Alaska Workers' Compensation Appeals Commission

Bryce Warnke-Green, Appellant, vs. Pro West Contractors, LLC and Liberty Northwest Insurance Corporation, Appellee.	Final Decision Decision No. 235 June 26, 2017 AWCAC Appeal No. 16-014 AWCB Decision No. 16-0090 AWCB Case No. 201500985

Final decision on appeal from Alaska Workers' Compensation Board Final Decision and Order No. 16-0090, issued at Fairbanks, Alaska, on October 19, 2016, by northern panel members Robert Vollmer, Chair, and Jacob Howdeshell, Member for Labor.

Appearances: Eric Croft, The Croft Law Office, for appellant, Bryce Warnke-Green; Constance E. Livsey, Barlow Anderson, LLC, for appellees, Pro West Contractors, LLC and Liberty Northwest Insurance Corporation.

Commission proceedings: Appeal filed November 10, 2016; briefing completed March 23, 2017; oral argument held on April 11, 2017.

Commissioners: Michael J. Notar, Philip E. Ulmer, Deirdre D. Ford, Chair.

By: Deirdre D. Ford, Chair.

1. Introduction.

Bryce Warnke-Green sustained a C-4 tetraplegia in a work-related accident in Nome, Alaska, on September 24, 2014, while working for Pro West Contractors, LLC (Pro West). He currently lives in Seattle, Washington, near medical treatment and requests Pro West purchase a new van with specialized modifications to facilitate his travel. The Alaska Workers' Compensation Board (Board) heard his claim on April 21, 2016, in Fairbanks, Alaska, and found a motor vehicle was not a medical benefit and Pro West had no obligation to purchase an automobile for Mr. Warnke-Green. The Board did not address fully whether the increased cost for a modifiable van and the necessary modifications were medical benefits under the Alaska Workers' Compensation Act (Act).

The Alaska Workers' Compensation Appeals Commission (Commission) affirms the Board's finding that a new modified van is not a prosthetic device and Pro West is not obligated to provide a new automobile at no cost to Mr. Warnke-Green. However, the Commission reverses the Board's decision regarding the increased cost for a modifiable van and the required modifications. The Commission finds these items to be encompassed with the term "apparatus" under the Act, required by the "nature of the injury," and are a compensable medical benefit. The increased costs to procure a modifiable van and for the necessary modifications to accommodate Mr. Warnke-Green's wheelchair arise out of his employment-related accident. These costs are necessitated by the nature of his work-related injuries.

2. Factual background and proceedings.[1]

Mr. Warnke-Green was working for Pro West as a laborer in Nome when he was injured. He was positioning a truck while a co-worker was moving a crane which toppled over with the boom landing on the roof of the truck. The boom crushed the cab with Mr. Warnke-Green inside.[2]

Mr. Warnke-Green suffered an American Spinal Injury Association level A, C4 tetraplegia complicated by spasms, chronic pain, neurogenic bowel and bladder, and immobility leading to pressure wounds. He relies on an electric wheelchair for mobility and requires full-time assistance with his basic activities of daily living.[3] There is no dispute the September 28, 2014, work injury caused Mr. Warnke-Green's C4 tetraplegia.[4]

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[1] We make no factual findings. We state the facts as found by the Board, adding context by citation to the record with respect to matters that do not appear to be in dispute.

[2] *Warnke-Green v. Pro West Contractors, LLC and Liberty Northwest Insurance Corp.*, Alaska Workers' Comp. Bd. Dec. No. 16-0090 (Oct. 19, 2016) at 3, No. 1.

[3] *Id.*, No. 2.

[4] *Id.*, No. 3.

There are very few medical reports in the record.[5] Mr. Warnke-Green agrees there are no specific medical reports or prescriptions in the record for either a modifiable van or for any specific modifications to such a van. However, one medical report does state that Mr. Warnke-Green should have a van that is "handicapped accessible."[6]

On September 24, 2015, physical therapist Roozbeh Katiraie at Pushing Boundaries completed a 12-week evaluation of Mr. Warnke-Green's progress, and noted he "[o]bserved improved emotional state due to him being able to leave the confines of his home and interact with the community." The report also included recommendations for the next 12-week period:

> It has been stressed to Bryce to keep attempting to be as active as possible outside of Pushing Boundaries by doing range of motion exercise and getting out of bed . . . . Pushing Boundaries remains the main source of physical activity that Bryce receives and he continues to comment on how much he looks forward to coming and exercising and continues to put forth great effort during his sessions. While current transportation limitations are challenging, we are encouraging increased social interactions within the community to promote psychosocial health and reintegration.[7]

