Equipment

Company at that time.

6. The State Insurance Fund received a copy of Craig Hospital's Letter of Medical Necessity dated August 23, 2005, from Claimant's counsel on November 21, 2005. It alleges the letter had not been received from Craig Hospital prior to that date.

7. On December 20, 2005, Claimant filed a Motion for Expedited Hearing requesting an Order directing provision of a wheelchair. A telephonic hearing on this Motion was scheduled for January 5, 2006.

8. On January 5, 2006, an Order was filed by the Commission which vacated the telephonic hearing scheduled that date for the reason that the parties stipulated defendants would provide the motorized wheelchair. The stipulation provided in part:

Pursuant to negotiation between the parties conducted this date defendants employer/surety have agreed to purchase for Claimant the motorized chair prescribed for her by her treating physicians. The requirements and specifications for Claimant's motorized chair together with a Statement of Medical Necessity from Claimant's primary treating physician, Indira S. Lanig, M.D. are attached hereto and by this reference incorporated herein as if set forth in full.

Motion and Stipulation to Vacate Telephone Conference, pp. 1-2 (filed January 5, 2006).

9. On March 24, 2006, Claimant filed a Renewed Motion for Expedited Hearing and Entry of Order directing provision of motorized wheelchair with the Industrial Commission.

10. On April 20, 2006, the Renewed Motion for Expedited Hearing was heard telephonically. The parties presented oral argument.

11. The parties have stipulated that Claimant requires a replacement motorized wheelchair.

12. Teresa Raymond of the State Insurance Fund has been handling the request for the

wheelchair. On behalf of the State Insurance Fund, Raymond has made numerous calls and contacts since last November seeking to obtain a suitable chair for Claimant from Med Now or Norco, and seeking to arrange for proper fitting of a chair to Claimant by an occupational therapist and a physical therapist experienced in wheelchair fittings for spinal cord injury patients.

13. The cost of the wheelchair recommended by Craig Hospital through Adaptive Equipment Company is approximately \$32,000. The State Insurance Fund received a bid from Med Now for \$25,000 and a bid from NORCO for \$20,000 to provide a chair. It has always been the State Insurance Fund's position that the wheelchair should be purchased locally since it has to be serviced locally.

14. After the telephone conference of March 24, 2006, Defendants agreed to seek the expertise of an Occupational Therapist and Physical Therapist to assist in fitting the wheelchair to Claimant. Teresa Raymond completed those requirements April 14, 2006, however, no chair has been forthcoming.

15. Claimant would have the chair now if State Insurance Fund had authorized Adaptive Equipment Company to provide the chair on October 26, 2005.

DISCUSSION AND FURTHER FINDINGS

16. **Medical benefits.** The provisions of the Workers' Compensation Law are to be liberally construed in favor of the employee. Haldiman v. American Fine Foods, 117 Idaho 955, 956, 793 P.2d 187, 188 (1990). The humane purposes which it serves leave no room for narrow, technical construction. Ogden v. Thompson, 128 Idaho 87, 88, 910 P.2d 759, 760 (1996).

17. Idaho Code § 72-432(1) mandates that an employer shall provide for an injured employee such reasonable medical, surgical or other attendance or treatment, nurse and hospital

service, medicines, crutches, and apparatus, as may be reasonably required by the employee's physician or needed immediately after an injury or manifestation of an occupational disease, and for a reasonable time thereafter. If the employer fails to provide the same, the injured employee may do so at the expense of the employer. Idaho Code § 72-432(1) obligates an employer to provide treatment if the employee's physician requires the treatment and if the treatment is reasonable. Sprague v. Caldwell Transportation, Inc., 116 Idaho 720, 779 P.2d 395 (1989). For the purposes of Idaho Code § 72-432(1), medical treatment is reasonable if the employee's physician requires the treatment and it is for the physician to decide whether the treatment is required. Mulder v. Liberty Northwest Insurance Company, 135 Idaho 52, 58, 14 P.3d 372, 402, 408 (2000).

18. Defendants have recognized the medical necessity of a new motorized chair for Claimant and have attempted for at least five months to obtain a suitable chair through other suppliers. The delay in obtaining an appropriate chair evidences the highly technical aspects of this machinery and the extensive and specialized training required to fit such a chair to properly support a quadriplegic such as Claimant.

19. It has now been more than eight months since Claimant's treating physician prescribed the new chair, and more than six months since the time Defendants acknowledge they were advised of such. Defendants' preference to secure a less expensive chair from a local supplier is understandable. However, Claimant is entitled to a chair as prescribed by her treating physician within a reasonable time. Defendants' attempts to locate, arrange for, and fit Claimant with a suitable motorized chair from a local supplier have not produced timely results. Claimant is entitled to a new motorized chair as prescribed by her treating physician, Dr. Lanig, from Adaptive Equipment Company.

CONCLUSION OF LAW

Defendants should be required to immediately provide Claimant a new motorized wheelchair from Adaptive Equipment Company.

RECOMMENDATION

The Referee recommends that the Commission adopt the foregoing Findings of Fact and Conclusion of Law as its own, and issue an appropriate final order.

DATED this 5th day of May, 2006.

INDUSTRIAL COMMISSION

/s/ _____
Alan Reed Taylor, Referee

ATTEST:

/s/ _____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of May, 2006, a true and correct copy of **Findings of Fact, Conclusion of Law, and Recommendation** was served by regular United States Mail upon each of the following:

JOSEPH E JARZABEK
PO BOX 1049
SANDPOINT ID 83864-1049

DAVID R SKINNER
6098 TONKIN DR
BOISE ID 83704

kr /s/ _____

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

PATRICIA J. SHELTON,)	
)	
Claimant,)	IC 97-005067
)	
v.)	
)	
AUTO PHONE CORPORATION,)	
)	
Employer,)	
)	ORDER
)	Filed
IDAHO STATE INSURANCE FUND,)	May 9, 2006
)	
Surety,)	
)	
Defendants.)	
_____)	

Pursuant to Idaho Code § 72-717, Referee Alan Taylor submitted the record in the above-entitled matter, together with his proposed findings of fact and conclusion of law to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendation of the Referee. The Commission concurs with the recommendation. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusion of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED That:

Defendants shall be required to immediately provide Claimant a new motorized wheelchair from Adaptive Equipment Company.

Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to the issue adjudicated.

DATED this 9th day of May, 2006.

INDUSTRIAL COMMISSION

/s/
Thomas E. Limbaugh, Chairman

/s/
James F. Kile, Commissioner

/s/
R. D. Maynard, Commissioner

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of May, 2006, a true and correct copy of the foregoing **Order** was served by regular United States Mail upon each of the following persons:

JOSEPH E JARZABEK
PO BOX 1049
SANDPOINT ID 83864-1049

DAVID R SKINNER
6098 TONKIN DR
BOISE ID 83704

kr

/s/