ALASKA WORKERS' COMPENSATION BOARD

P.O. Box 115512 **Juneau, Alaska 99811-5512**

BRYCE WARNKE GREEN, Employee, Claimant,	)	FINAL DECISION AND ORDER
v.	)	AWCB Case No. 201500985
PRO WEST CONTRACTORS LLC, Employer,	)	AWCB Decision No. 16-0090
and	)	Filed with AWCB Fairbanks, Alaska on October 19, 2016
LIBERTY NORTHWEST INSURANCE CORP, Insurer, Defendants.	)	

Bryce Warnke Green's (Employee's) November 27, 2015 claim was heard in Fairbanks, Alaska on April 21, 2016. This hearing date was selected on March 17, 2016. Attorney Eric Croft appeared and represented Bryce Warnke Green, who testified telephonically on his own behalf. Attorney Constance Livsey appeared and represented Pro-West Contractors, L.L.C. and Liberty Northwest Insurance Corporation (Employer). Employer's adjuster, Berni Seever, appeared and testified on its behalf. The record closed at the conclusion of deliberations on May 24, 2016.

ISSUES

Employee, who suffers from C-4 tetraplegia, contends Employer is obligated to provide both a van, as well as modifications to that van, because one is medically necessary and would aid in the process of his recovery from the work injury. He contends a van would provide him and his family with the security of knowing they can quickly respond to emergency situations, and would allow him to "get back out into the world." Employee cites numerous decisions from

other jurisdictions and contends Employer should bear the full purchase price of both the van and necessary modifications.

Employer contends the Workers' Compensation Act does not require it to purchase a new, personal vehicle for Employee's use. Instead, it contends its legal responsibilities under the Act are to reimburse mileage expenses for medical-related travel, which it has been doing. Employer also contends Seattle has excellent handicapped accessible paratransit public transportation available.

1) **Does the Workers' Compensation Act provide for the purchase of an automobile as a medical benefit?**

The parties reiterate their contentions set forth above.

2) **Alternatively, in the event Alaska Workers' Compensation Act does provide for the purchase of an automobile as a medical benefit, do the facts in this case support awarding one to Employee?**

Employee contends the Cabulance service is insufficient to meet his medical transportation needs and he requests an award of "medically appropriate" van.

Employer contends it has been providing Employee with the Cabulance service to meet Employee's medical transportation needs.

3) **Is Employee entitled to the purchase of an automobile as a transportation benefit so that he can obtain medical treatment?**

Employee contends he should not be compelled to contribute toward the base price of a hypothetical automobile, or be responsible for contributing the value of his personal vehicle in Nome toward the purchase price of a van. Employee analogizes the benefit of a modified van to orthotic foot ware, where the price of the shoe is not deducted under the Workers' Compensation Act.

Employer points to 35 years of "well-reasoned" board precedent and contends, if Employee's injury makes it impractical for Employee to use his personal vehicle, it may be deemed responsible for the difference in cost between a standard, mid-sized car and a standard van equipped with necessary modifications.

4) **Is Employee entitled to the difference in price between a standard, mid-sized car and a standard van equipped with necessary modifications?**

Employee requests an award of attorney's fees and costs.

Employer contends, since it is not responsible for providing the benefit sought, Employee should not be awarded attorney's fees and costs.

5) **Is Employee entitled to attorney's fees and costs?**

FINDINGS OF FACT

The following facts and factual conclusions are established by a preponderance of the evidence:

1) On September 28, 2014, Employee was working for Employer as a laborer in Nome and positioning a truck while a co-worker was moving a crane. The crane toppled over with the boom landing the roof of the truck, crushing the cab with Employee inside. (First Report of Injury, January 22, 2015; Employee's hearing brief, April 14, 2016; Employer's hearing brief, April 14, 2016).

2) Employee suffers from 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. (Oz report, December 1, 2015; Katiraie reports, May 29, 2015; September 24, 2015).

3) It is undisputed the September 28, 2014 work injury caused Employee's C4 tetraplegia. (Record).

4) Given the severity of Employee's injury, there is a paucity of medical reports in the record. (Experience, observations, unique facts of the case; record).

5) The record contains three medical summaries: one, filed by Employer on March 22, 2016, contains a four page physical examination report; another, filed by Employer on April 6, 2016, contains 37 pages of chart notes concerning Employee's admission to Harbor View Medical Center for bed sores and documenting patient education for bed sores; and the third, filed by Employee on April 7, 2016, contains six pages of reports from Pushing Boundaries, Employee's physical therapy provider. (Medical Summaries, March 22, 2016; April 4, 2016; April 6, 2016).