On November 27, 2015, Mr. Warnke-Green filed a claim seeking a "new modified van" and attorneys' fees and costs.[8] Pro West answered on December 8, 2015, denying his claim in its entirety, including the purchase of a "new modified van."[9]

Pro West contends Mr. Warnke-Green's father demanded Pro West provide his son with a new Mercedes van and modify it to be handicapped accessible. Both at hearing and at oral argument, Mr. Warnke-Green's attorney clarified the van need not be new, but rather should be "medically appropriate."[10] Medically appropriate was not defined.

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5 *Warnke-Green*, Bd. Dec. No. 16-0090 at 3, No. 4.

6 *Id.* at 4, No. 7.

7 *Id.*, No. 8; R. 000170.

8 *Id.* at 4, No. 9.

9 *Id.*, No. 10.

10 *Id.* at 6, No. 18.

Pro West asserts it has offered a modified van and only asks Mr. Warnke-Green to contribute towards the purchase of such a van.

Mr. Warnke-Green testified he was born and raised in Nome. Prior to the injury, he enjoyed hunting, fishing, boating, four-wheeling, riding dirt bikes, snow machining, and travelling to the villages. Mr. Warnke-Green also enjoyed working at commercial fishing. Mr. Warnke-Green contends

> [his] life has dramatically changed. In Nome, most people have access to some form of individual transportation. But his work injury had forced him to live in Seattle. Many Seattle residents choose not to have a vehicle for expense and other valid reasons. The Board should not speculate on whether [Mr. Warnke-Green] would have had a car if he moved voluntarily to Seattle, or what hypothetical average car [Mr. Warnke-Green] might have bought. It seems unlikely he would have bought a large van. Instead, the Board should simply deduct the price of the vehicle he actually had or has in Nome.[11]

At the time of his injury, Mr. Warnke-Green owned a Chevy Suburban, which was in the shop because it did not run. Mr. Warnke-Green estimated the value of his 1992 Suburban, which he described as a "parts vehicle," at about $500 to $1,000.

Mr. Warnke-Green testified he has had a drivers' license since he was 16 years-old. However, he did not have a driver's license at the time of his injury because it had been suspended. Although the suspension period had lapsed, he had not gotten around to updating it, since he was primarily using his mother's four-wheeler or getting rides with other people.[12] Evidence shows Mr. Warnke-Green received traffic tickets for driving without a valid license and for expired vehicle registrations. These tickets involved "old vehicles" he had. Mr. Warnke-Green did not use a bus or a taxi service when he lived in Nome, but rather used privately owned vehicles. Evidence shows Mr. Warnke-Green owned and used various vehicles in the past.

At the time of the hearing, Mr. Warnke-Green was using an ambulance to go to doctors' appointments because he had bed sores and his doctors did not want him to

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11 *Warnke-Green*, Bd. Dec. No. 16-0090 at 5, No. 15.

12 *Id.* at 6-7, No. 22.

sit.[13] He also used the Cabulance service which he described as like a cab, but for people in wheelchairs.[14] In his experience, most Cabulance vehicles were minivans, with some having side-doors and other being "rear-loaders."[15] He found the side-loaders generally worked better for him, but it depended on the type of vehicle.[16] One vehicle did not work well for him because it was too small and his head would hit the ceiling.[17] In addition, because he must be reclined in this vehicle, with his feet sticking up in the air, it was uncomfortable.[18] At times, the Cabulance service has been late and Mr. Warnke-Green has missed medical appointments.[19] Additionally, the Cabulance service requires one or two days' advance notice.[20]

When Mr. Warnke-Green's family visited him in Seattle, Pro West authorized use of the Cabulance service for non-medical/recreational activities on several occasions.[21] Mr. Warnke-Green has been shown how to use the public transportation system in Seattle, but he has not used either the paratransit bus or light rail services.

Mr. Warnke-Green had not participated in any recreational activities in the seven months prior to the hearing.[22] His dad does the shopping with the family vehicle, a Chevy Suburban, which cannot be modified to accommodate Mr. Warnke-Green because the roof is not tall enough. He stated he was anxious to return to Pushing Boundaries, which he last attended four or five months prior to the hearing. Mr. Warnke-Green, at the time of the hearing, had not had an opportunity to attend Pushing Boundaries because he was

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13 *Warnke-Green*, Bd. Dec. No. 16-0090 at 7, No. 22.

