

Knoell, Agnes

ATTENDANT SERVICES

Whether the worker "requires" the services of an attendant is determined by an evaluation of the worker's physical condition and not by the financial ability to pay for such services or by the willingness of family members to provide the needed care. ...*In re Agnes Knoell, BIA Dec., 24,242 (1967)* [dissent]

A psychiatric condition, the manifestations of which are physically incapacitating, may satisfy the statutory requirement of "physical helplessness", entitling the worker to attendant care services. ...*In re Agnes Knoell, BIA Dec., 24,242 (1967)* [dissent]

Scroll down for order.

1 "...she has a chronic back which is an old lumbar disc syndrome which
2 is a real disc problem.

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4 However, the psychiatric goes hand in hand with the problem.

5 If she is under the slightest emotional stress, then she has back pain
6 with objective muscle spasm pain."
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8 As recently as August of 1965, it was necessary, he stated, to hospitalize her in a psychiatric unit
9 for a month,

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11 "...for a complete collapse at that time of her mental status with severe
12 suicidal depression, severe regression and vegetation and tremendous
13 anxiety and disturbance of the family structure as a result of same."
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15 Under supportive psychotherapy and occupation therapy, which she receives three days a week as
16 an out-patient, her condition, he testified, has improved to the extent that her depression has been
17 somewhat relieved and she is no longer suicidal. In describing his continued treatment of the
18 claimant, he explained that:

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21 "This whole program has been to take this patient who just sat at home,
22 depressed and crying, out into the environment and getting her to do
23 things and getting her with people which has resulted in improvement of
24 one aspect of the psychiatric condition, that is, the depressive reaction.

25 However, her total picture of her back and mental condition of a
26 completely collapsed personality structure and ego structure requiring
27 constant support to hold her up and function mentally still exists."
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29 Regarding her condition as of the time he testified, he stated that:

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31 "From the psychiatric standpoint alone this woman is totally disabled
32 and not capable of managing her own affairs.

33 This would be from the psychiatric alone, as well as the psychiatric
34 effect on the organic, the psychiatric affects the organic.

35 Her activities are limited to minimal dusting, minimal cooking. Her only
36 special activity or contact with the world is with her -- at home with the
37 husband and daughter still at home and her contacts with patients and
38 personnel at the psychiatric hospital and the various occasional few
39 friends that she has.
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41 In other words, the whole struggle from the psychiatric standpoint has
42 been to get this woman to barely have her head above water and try to
43 maintain it there.

44 This is the case in which she was practically or completely a vegetable
45 in the past in which she was suicidally depressed and her present
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1 condition, with her age of 62, is probably about as good as we are going
2 to get her, if we can keep her there."
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4 The evidence in this record, which in addition to the testimony of Dr. Kass, consists of the testimony
5 of the claimant's husband and that of her twenty-three year old daughter, establishes that the
6 claimant is not completely helpless physically. She is barely able to take care of her bodily
7 functions but needs some assistance in dressing, bathing, and having her food prepared for her.
8 She is not confined to her bed, though she spends a considerable amount of time in bed apart from
9 the three days per week that she is taken to the hospital for therapy. She does not need to have
10 someone in constant attendance upon her at all times but requires the care that she does receive
11 from her husband and daughter, one or the other of whom is with her except for the three days per
12 week she spends in the hospital, to which she is taken and returned by her husband, and for two
13 afternoons per week when she is home alone.
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15 The claimant's application for an increased pension is based upon the provisions of RCW
16 51.32.060(5) which provides that
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18 "In case of permanent total disability, if the character of the injury is such
19 as to render the workman so physically helpless as to require the
20 services of an attendant, the monthly payment to such workman shall be
21 increased one hundred fifteen dollars per month as long as such
22 requirement continues..."
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24 No case construing this statute has been decided by the Washington Supreme Court, aside from
25 the case of Talbot v. Industrial Insurance Commission, 108 Wash. 231, in which it was conceded
26 that the claimant was in need of the services of an attendant and the only question before the court
27 was whether or not the statute could be given retroactive effect to cover an injury occurring prior to
28 the date of its enactment. Nor are we aware of any cases from other states, but two of which are
29 reported in Larson's Treatise on Workmen's Compensation to have similar statutes, that would be
30 helpful in determining under what circumstances a permanently totally disabled workman should
31 be considered "so physically helpless as to require the services of an attendant."
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33 There is obviously, as the hearing examiner pointed out, a considerable difference between
34 the degree of permanent disability, precluding a claimant's return to gainful employment, necessary
35 to establish his right to a pension as a totally and permanently disabled workman and the further
36 degree of disability that would entitle him to the services of an attendant so long as that degree of
37 disability continues. The Proposed Decision and Order denying the claimant relief was based upon
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1 the view that the degree of disability required would be such that the claimant would have to require
2 someone to be "always with her for the reason that she would be so physically helpless as to be
3 unable to be left alone." In view of its legislative history, we feel that this interpretation of the
4 statute is too limited to be maintained. As first enacted in 1917, the statutory provisions now found
5 in RCW 51.32.060(5) provided that a workman to be entitled to the increased pension award must
6 be "so physically helpless as to require the services of a constant attendant." (Emphasis added)
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8 Aside from gradual increases in the amount of additional compensation provided for this purpose,
9 the statute has remained unchanged since its enactment except that the word "constant" was
10 deleted by the legislature at its 1941 session. It must be presumed that this deletion expressed a
11 legislative intent to permit a claimant to qualify for the increased pension award based upon the
12 need of the services of an attendant even though he does not require someone to be in constant
13 attendance upon him but is able to take care of himself for short periods of time.
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19 As pointed out in her exceptions, the fact that the claimant's husband and daughter now
20 provide the care she needs does not justify the denial of her application for increased benefits from
21 the Department for this purpose. By the statutory language "so physically helpless as to require,"
22 the reference of the word "require" is obviously limited to the claimant's physical condition and
23 cannot be construed as referring to either her family situation or her economic circumstances. In
24 connection with this requirement of physical disability, it may be noted that it is evident that the
25 claimant's disability, although to some extent of somatic origin, is primarily psychogenic. As was
26 made clear by Dr. Kass, however, her psychiatric condition is manifested by somatic symptoms as
27 physically incapacitating as they would be if they were organically caused. A psychiatric condition,
28 the manifestations of which are such that she is in her more acute phases, "practically or
29 completely a vegetable" would seem to satisfy the physical element called for by the statute.
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36 The Board has concluded from its review of this record and its consideration to the law
37 applicable to the facts in this case, that the claimant has established her right to an increased
38 pension award pursuant to the provisions of RCW 51.32.060(5).
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40 The Board has reviewed the evidentiary rulings of the hearing examiner and finding no
41 prejudicial error therein, hereby affirms said rulings.
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43 **FINDINGS OF FACT**

