

Conley, Murney, Sr.

MISCELLANEOUS SERVICES AND APPLIANCES - WAC 296-23-165

Adjustable bed

Power chair lift

WAC 296-23-165 contemplates items and services that are rehabilitative in that they increase function and mobility. An adjustable bed may not be medically necessary if it does not increase mobility or allow the worker to regain function.*In re Murney Conley, Sr., BIIA Dec., 08 17796 (2009)* [Editor's Note: The Board's decision was appealed to superior court under Thurston County Cause No. 09-2-01991-3.]

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**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON**

1 **IN RE: MURNEY F. CONLEY, SR.) DOCKET NO. 08 17796**
2 **CLAIM NO. P-541652) DECISION AND ORDER**
3 _____)

4 **APPEARANCES:**

5 Claimant, Murney F. Conley, Sr., by
6 Law Office of Mark C. Wagner, per
7 Mark C. Wagner

8 Employer, Prosser Piano & Organ Co.,
9 None

10 Department of Labor and Industries, by
11 The Office of the Attorney General, per
12 Helen B. Fraychineaud, Assistant

13 The claimant, Murney F. Conley, Sr., filed an appeal with the Board of Industrial Insurance
14 Appeals on August 15, 2008, from an order of the Department of Labor and Industries dated
15 June 16, 2008. In this order, the Department denied the claimant's request for the purchase of an
16 adjustable bed and/or a "power chair lift." The Department order is **REVERSED AND**
17 **REMANDED.**

18 **DECISION**

19 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
20 and decision on a timely Petition for Review filed by the claimant to a Proposed Decision and Order
21 issued on March 13, 2009, in which the industrial appeals judge affirmed the order of the
22 Department dated June 16, 2008. All contested issues are addressed in this order.

23 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that
24 no prejudicial error was committed. The rulings are affirmed.

25 The claimant, Murney F. Conley, Sr., is 59 years old. Mr. Conley is 5 feet 10 inches tall and
26 weighs 331 pounds. He injured his low back on March 13, 1999, while in the course of his
27 employment with Prosser Piano & Organ Co. The injury occurred while Mr. Conley was delivering
28 a grand piano and became positioned in an extreme backbend. Treatment of the injury required
29 multiple surgeries, including a spinal fusion.

30 Mr. Conley appeals from an order in which the Department denied his request that it
31 approve the purchase of an "adjustable bed and/or a power chair lift." We initially note that the
32 second item was consistently referred to by the testifying witnesses as a "power lift chair" rather

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1 than a "power chair lift." The Department did not object to testimony describing the "power lift
2 chair" as a chair with a motorized component that lifts the user to a near-standing position so that
3 he can get out of the chair. We therefore refer to this item as a "power lift chair" and consider this
4 the item for which Mr. Conley sought the Department's pre-approval to purchase.

5 Our industrial appeals judge determined that the power lift chair and adjustable bed were
6 not compensable based on a Department rule, WAC 296-20-1102. This rule precludes payment for
7 certain types of items, including those considered "home furnishings." In the Petition for Review,
8 Mr. Conley asks that we consider whether these items are covered pursuant to WAC 296-23-165,
9 "Miscellaneous services and appliances," which states in part:

10 (1) The department or self-insurer will reimburse for certain proper and necessary
11 miscellaneous services and items needed as a result of an industrial accident.
12 Nursing care, attendant services, transportation, hearing aids, eyeglasses, orthotics
13 and prosthetics, braces, medical supplies, oxygen systems, walking aids, and
durable medical equipment are included in this classification.

14 We agree with Mr. Conley that WAC 296-23-165 is the primary rule applicable to the question of
15 whether a power lift chair and/or adjustable bed is compensable. Therefore, we apply the criteria
16 established in that rule to the evidence presented to determine whether the Department is required
17 to authorize the purchase of one or both of these items.

18 Mr. Conley testified that he currently sleeps in a reclining power lift chair that was purchased
19 by him in 2000 or 2001. A properly functioning chair lifts him to an almost standing position so he
20 can get out of the chair by himself, without assistance. He described how the chair has worn out
21 and no longer lifts him high enough to allow him to get out of the chair. Mr. Conley feels that he
22 needs the chair so that he can get up to move around and attend to his personal comfort.

23 Kristi Conley, Mr. Conley's wife, testified regarding her concern about leaving Mr. Conley on
24 his own at their home in Tenino, Washington, while she is at work in Fife, Washington,
25 approximately 46 miles away. On numerous occasions, she has driven home to help him relieve
26 himself, and then driven back to her workplace.

27 Michael Martin, M.D., certified orthopedic surgeon, has treated Mr. Conley's back injury for
28 about 10 years and performed Mr. Conley's surgeries. Dr. Martin testified that due to his industrial
29 injury-related limitations, Mr. Conley requires a chair that he can comfortably sleep in and get out
30 of. A chair that lifts Mr. Conley up to a standing position is easier on Mr. Conley's back. Dr. Martin
31 believes that the requested power lift chair would aid Mr. Conley's mobility.