14 *Id.*

15 *Id.*

16 *Id.*

17 *Id.*

18 *Id.*

19 *Id.*

20 *Id.*

21 Hr'g Tr. at 54:10-22, Apr. 21, 2016.

22 *Warnke-Green*, Bd. Dec. No. 16-0090 at 7, No. 22.

hospitalized from Thanksgiving 2015 until April 13, 2016.[23] He intended to resume attendance at Pushing Boundaries.

Mr. Warnke-Green also stated, if he had access to suitable transportation, he would go to the store, go shopping, and participate in recreational activities including visiting the countryside. Having his own van would allow him to see more things, take friends out when they visit him, and go to concerts.

Berni Seever, adjuster, testified she has never spoken with Mr. Warnke-Green because she is only able to communicate with his father, Louis, who contends he has power of attorney from his son. In the fall of 2015, Louis had located, and put a deposit on, a Mercedes Benz Sprinter van. The two of them had discussed the costs of Louis's van compared to another van she had located which had already been modified, but Louis wanted the new van. Later, the modified van was no longer available. Ms. Seever and Louis have not had any further discussions regarding a van.

In the meantime, Pro West has been providing Mr. Warnke-Green with the Cabulance service.[24] Pro West has consistently provided appropriate transportation for all medical needs and has never disputed Mr. Warnke-Green's need for ambulance and/or Cabulance services to attend medical appointments.

Pro West contends Mr. Warnke-Green has adequate and reasonable transportation available to him for non-medical activities and presented evidence showing that Seattle has excellent paratransit public transportation for handicapped individuals. Mr. Warnke-Green contended Pro West's information source is for travelers, and not for residents of Seattle. He also agreed that while he has been trained to use the public transit options, he has chosen not to use them.[25] He asserts a private van is a more convenient option and Pro-West should be required to purchase one for him.

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[23] *Warnke-Green*, Bd. Dec. No. 16-0090 at 7, No. 22.

[24] *Id.* at 7-8, No. 23.

[25] *Id.* at 8, No. 25.

3. Standard of review.

"The goal of statutory construction is to give effect to the legislature's intent, with due regard for the meaning the statutory language conveys to others."[26] A statute is interpreted according to reason, practicality, and common sense, considering the meaning of the statute's language, its legislative history, and its purpose.[27] Statutes dealing with the same subject are *in pari materia* and are to be construed together.[28] If one statutory "section deals with a subject in general terms and another deals with a part of the same subject in a more detailed way, the two should be harmonized, if possible; but if there is a conflict, the specific section will control over the general."[29] On questions of law, the Commission does not defer to the Board's conclusions, but exercises its independent judgment.[30] Under AS 23.30.128(d), the Commission has the authority to modify a decision of the Board upon review.

4. Discussion.

a. Does the Act require the purchase of an automobile for a quadriplegic?

The issue before the Commission is a legal one: does the Act require an employer to purchase a new motor vehicle for an injured worker without contribution from the injured worker?

The Act discusses required medical benefits in several places. First, under required policy provisions, an employer's policy must contain certain provisions:

> (1) The insurer assumes in full all the obligations to pay physician's fees, nurse's charges, hospital services, hospital supplies, medicines, prosthetic devices, transportation charges to the nearest point where adequate medical facilities are available, burial expenses, and compensation or death benefits imposed upon the insured under the provisions of this chapter.

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[26] *Shehata v. Salvation Army*, 225 P.3d 1106, 114 (Alaska 2010).

[27] *See, Municipality of Anchorage v. Adamson*, 301 P.3d 569, 575 (Alaska 2013) (citations omitted).

[28] *See, Benner v. Wichman*, 874 P.2d 949, 958, n.18 (Alaska 1994).

[29] *See*, *Matter of Hutchinson's Estate*, 577 P.2d 1074, 1075 (Alaska 1978).

[30] AS 23.30.128(b).

> (2) The policy is made subject to the provisions of this chapter and its provisions relative to the liability of the insured employer to pay physician's fees, nurse's charges, hospital services, hospital supplies, medicines, prosthetic devices, transportation charges to the nearest point where adequate medical facilities are available, burial expenses, compensation or death benefits to and for said employees or beneficiaries, the acceptance of the liability by the insured employer, the adjustment, trial, and adjudication of claims for the physician's fees, nurse's charges, hospital services, hospital supplies, medicines, prosthetic devices, transportation charges to the nearest point where adequate medical facilities are available, burial expenses, compensation or death benefits, and the liability of the insurer to pay the same are considered a part of this policy contract.[31] (Emphasis added.)