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45 Based upon the record, the Board finds:
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1. On March 13, 1960, the claimant herein, Agnes M. Knoell, sustained in injury in the course of her employment with Mt. View General Hospital. Her claim based upon this injury was allowed by the Department of Labor and Industries as an industrial injury and benefits were provided to her under the Industrial Insurance Act. From the Department's order closing her claim the claimant appealed to this Board, which on September 30, 1964, issued a Decision and Order directing the Department to place her on its pension rolls as a permanently and totally disabled workman. On November 23, 1964, the Supervisor of Industrial Insurance entered an order placing the claimant on its pension rolls pursuant to the Board's order of September 30, 1964.
 2. In February of 1965 the claimant filed an application for an increased pension based upon her asserted need for the services of an attendant, pursuant to provisions of RCW 51.32.060(5). On April 1, 1965, the Supervisor entered an order denying this application. On April 22, 1965, claimant filed notice of appeal with this Board, which on May 7, 1965, entered an order granting the appeal.
 3. On April 12, 1966, a hearing examiner for this Board entered a Proposed Decision and Order in connection with this appeal. Thereafter, within the period of time provided by law the claimant filed a Statement of Exceptions to said Proposed Decision and Order.
 4. On or about April 1, 1965, the claimant was suffering from organic disability in her low back consisting of a chronic lumbar disc syndrome and from a psychiatric condition, described by her attending physician, a Board certified psychiatrist, as a "complete collapse of personality structure and ego structure," with resulting physical symptomatology and disability, increased by the slightest degree of emotional stress. She was capable of performing only minimal housekeeping activities, was in need of assistance in bathing and dressing and was only barely able to take care of her own bodily functions. She could be left alone for short periods of time but could not live alone nor leave her home alone except to go out into the yard. As a direct result of her organic and psychogenic physical disability, which rendered her permanently and totally disabled and incapable of managing her own affairs, she was so physically helpless as to require the services of an attendant.

CONCLUSIONS OF LAW

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Based upon the foregoing findings of fact, the Board concludes:

1. This Board has jurisdiction of the parties and subject matter of this appeal.
2. The order of the Supervisor of Industrial Insurance dated April 1, 1965, should be reversed and this claim should be remanded to the Department of Labor and Industries with direction to grant the claimant an increased pension award pursuant to the provisions of RCW

1 51.32.060(5) for the services of an attendant for so long as her need
2 therefor continues.

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4 It is so ORDERED.

5 Dated this 18th day of May, 1967.

6 BOARD OF INDUSTRIAL INSURANCE APPEALS

7
8 /s/
9 J. HARRIS LYNCH Chairman

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11 /s/
12 R. H. POWELL Member

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15 **DISSENTING OPINION**

16 I do not agree. The statute requires that the claimant be "physically helpless." By the
17 testimony of Dr. Kass and the claimant's husband she is able to: go to therapy classes three days
18 a week, go on short pleasure drives once or twice a week, occasionally walk to the grocery store
19 with her daughter, take care of her own physical functions, dress herself, do some light
20 housekeeping, cook and serve her own lunches, write letters and knit. This is obviously not the
21 description of a physically helpless person.

22 It is true that Dr. Kass testified that her mental condition is such that she is unable to manage
23 her own affairs but this is immaterial since the issue here is her physical capability and not her
24 mental condition, and the only attendant she can be provided is one who will assist her in her
25 physical needs. She will not receive the services of a bank trust department to help her manage
26 her affairs.

27 By reaching its conclusion, the majority is twisting the clear meaning of the statute.

28 Dated this 18th day of May, 1967.

29 BOARD OF INDUSTRIAL INSURANCE APPEALS

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31 /s/
32 J. A. PRIEST Member Pro Tem