6) Employee's April 4, 2016 summary also includes an unsigned September 17, 2015, letter addressed to one of Employee's providers, Deborah Crane, M.D., and a November 23, 2015 letter from Dr. Crane, expressing her opinion Employee should remain in Seattle versus returning to Alaska. (Unsigned letter, September 17, 2015; Crane letter, November 23, 2015).

7) Employee does not dispute there are no medical prescriptions in the record for either a van, or for any specific modifications to a van, except for perhaps one that is "handicapped accessible." (Record).

8) On September 24, 2015, physical therapist Roozbeh Katiraie at Pushing Boundaries completed a 12 week evaluation of Employee's progress, which noted, "Observed 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 [Employee] 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 [Employee] 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.

(Katiraie report, September 24, 2015).

9) On November 27, 2015, Employee filed a claim seeking a "new modified van" and attorneys' fees and costs. (Claim, November 23, 2015).

10) On December 8, 2015, Employer answered Employee's November 23, 2016 claim, denying his claim in its entirety, including the purchase of a "new modified van." (Employer's Answer, December 8, 2015).

11) On February 2, 2016, Employer served a controversion denying housing costs after September 2015 on the basis Employee had been released by his physician to return to Alaska, if he chose to do so. It also denied reimbursement for a home generator, gas cans and an extension cord that had been purchased by Employee's family members. Employer denied payment for routine yard maintenance at Employee's rented house. It also denied payment of charges for repairing yard and landscape damage caused by Employee's and his family member's dogs. Employer denied payment of routine, non-medical, transportation expenses. (Controversion, February 2, 2016).

12) At a March 17, 2016 prehearing conference, Employee's November 23, 2015 claim was set for hearing on April 21, 2016. (Prehearing Conference Summary, March 17, 2016).

13) On April 14, 2016, Employer filed an objection to the unsigned and undated letter to Dr. Crane, filed with Employee's April 4, 2016 medical summary, on numerous bases, including that it is not a medical record, it is argumentative, prejudicial and factually inaccurate, and that it contains inadmissible hearsay. Employer denied it had ever sought to compel Employee to return to Nome. (Employer's Petition, April 14, 2016).

14) On April 14, 2016, Employer also filed a request for cross-examination for an unknown author of a handwritten letter in response to letter from its adjuster. It also requested an opportunity to cross-examine Dr. James. (Employer's Request for Cross-Examination, April 14, 2016).

15) In his hearing brief, Employee contends:

> Second, [Employee's] 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 [Employee] would have had a car if he moved voluntarily to Seattle, or what hypothetical average car [Employee] 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.

(Employee's hearing brief, April 14, 2016).

16) Employee also contended in his brief he was paralyzed due to the "gross negligence" of Employer. (*Id.*).

17) In its hearing brief, Employer contends Employee's father demanded Employer provide Employee with a new, Mercedes van and modify it to be handicapped accessible. Employer also made numerous contentions regarding settlement negotiations between the parties, and attached a proposed compromise and release agreement the parties never executed as an exhibit to its brief. (Employer's hearing brief, April 14, 2016).

18) At hearing, Employee's attorney clarified the van need not necessarily be new, nor of a particular manufacturer, but rather "medically appropriate." (Record).

19) On April 18, 2016, Employee filed an affidavit of fees and costs setting forth 22.6 attorney hours by Eric Croft, billed at a rate of $400 per hour, for a total of $9,040 in attorney's fees; 5.3 attorney hours by Chancy Croft in 2015, billed at a rate of $400 per hour, for a total of $2,120 in attorney's fees; 2.9 hours of attorney time for Chancy Croft in 2016, billed at a rate of $500 per hour, for a total of $1,450 in attorney's fees; 9.9 hours of paralegal time in 2015, billed at a rate of $160 per hour, for a total of $1,552.04 in paralegal fees; and 11.4 hours of paralegal time in 2016, billed at a rate of $170 per hour, for a total of $1,938 in paralegal fees for 2016. Employee listed no costs. Employee's grand total for both attorneys' fees and paralegal fees is $16,100.04. (Employee fee affidavit, April 14, 2016).

20) Employee did not supplement his fees following the hearing. (Record).

21) On April 21, 2016, the parties raised several issues preliminary to the hearing. Employer raised its April 14, 2014 request for cross-examination, which Employee agreed need not be immediately resolved for purposes of the hearing. Both parties discussed possible consideration of the proposed compromise and release agreements, as well as prior settlement negotiations between the parties, which both parties agreed was "unusual." Employer also objected to Employee interjecting the issue of fault into his hearing brief. (Record).