The Act further specifies the required medical treatment at AS 23.30.095 as including "medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus for the period which the nature of the injury or the process of recovery requires, not exceeding two years from and after the date of injury to the employee." Further, the "board may authorize continued treatment or care or both as the process of recovery may require . . . ." The Act defines "injury," "medical and related benefits," and "prosthetic devices" at AS 23.30.395:

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> (24) "injury" means accidental injury or death arising out of and in the course of employment, and an occupational disease or infection that arises naturally out of the employment or that naturally or unavoidably results from an accidental injury; "injury" includes breakage or damage to eyeglasses, hearing aids, dentures, or any prosthetic devices that function as part of the body and further includes an injury caused by the wilful act of a third person directed against an employee because of the employment;
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> . . . .
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> (26) "medical and related benefits" includes, but is not limited to, physicians' fees, nurses' charges, hospital services, hospital supplies, medicine and prosthetic devices, physical rehabilitation, and treatment for the fitting and training for use of such devices as may reasonably be required, that arises out of or is necessitated by an injury, and transportation charges to the nearest point where adequate medical facilities are available;

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[31] AS 23.30.030.

. . . .

> (33) "prosthetic devices" includes but is not limited to eye glasses, hearing aids, dentures, and such other devices and appliances, and the repair or replacement of the devices necessitated by ordinary wear and arising out of an injury;
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> . . . .

Statutory interpretation requires "interpreting a statute 'according to reason, practicality, and common sense, considering the meaning or the statute's language, its legislative history, and its purpose.'"[32] It is also "an established principle of statutory construction that all sections of an act are to be construed together so that all have meaning and no section conflicts with another. Further, where one section deals with a subject in general terms and another deals with a part of the same subject in a more detailed way, the two should be harmonized, if possible; but where there is a conflict, the specific section will control over the general."[33]

The Act must "be interpreted so as to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter [and] workers' compensation cases shall be decided on their merits except where otherwise provided by statute . . . ."[34] Benefits are to be paid to an injured worker where the disability or need for medical treatment "arose out of and in the course of the employment."[35] The Alaska Supreme Court (Court) has stated it presumes "that the legislature intended every word, sentence, or provision of a statute to have some purpose, force, and effect, and that no words or provisions are superfluous."[36] Moreover, "[i]t is an established principle of statutory construction that all sections of an act are to be construed together so that all

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[32] *Bockus v. First Student Services*, 384 P.3d 801, 807 (Alaska 2016)(citing Louie v. BP Exploration (Alaska), Inc., 327 P.3d 204, 206 (Alaska 2014)(citing *Grimm v. Wagoner*, 77 P.3d 423, 427 (Alaska 2003).

[33] *Matter of Hutchinson's Estate*, 577 P.2d 1074, 1075 (Alaska 1978).

[34] AS 23.30.001.

[35] AS 23.30.010(a).

[36] *Nelson v. Municipality of Anchorage,* 267 P.3d 636, 642 (Alaska 2011).

have meaning and no section conflicts with another. Further, where one section deals with a subject in general terms and another deals with a part of the same subject in a more detailed way, the two should be harmonized, if possible; but if there is a conflict, the specific section will control over the general."[37]

Employers are to pay the necessary medical expenses for an injured worker and medically related travel expenses must be paid or reimbursed to an injured worker if the worker has used the most reasonable and efficient means of transportation. An insurance policy must include provisions for liability, among other things, for prosthetic devices and transportation to medical facilities. AS 23.30.030(2). The Act further requires an employer to "furnish . . . medicine, crutches, and apparatus for the period which the nature of the injury . . . requires . . . ." AS 23.30.095(a). At AS 23.30.395(33), "prosthetic devices" is defined to include hearing aids, eyeglasses, and dentures.

A reasonable interpretation of the statutory language, construing all sections together, is that an automobile is not a prosthetic device. Prosthetic devices are items that are attached to the human body while an automobile clearly is not. Therefore, the Board's finding that the language "prosthetic devices" does not cover the purchase of an automobile for an injured worker is affirmed.

b. Are specialized modifications and extra costs associated with a modifiable vehicle an apparatus under the Act and thus a medical benefit?