1 WAC 296-23-165 covers "certain proper and necessary miscellaneous services and items
2 needed as a result of an industrial accident." WAC 296-20-01002 defines "proper and necessary,"
3 in the context of "treatment," as "[c]urative or rehabilitative." Pursuant to this rule, curative
4 treatment "produces permanent changes, which eliminate or lessen the clinical effects of an
5 accepted condition"; while rehabilitative treatment "allows an injured or ill worker to regain
6 functional activity in the presence of an interfering accepted condition." Both curative and
7 rehabilitative treatment "produce long-term changes."

8 The "miscellaneous services and items" included in WAC 296-23-165 do not cleanly fit
9 within the heading of "treatment." That said, the examples of potential "miscellaneous services and
10 items" provided in the rule clearly contemplate items and services that are rehabilitative, in that they
11 increase function and mobility. Examples include "transportation," "prosthetics," and "walking aids."
12 Increased mobility is consistent with the goal of rehabilitative treatment, that is, to increase
13 functional activity. Applying "proper and necessary" in the context of WAC 296-23-165 leads us to
14 conclude that items that increase mobility over the long-term are properly viewed as producing
15 "long-term changes," as that phrase is used in WAC 296-20-01002.

16 Pursuant to WAC 296-23-165, the decision to grant or deny prior authorization of an item for
17 reimbursement requires a showing that "the worker is eligible for coverage" and that the item "is
18 appropriate and medically necessary for treatment of the worker's accepted industrial condition."
19 Mr. Conley's claim has been accepted for treatment and other benefits and is therefore eligible for
20 coverage. We find that the power lift chair is appropriate and medically necessary for treatment for
21 his accepted lumbar condition, as it helps Mr. Conley overcome certain restrictions on mobility and
22 functionality caused by the industrial injury. We therefore conclude that the cost of a power lift chair
23 is a proper and necessary item that is properly reimbursed pursuant to WAC 296-23-165.

24 Mr. Conley also seeks coverage by the Department of an adjustable bed. He testified that
25 he cannot lie flat in a bed and needs to be tilted up with his knees up in order to be comfortable and
26 sleep. Mr. Conley also testified that he would like an adjustable bed for his home so that he can
27 sleep in a bed with his wife. Unlike the power lift chair, an adjustable bed does not increase
28 Mr. Conley's mobility or allow him to regain function. We therefore conclude that Mr. Conley is not
29 entitled to reimbursement by the Department for the cost of an adjustable bed.

30 After consideration of the Proposed Decision and Order and the Petition for Review, and a
31 careful review of the entire record before us, we enter the following:
32

1 **FINDINGS OF FACT**

- 2 1. On March 23, 1999, the Department of Labor and Industries received an
3 Application for Benefits, in which the claimant, Murney F. Conley, Sr.,
4 alleged an industrial injury that occurred on March 13, 1999, during the
5 course of his employment with Prosser Piano & Organ Co. The claim
6 was allowed and benefits paid. On April 24, 2008, the Department
7 issued a letter in which it denied the claimant's request to purchase an
8 adjustable bed or power lift chair. On June 11, 2008, the Department
9 received the claimant's Protest and Request for Reconsideration to the
10 April 24, 2008 letter. On June 16, 2008, the Department issued an order
11 in which it denied the purchase of an adjustable bed and/or a power lift
12 chair. On August 15, 2008, the Board received the claimant's appeal
13 from the June 16, 2008 order. On August 27, 2008, the Board granted
14 the claimant's appeal under Docket No. 08 17796 and agreed to hear
15 the appeal.
- 16 2. On March 13, 1999, Mr. Conley injured his low back in the course of his
17 employment with Prosser Piano & Organ Co. As a result of that injury,
18 he underwent surgical treatment including a lumbar fusion that
19 significantly limits the mobility of his spine.
- 20 3. A power lift chair will provide Mr. Conley with increased independence
21 and enable him to overcome physical limitations caused by the effects of
22 his industrial injury, thereby allowing him to function more effectively in
23 everyday life.
- 24 4. An adjustable bed will not enable Mr. Conley to overcome physical
25 limitations caused by the effects of his industrial injury or allow him to
26 function more effectively in everyday life.

27 **CONCLUSIONS OF LAW**

- 28 1. The Board of Industrial Insurance Appeals has jurisdiction over the
29 parties to and the subject matter of this appeal.
- 30 2. A power lift chair is a proper and necessary item within the meaning of
31 WAC 296-23-165.
- 32 3. An adjustable bed is not a proper and necessary item within the
meaning of WAC 296-23-165.
4. The June 16, 2008 order of the Department of Labor and Industries is
incorrect and is reversed. This matter is remanded to the Department
with directions to issue an order in which it authorizes the request for the

1 purchase of a power lift chair and denies the request for the purchase of
2 an adjustable bed.

3 DATED: July 22, 2009.

4 BOARD OF INDUSTRIAL INSURANCE APPEALS

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7 /s/ _____
8 THOMAS E. EGAN Chairperson

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10 /s/ _____
11 FRANK E. FENNERTY, JR. Member

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13 /s/ _____
14 LARRY DITTMAN Member

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