

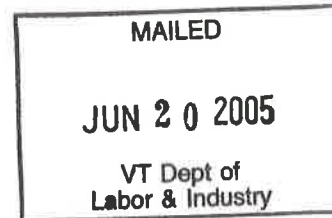
**STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY**

Chad Brunet)	Opinion No. 34-05WC
)	
)	By: Margaret A. Mangan
v.)	Hearing Officer
)	
Ronald and Tammy Brunet)	For: Laura Kilmer Collins
)	Commissioner
)	
)	State File No. G-02859

Pretrial conference held on March 7, 2005
Hearing held in Middlebury on May 6, 2005
Record Closed on May 18, 2005

APPEARANCES:

Beth Robinson, Esq., for the Claimant
Keith J. Kasper, Esq., for the Defendant



ISSUE:

Is defendant obligated to pay the full cost of a handicap accessible van equipped for claimant's needs? If not, what portion of the cost of a replacement van that can accommodate claimant's injury is defendant obligated to pay?

EXHIBITS:

Joint Exhibit A: Van Estimate 3/19/05

Defendant's Exhibits:

Defendant's Exhibit 1:	NADA Vehicle Pricing 2005 Toyota Tacoma Pickup
Defendant's Exhibit 2:	NADA Vehicle Pricing 2000 Average Retail Value Toyota Tacoma Pickup

CLAIM:

Claimant seeks full payment for a handicap accessible van equipped for his needs.

STIPULATED FACTS:

1. Claimant was injured in a work-related injury in 1993 while employed by Ronald and Tammy Brunet. Liberty Mutual was on the risk for this injury.
2. As a result of his work-related injury, a cervical fracture at C5-6, claimant suffers from quadriplegia.
3. In 1994 Liberty Mutual purchased for claimant a van that could accommodate claimant's wheelchair and other needs. Liberty Mutual paid the entire cost of that van.
4. The van purchased by Liberty Mutual is no longer operational and Mr. Brunet requires a replacement van to enable him to meet his medical and personal needs.
5. The estimate marked as Exhibit A, reflects the approximate cost of a new van that can accommodate claimant's needs. The parties acknowledge that this estimate may need to be "tweaked" if the proposed van reasonably requires additional features or accommodations to meet Mr. Brunet's needs.

FINDINGS OF FACT:

1. At the time of his August 9, 1993 injury, claimant owned a 1988 Toyota Pickup with 91,000 miles. He had purchased the vehicle nine months earlier for approximately \$5,1000. A comparable vehicle today according to a defense estimate is \$10,200.
2. Before the accident, claimant personally maintained his vehicle. He lived (and lives) in a rural area, without public transportation.
3. Claimant's truck was totaled in the work related accident. Insurance proceeds paid the debt owed on the truck, but left him with no funds to apply to another vehicle.
4. Liberty Mutual purchased a new 1993 van for the claimant that he began using in late 1994 or 1995 when it was modified. Claimant understood that Liberty Mutual would be responsible for replacing the van in 10 years.
5. The van has not been operational since November 2004, which means that claimant is limited in his ability to leave his home, shop and socialize.
6. Given his credit history, claimant believes that it is unlikely he will be able to secure financing for a vehicle.

7. Claimant submitted support for his claim for attorney fees based on 18.2 hours.

CONCLUSIONS OF LAW:


1. Prior to a recent amendment to the Vermont Workers' Compensation Act, this Department held that "under a liberal, humane, and reasonable construction of the workers' compensation act, modifications to a motor vehicle when a claimant is medically dependent upon a wheelchair for mobility is a covered benefit within the context of medical supplies under 21 V.S.A. § 640(a) so long as the request is reasonable." *Patch v. H.P. Cummings*, Opinion No 49-02 (2002). *Patch* was a focal point for the legislative work leading to the 2004 amendment to 21 V.S.A. § 640(a), which provides that an employer provide modifications to vehicles that are reasonably necessary to aid in the claimant's mobility.
2. The operative term is "modification," which could mean hand brakes for those with paraplegia to allow them to use their own vehicles. However, in a case such as this where claimant's needs cannot be met with modifications to a pickup truck comparable to what he had been driving, a fully equipped van must be purchased. The question presented is whether claimant must pay for any portion of that purchase. Claimant argues that the carrier should be responsible for the full cost of the equipped van. Defendant argues that claimant should be responsible for the basic van and defendant only for the modifications to the van.
3. "The employer's liability is limited to those modifications that are directly related to the particular claimant's disability from a work related injury." *Patch*. Furthermore, "it is impractical to consider that someone could live in rural Vermont without an automobile for transportation." *Id.*
4. Other jurisdictions that have considered this issue have fallen into three categories: those that deny a vehicle purchase completely; those that allow for the full purchase price, particularly for claimants who did not have their own vehicles before the work related accident; and those that allow for part of the cost. See *Patch*, supra; Elizabeth Cazden, Annotation, *Compensability of Specially Equipped Van or Vehicle under Workers' Compensation Statutes*, 63 A.L.R.5th 163 (2005).

5. It would be unfair to the claimant to ask that he pay for a van, when he never would have had such a vehicle were it not for the accident. On the other hand, it would be unfair to the carrier to ignore the costs claimant would have assumed but for the accident. Vermont strikes a balance between the interests at stake. The *Patch* standard of “modification” suggests that the carrier should be responsible for less than the full cost of a fully equipped van and that the claimant will assume the cost of a vehicle he would have driven but for the accident.
6. Mr. Brunet had a vehicle before the accident, and it is reasonable to assume that he would be driving one at his own expense now had the accident not occurred. “Therefore the costs of owning and maintaining an automobile were normal, ordinary expenses for claimant prior to his injury. However, claimant should not be expected to incur extraordinary expenses because his injury requires a more expensive form of transportation that he would have purchased for himself prior to the injury.” See *id* and cases cited therein.
7. As with *Patch*, claimant is awarded the difference between the cost of the van and the cost of an average, standard sized vehicle he would use but for the injury. See *Crouch v. West Virginia Workers' Compensation Commissioner*, 403 S.E.2d 747, 751 (Supreme Court of Appeals W.V. 1991) (holding that the cost of an average, mid-price automobile, of the same year as the purchased van, must be deducted from the cost of the van.); *Meyer v. North Dakota Workers' Compensation Bureau*, 512 N.W.2d 680, 681 (N.D. 1994) (holding the “injured worker is entitled to reimbursement for the difference between the cost of a handicap accessible van and the cost of a vehicle he would have otherwise owned.”)
8. Claimant drove a second hand pickup truck. Defendant provided evidence that such a vehicle at current prices is valued at \$10, 200. However, it is not clear that claimant has accepted that figure. Therefore, the carrier is responsible for the van necessary for the claimant’s transportation, less the amount of a second hand pickup comparable to the one he had at the time of the accident at the 2005 cost. If the parties cannot agree of that figure, documents may be submitted to the department for a ruling on that issue.
9. Pursuant to 21 V.S.A. § 678(a), claimant is awarded the fees requested.

ORDER:

Therefore, claimant is awarded a fully equipped van less the present day value of a pickup comparable to the one on which he depended at the time of the accident.

Dated at Montpelier, Vermont this 17th day of June 2005.



Laura Kilmer Collins
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.