The Board limited Pro West's obligation to provide transportation assistance to Mr. Warnke-Green to medically related transportation. This is too narrow an interpretation of what medical benefits entail, especially in the case of a quadriplegic. An injured worker who is no longer able to use a regular vehicle needs additional assistance just as an injured worker may require a wheelchair or other assistive devices as the "nature of the injury requires." AS 23.30.095 provides that an employer "shall furnish medical . . . and other . . . apparatus for the period which the nature of the injury . . . requires . . . ." The statute further states the Board may authorize "continued treatment

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[37] *Matter of Hutchinson's Estate*, 577 P.2d at 1075.

or care or both as the process of recovery may require." What the statute mandates hinges on the understanding and definition of "apparatus" and defining what the "nature of the injury" requires.

The Act does not define "apparatus." However, the Court has held that when the Legislature includes a specific word in a statute, that word should be given meaning and included in the construction of the statute with other sections of the Act. Moreover, the Act requires that benefits be paid as the "nature of the injury" requires.

Black's Law Dictionary defines "apparatus" under "machine" which is "a device or apparatus consisting of fixed and moving parts that work together to perform some function."[38] *Webster's Third New International Dictionary* says an apparatus is "a collection or set of materials, instruments, appliances, or machinery designed for a particular use."[39]

The Board has considered this issue in *Meyn v. Bucher Glass, Inc.,* Alaska Workers' Comp. Bd. Dec. No. 81.0052 (Feb. 18, 1981) and in *Geyer v. Quadrant General, Inc.,* Alaska Workers' Comp. Bd. Dec. No. 86-____ (July 25, 1986). In both instances the Board found a modified vehicle compensable. In *Meyn*, the Board ordered the employer to provide the employee with the van modifications requested and the difference in cost, if any, between a standard mid-sized auto and a standard van. The Board found the requested modifications were "apparatus" under AS 23.30.095(a), were medically necessary, and, therefore, were medical benefits for the injured worker. The Board, however, found the decision as to the purchase of the van itself to be more problematic and ultimately held that only the additional cost for a modifiable van and the modifications were the responsibility of the employer.[40]

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[38] *Black's Law Dictionary*, 8th ed., 2004, at 969.

[39] *Webster's Third New International Dictionary,* 2002, at 102.

[40] *Meyn v. Bucher Glass, Inc*., Alaska Workers' Comp. Bd. Dec. No. 81.0052 at 7-8 (Feb. 18, 1981) as quoted in *Hubbard v. Top Notch Cutting*, Alaska Workers' Comp. Bd. Dec. No. 06-0329 at 22 (Dec. 15, 2006) (the decision in *Meyn* is no longer available and seems to have disappeared from the Board's files).

In *Geyer,* the Board relied on Professor Larson's analysis and found the employer "liable for the special equipment and, if a particular car or van is necessary, for the extra costs of purchasing a van versus a standard, American car." The Board found a van was reasonably necessary for medical transportation as well as for other activities.

The Court has often looked to *Larson's Workers' Compensation Laws* for guidance in interpreting the Act.[41] *Larson's* discusses a variety of decisions interpreting language in various workers' compensation statutes as to when a statute mandates the purchase of a motor vehicle for an injured worker.[42] *Larson's* declares the better rule is illustrated by a Michigan decision, which held that the cost of modifying a van so that it can be operated by someone who is disabled may be a compensable medical expense under the state's workers' compensation law, but the cost of the van itself is not compensable.[43]

Another court noted that the injured worker would not have needed to purchase a modified van were it not for the work injury.[44] Yet another court stated that a van that could accommodate a wheelchair-bound quadriplegic was more than reasonably required for the injured worker to be active in today's society.[45] A court in Mississippi found that a modified van qualified as an "other apparatus" under its workers' compensation act, finding it would facilitate the worker's recovery and rehabilitation process. Just as modifications to the worker's home increased the utility of his wheelchair, so, too, would

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[41] *See, e.g., Anchorage Roofing Co., Inc. v. Gonzales*, 507 P.2d 501, 505 (Alaska 1973); *Golden Valley Electric Assoc., Inc. v. City Electric Service*, 518 P.2d 65, 66 (Alaska 1974).

[42] *See*, 5 Arthur Larson and Lex Larson, *Larson's Workers' Compensation Law*, Sect. 94.03[1] (2008).

