

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONNA L. WHITEHEAD and DEPARTMENT OF DEFENSE,
UNIFORM SERVICES UNIVERSITY OF HEALTH SCIENCE, Bethesda, MD

*Docket No. 97-1895; Oral Argument Held March 1, 2000;
Issued April 24, 2000*

Appearances: *Walter T. Evans, Esq.*, for appellant; *Catherine P. Carter, Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant is entitled to an attendant's allowance; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for at least 120 days of full-time day treatment.

The Board has reviewed the record on appeal, together with the arguments presented at the Board's March 1, 2000 oral argument and finds that appellant has not established her entitlement to an attendant's allowance.

The Federal Employees' Compensation Act provides for an attendant's allowance under section 8111(a), which states:

"The Secretary of Labor may pay an employee who has been awarded compensation an additional sum of not more than \$1,500.00 a month, as the Secretary considers necessary, when the Secretary finds that the service of an attendant is necessary constantly because the employee is totally blind, or has lost the use of both hands or both feet, or is paralyzed and unable to walk, or because of other disability resulting from the injury making him so helpless as to require constant attendance."¹

Under this provision, the Office may pay an attendant's allowance upon finding that a claimant is so helpless that she is in need of constant care. The claimant is not required to need around-the-clock care. She has only to have a continually recurring need for assistance in personal matters. The attendant's allowance, however, is not intended to pay an attendant for

¹ 5 U.S.C. § 8111(a).

performance of domestic and housekeeping chores such as cooking, cleaning, doing the laundry or providing transportation services. It is intended to pay an attendant for assisting a claimant in her personal needs such as dressing, bathing or using the toilet.² Additionally, a claimant bears the burden of proof to establish by competent medical evidence that she requires attendant care within the meaning of the Act.³ An attendant's allowance is not granted simply upon request of a disabled employee or upon request of her physicians. The need for attendant care must be established by rationalized medical opinion evidence.⁴

Appellant's attorney has conceded that appellant is capable of feeding, dressing, bathing and using the toilet herself. He argues, however, that appellant is a nonfunctioning individual suffering from a major depression, that she will not get out of bed without extreme prompting, and that she therefore satisfies the statutory requirement of being "so helpless as to require constant attention." In this case, the Office accepted that appellant sustained a major depressive reaction while in the performance of her duties. If she were so helpless as to require constant attention because of disability resulting from this major depressive reaction, she could qualify for an attendant's allowance under the statute. In her August 30, 1996 report, however, Dr. Karen Alleyne, appellant's attending psychiatrist, noted that appellant was unable to care for her basic daily needs because of a severe post-traumatic stress disorder. As the Office has not accepted that this condition arose out of and in the course of appellant's federal employment, the record fails to establish her entitlement to an attendant's allowance. The Board will affirm the Office's January 31, 1997 decision on the issue of attendant's allowance.

The Board also finds that the Office properly denied appellant's request for at least 120 days of full-time day treatment.

Section 8103(a) of the Act provides that the United States shall furnish to an employee who is injured while in the performance of duty the services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability or aid in lessening the amount of any monthly compensation. The Office must therefore exercise discretion in determining whether the particular service, appliance or supply is likely to effect the purposes specified in the Act.⁵

In her March 27, 1996 report, Dr. Alleyne noted that appellant had made small but noticeable progress during a day treatment program the year before. Appellant became more active and more assertive and began taking care of her personal needs more effectively. Since leaving the program, however, she was again unable to care for herself or her family. Dr. Alleyne recommended that appellant return to the day treatment program so that she could

² *Grant S. Pfeiffer*, 42 ECAB 647 (1991).

³ *See Cynthia S. Snipes (Edward S. Snipes)*, 33 ECAB 379, 383 (1981).

⁴ *See Kenneth Williams*, 32 ECAB 1829, 1832 (1981).

⁵ *See Marjorie S. Geer*, 39 ECAB 1099 (1988) (the Office has broad discretionary authority in the administration of the Act and must exercise that discretion to achieve the objectives of section 8103).

begin to progress again. She noted that this had been the most effective course of treatment so far.

On August 9, 1995 Dr. Alleyne reported that appellant had continued to progress in the day treatment program, but progress was slow and appellant was still unable to care adequately for her family or to leave home alone. In the program, appellant was exploring the issues related to her past traumas and learning to become more assertive. Dr. Alleyne recommended continuation of the program.

In her April 19, 1996 report, Dr. Alleyne stated that appellant required intensive, daily supervision and therapy in an out-patient setting. She noted that appellant did well in a program the year before. Her progress was definite but slow and she would need approval for at least 120 days of full-time day treatment.

In his January 31, 1997 decision, the Office hearing representative found that the reports of Dr. Alleyne contained significant deficiencies with respect to history, findings, diagnosis and opinion on causal relationship. He found that Dr. Alleyne provided no explanation of what treatment the program would entail or how such treatment would serve to cure, give relief or lessen the period of disability. Although Dr. Alleyne recommended at least 120 days of full-time day treatment, she did not clearly explain how such treatment would serve to cure, give relief or lessen the period of appellant's employment-related disability in light of the small improvement previously demonstrated. For this reason, the Board finds that the Office did not abuse its discretion in denying appellant's request for at least 120 days of full-time day treatment. The Board will affirm the Office's January 31, 1997 decision on this issue.

The January 31, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
April 24, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member