

**STATE OF VERMONT  
DEPARTMENT OF LABOR AND INDUSTRY**

	)	State File No. A-25010
	)	
Lois D. Hansen	)	By: Margaret A. Mangan
	)	Hearing Officer
v.	)	
	)	For: Michael S. Bertrand
J. Graham Goldsmith	)	Commissioner
	)	
	)	Opinion No. 11-03WC

Submitted on briefs without an evidentiary hearing  
Record Closed on September 10, 2002

**APPEARANCES:**

Robert S. Behrens, Esq. for the Claimant  
Andrew C. Boxer, Esq. for Defendant

**ISSUE:**

Are Claimant's expenses for home help compensable under the Workers' Compensation Act?

**CLAIM:**

Claimant seeks a determination that Defendant compensate her for 8 hours per week of home help, comprised of cleaning and household chores.

**FINDINGS OF FACTS**

(Based on the stipulation of the parties):

1. Claimant Lois Hansen was injured in 1988 due to a slip and fall while at work. Her employer at the time was J. Graham Goldsmith. She received temporary total and permanent partial benefits until a Form 22 was filed with the Department on December 3, 1993.

2. The Form 22 Agreement for permanent partial disability benefits consisted of forty-three (43) weeks of compensation. The permanency calculation was based on Dr. Vargas's opinion that the claimant had reached medical end result with a 15 to 20% loss of function of the left lower extremity. Claimant Lois Hansen and Cheryl Donovan, as supervisor at Aetna Insurance Company, signed the agreement which provided that the insurance carrier/employer would continue to provide the Claimant with "medical, hospital, surgical and nursing services and supplies in accordance with the provision of 21 V.S.A. § 640."
3. Aetna paid for a person to help Claimant with household cleaning and chores for eight (8) hours a week. Aetna continued to pay for Claimant ongoing medical and home help bills from December 3, 1993 until 1997 when Aetna filed a Form 27 to terminate all benefits on November 14, 1997.
4. On October 25, 2000 this Department ruled that the medical benefits were to be kept open, which is the current status today. Aetna stopped paying Claimant's "home help" bills since it filed the Form 27.
5. In a January 8, 2001 letter, Diane C. Ripa, M.D., Claimant's treating physician, indicated the following:

Patient, Lois Hansen, must have 8 hours of home health care weekly. This need for services is directly related to a knee injury, which occurred May 1988. This home health aide is specifically to assist Lois with performance tasks that patient cannot perform herself.

Additionally, patient is in need for physical therapy for her left knee. This physical therapy is to increase the strength of the knee. She has muscle atrophy of the left leg due to chronic left knee pain from this knee injury in May 1988.

6. On February 20, 2001 Jonathan E. Fenton, D.O. performed an independent medical examination (IME). In the discussion section of his report, Dr. Fenton wrote:

I also feel, based on the patient's history, that the home health assistance she is requesting is reasonable, necessary and related to the traumatic arthritis she has developed from her 1998 injury. However, such care is for assistance with ADL functions and does not represent medical, nursing or physical therapy treatment.

In a June 19, 2001 letter, Dr. Ripa further provided:

I've been caring of Lois Hansen for a number of years. She suffers from left knee pain related to an injury occurring in 1998 [sic]. She needs to have help doing her activities of daily living because of severe chronic pain. If she does all her activities of daily living, her knee pain worsens and will continue to worsen over time. We have recommended for medical reasons that she receive 8 hours per week of home care to reduce the strain on her knee.

**DISCUSSION:**

1. The parties agree that the controlling statutory provision states:

An employer subject to the provisions of this chapter shall furnish reasonable surgical, medical and nursing services and supplies to an injured employee. The employer shall also furnish reasonable hospital services and supplies, including surgical, medical and nursing services while the injured employee is confined in a hospital for treatment and care.

21 V.S.A. § 640 (a)

2. Based on the opinions of Doctors Ripa and Fenton, Claimant argues the eight hours per week of home help is medically necessary and reasonable and hence compensable under § 640. She argues that it would be illogical to cover a prosthetic device and not home care services. Further, she argues that the proposed services would be covered were Claimant placed in a nursing home and should be covered while she is in her own home.
3. Defendant argues that the Legislature, Supreme Court and this Department have all determined that while medical, surgical and nursing services are covered under the Act, even when provided in one's home, housekeeping services are not. See, *Close v. Superior Excavating Co.*, 166 Vt. 318 (1997) and Op. No., 94-95WC (1996); *Page v. Coils*, Op. No. 34-83WC (1984).

**CONCLUSIONS OF LAW:**

1. Claimant is correct when she states that the Act covers prosthetic devices, § 601(7), confinement in a hospital and nursing services. § 640(a). It may be true that the services she now seeks would be less expensive than a nursing home, which presumably would be covered. However, in fashioning a workers' compensation system in which a Claimant need not prove fault and the employer has limited liability, the Legislature necessarily chose to cover some, but not all, potential services for an injured worker. In *Close*, 166 Vt. 318, the Court affirmed this Department's decision to award payment for spousal nursing services that went beyond housekeeping. Therefore, "[w]hile 'attendance' in the nursing sense is covered, ... a line has been drawn between nursing attendance and services which are in essence housekeeping." Larson's Worker's Compensation Law, § 94.03[4][d].
2. In this case, the services sought are for housekeeping only, with no aspects of nursing care. Accordingly, without a statutory provision specifying that such services are compensable, clear precedent dictates that they are not.

**ORDER:**

Therefore, based on the Foregoing Findings of Fact and Conclusions of Law, the claim for home help DENIED.

Dated at Montpelier, Vermont this 28<sup>th</sup> day of February 2003.

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Michael S. Bertrand  
Commissioner

Appeal:

Within 30 days after copies of this opinion have been mailed, either party may appeal questions of fact or mixed questions of law and fact to a superior court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§ 670, 672.