[43] *Id.*, citing *Weakland v. Toledo Engineering Co., Inc.,* 467 Mich. 344, 656 N.W.2d 175 (2003).

[44] *Beelman Trucking v. Workers' Compensation Commission*, 381 Ill. App. 3d 701, 886 N.E.2d 479, 485 (Ill. App. 2008).

[45] *Crouch v. West Va. Workers' Compensation Commissioner*, 184 W. Va. 730, 403 S.E.2d 747, 750 (W.Va. App. 1991).

the utility of his wheelchair be limited unless he had "an appropriately modified automobile to accommodate his disability and his wheelchair."[46]

However, it is not necessary or even prudent to look to other jurisdictions since the language in those Acts does not precisely comport to the language in Alaska's Act. The Court, in *Municipality of Anchorage v. Carter*, found a hot tub was compensable, even though it was only palliative care.[47] The Court expressly declined to read the "process of recovery" language narrowly.

So here too, the language "nature of injury" should be read to encompass the transportation needs caused by the debilitating and permanent injuries sustained by Mr. Warnke-Green. The apparatus needed by Mr. Warnke-Green includes use of a modified van to accommodate his wheelchair.

Wheelchairs are not specifically identified by the Act and no part of the Act explicitly encompasses the purchase of a wheelchair for a disabled worker who can no longer walk, and yet employers routinely provide wheelchairs for injured workers who can no longer walk. Such a common sense approach goes to the mobility of an injured worker and the need to enable the mobility of such an employee. The authority in the Act for wheelchairs is contained in the word "apparatus" as defined by the "nature of the injury." Just as the need for wheelchairs, canes, etc. are not expressly identified by AS 23.30.095 or AS 23.30.395, no one would contend these are not medical devices necessary for an injured worker's condition.

AS 23.30.395(26) states "medical and related benefits" . . . is not limited to" the specifics listed, but includes "treatment for the fitting and training for use of such devices as may be reasonably required" for an injured worker "that arises out of or is necessitated" by the work injury. Thus, this is the basis for requiring a modified van for a wheelchair-bound injured worker.

A modified van is likely to enhance Mr. Warnke-Green's physical well-being and mental health by making him more mobile. Moreover, Pushing Boundaries has indicated

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[46] *Georgia-Pacific Corp. v. James*, 733 So.2d 875, 877 (Miss. App. 1999).

[47] 818 P.2d 661, 665-6 (Alaska 1991).

that "increased social interactions within the community" would be helpful "to promote psychosocial health and reintegration."[48] Certainly, a modifiable van fitted with modifications for Mr. Warnke-Green's wheelchair would facilitate such interactions. The evidence demonstrates that before the work injury Mr. Warnke-Green could and did transport himself in a variety of ways: walking, four-wheelers, pick-up trucks, his Suburban, ordinary cars, etc. Further, Mr. Warnke-Green owned and utilized a variety of private transportation prior to the injury, including a Suburban which was in the repair shop for work. If it were not for the injury he would have been likely to own private vehicles, including pick-up trucks and four-wheelers, in the future. He has the income from his permanent total disability benefits (which is equivalent to income replacement and is non-taxable) to provide some of the cost for private transportation now.

Although the services provided by Cabulance in Seattle appear to be a reasonable and efficient means of transporting him to his medical appointments, such service has not been without difficulty for him. A modified van would be a more reasonable and more efficient means of transporting him to medical appointments, by alleviating these problems and making his transport more efficient. However, transportation to medical appointments is not the only reason an injured worker may need specialized transportation. Here, the injury has left Mr. Warnke-Green unable to perform the normal, everyday activities requiring transportation such as shopping, going to the library, and enjoying recreational activities, such as going to movies, etc. A modified van would provide Mr. Warnke-Green with the ability to engage in more of life's normal activities.

Moreover, Pro West has stated it is willing to provide Mr. Warnke-Green with a modified van, but has only asked that he contribute something to the purchase. In this case, Pro West has asked him to contribute the value of his Suburban which Mr. Warnke-Green estimates to be between $500 and $1,000. Mr. Warnke-Green asserts he has no obligation to contribute anything to the purchase or maintenance of a modified van. Pro West argues that Mr. Warnke-Green has sufficient income through his permanent total disability benefits (equated to income replacement) to purchase an unmodified vehicle if

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[48] R. 000170.

he chose to do so. Therefore, Pro West asserts he should contribute to some portion of the cost of a modifiable van. Mr. Warnke-Green argued he would have no need of a van but for the injury as he would have continued to use a four-wheeler and borrowed vehicles, and, therefore, a fully modified vehicle is required by the Act.

Pro West agrees Mr. Warnke-Green needs to use a motorized wheelchair for mobility and he needs wheelchair-accessible transportation.[49] On one hand, Pro West contends that where the motorized wheelchair has been provided and public transit which is wheelchair-accessible is available, nothing further is required of an employer of a quadriplegic, at least as long as such injured worker lives in an area like Seattle where wheelchair-accessible public transit is available. On the other hand, Pro West asserts it is willing to provide the modified van if Mr. Warnke-Green contributes to the cost, which is the value of his presently owned Suburban. This latter argument has the benefit of being sensible and logical.

Anyone can readily understand the need of a quadriplegic for a modified, wheelchair-accessible vehicle. This does not require specialized medical expertise. The Act refers to "apparatus" as part of medical benefits. This is a broad term that without much analysis would surely encompass wheelchairs and modified vans. There is no dispute that if an injured worker requires a wheelchair for mobility the employer must provide it. Just as an injured worker must be provided with a wheelchair for mobility, so does a quadriplegic worker require a modified van to provide mobility for accomplishing the basic activities of daily living. Non-injured workers utilize their earnings towards the purchase of transportation. So too, should the injured worker contribute towards the cost of transportation, but the employer is responsible for the increased costs necessitated by the work injury. Here the increased cost for a modifiable van and the necessary modifications are due to the work injury and are, therefore, encompassed in the term "apparatus" required as a result of the work injury.

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[49] Appellees' Brief at 5.

Moreover, both Mr. Warnke-Green and Pro-West have agreed that it is reasonable for Mr. Warnke-Green to contribute the value of his inoperable Suburban van.[50]

5. Conclusion.

The Board's finding that the purchase of a motor vehicle for Mr. Warnke-Green is not a medical benefit is AFFIRMED. However, the Board's decision is MODIFIED to hold that any increased cost associated with the purchase of a modifiable motor vehicle and any necessary modifications which will enable Mr. Warnke-Green to use the motor vehicle are encompassed in the language "apparatus" and, thus, are compensable medical benefits under the Act. The Board's decision is REMANDED for further proceedings consistent with this decision.

Date: *26 June 2017* ALASKA WORKERS' COMPENSATION APPEALS COMMISSION

Signed
Michael J. Notar, Appeals Commissioner

Signed
Philip E. Ulmer, Appeals Commissioner

Signed
Deirdre D. Ford, Chair

APPEAL PROCEDURES

This is a final decision. AS 23.30.128(e). It may be appealed to the Alaska Supreme Court. AS 23.30.129(a). If a party seeks review of this decision by the Alaska Supreme Court, a notice of appeal to the Alaska Supreme Court must be filed no later than 30 days after the date shown in the Commission's notice of distribution (the box below).

If you wish to appeal to the Alaska Supreme Court, you should contact the Alaska Appellate Courts *immediately*:

Clerk of the Appellate Courts
303 K Street
Anchorage, AK 99501-2084
Telephone: 907-264-0612

[50] Hr'g Tr. at 57:6-8: "And so having that credit against the insurance company's purchase of something appropriate for Bryce now we don't object to, whatever they get from that."

RECONSIDERATION

A party may ask the Commission to reconsider this decision by filing a motion for reconsideration in accordance with AS 23.30.128(f) and 8 AAC 57.230. The motion for reconsideration must be filed with the Commission no later than 30 days after the date shown in the Commission's notice of distribution (the box below). If a request for reconsideration of this final decision is filed on time with the Commission, any proceedings to appeal must be instituted no later than 30 days after the reconsideration decision is distributed to the parties, or, no later than 60 days after the date this final decision was distributed in the absence of any action on the reconsideration request, whichever date is earlier. AS 23.30.128(f).

I certify that, with the exception of changes made in formatting for publication, this is a full and correct copy of Final Decision No. 235 issued in the matter of *Bryce Warnke-Green vs. Pro West Contractors, LLC and Liberty Northwest Insurance Corporation,* AWCAC Appeal No. 16-014, and distributed by the office of the Alaska Workers' Compensation Appeals Commission in Anchorage, Alaska, on June 26, 2017.

Date: June 27, 2017

Signed

K. Morrison, Appeals Commission Clerk