22) At hearing on April 21, 2016, Employee testified he was born and raised in Nome. He enjoyed hunting, fishing, boating, four-wheeling, riding dirt bikes, snow machining and travelling to the villages. Employee also enjoyed working at commercial fishing. He had been employed by Employer since 2012, and was injured in 2014. At the time of his injury, Employee had a Chevy Suburban, but it was in the shop because it did not run. He did not remember what year model the Suburban was. Employee did not have a driver's license at the time of his injury because it had been suspended, although the suspension period had lapsed. While in Nome, he would drive his mom's four-wheeler and people would give him rides to get around town.

Employee now uses an ambulance, not the "Cabulance" service, to go to doctors' appointments because he has bed sores and his doctors do not want him to sit. He has used the Cabulance service before, and described the service as like a cab, but for people in wheelchairs. Most Cabulance vehicles are minivans, some have side-doors; others are "rear-loaders." The side-loaders generally work better for Employee, but this depends on the type of vehicle. One vehicle did not work well for him because it was too small and his head would hit the ceiling. Also, because he must be reclined in this vehicle, his feet are sticking up in the air, which is uncomfortable. At times, the Cabulance service has been late and Employee has missed medical appointments. Additionally, the Cabulance service requires one or two days' advance notice. Employee has not participated in any recreational activities the past seven months. His dad does the shopping with the family vehicle, a Chevy Suburban, which cannot be modified to accommodate him because the roof is not tall enough. Employee explained he can now move his arm "like a chickenwing" to shoulder height and is anxious to return to Pushing Boundaries. He last attended therapy at Pushing Boundaries four or five months ago. If Employee had access to suitable transportation, he would like to go to the store, go shopping and see the countryside. Having his own van would allow him to see more things, take friends out when they visit him and perhaps see a concert. Employee estimates the value of his 1992 Suburban at about 500 to 1,000 dollars. He also does not know the whereabouts of the title to the Suburban. Employee describes his Suburban as a "parts vehicle." On cross-examination, Employee testified he has had a drivers' license since he was 16 years-old, but it was suspended as the result of a DUI. He does not own any vehicles other than his Suburban. The work injury involved his daughter's truck. Employee has received traffic tickets for driving without a valid license and for expired vehicle registrations. These tickets involved "old vehicles" he had. Employee did not use a bus or a taxi service when he lived in Nome, but rather privately owned vehicles. He has been shown how to use public transportation in Seattle, but has never used the paratransit bus or light rail services because they are difficult to access. Employee has not had an opportunity to attend Pushing Boundaries because he has been hospitalized from Thanksgiving 2015 until April 13, 2016. (Warnke-Green).

23) At hearing, Berni Seever testified she has been employed by Insurer for 33 years, and has been assigned complex, high value claims for the last five years. She is the adjuster on Employee's claim. Ms. Seeever has never spoken with Employee, only his father, Louis, who

contends he has power of attorney from his son. In the fall of 2015, Louis had located, and paid a deposit on, a Mercedes Sprinter van. They discussed the costs of Louis's van compared to another van she had located that had had the modifications already performed, but Louis wanted a new van. Later, the van with modification was no longer available. Ms. Seever and Lois have not had any further discussions regarding a van. In the meantime, Insurer has been providing Employee with the Cabulance service. (Seever).

24) Employee entered a standing objection on relevancy grounds to Ms. Seever's testimony regarding negotiations between the parties. (Record).

25) At hearing, Employer contended Seattle has excellent paratransit public transportation for handicapped individuals. Employee contended Employer's information source was published for travelers, and not residents of Seattle. (Record).

PRINCIPLES OF LAW

The board may base its decision not only on direct testimony, medical findings, and other tangible evidence, but also on the board's "experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn from all of the above." *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 533-34 (Alaska 1987).

> **AS 23.30.001. Intent of the legislature and construction of chapter.** It is the intent of the legislature that
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> (1) This chapter be interpreted . . . to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to . . . employers . . . .

In *Suh v. Pingo Corp.*, 736 P.2d 342 (1987), the Alaska Supreme Court summarized the purpose of the Workers' Compensation Act as follows:

> The primary goal of the Workers' Compensation Act is to provide workers with modest but certain compensation for work-related injuries, regardless of fault. *Arctic Structures, Inc. v. Wedmore*, 605 P.2d 426, 438–40 (Alaska 1979). The compensation scheme embodied in the Act is the injured worker's exclusive remedy against his employer. AS 23.30.055. The exclusiveness of the remedy reflects a *quid pro quo* exchange of rights and liabilities for both workers and employers. Workers gain an assured remedy without the burden of proving fault, but lose the right to sue their employers in tort. Employers gain relief from large tort damage awards and enjoy an absolute limit on liability under the Act, but are

> liable without fault for injuries covered under the Act. 2A Larson, Workers' Compensation Law § 65.11, 12–1–6 (1985). This *quid pro quo* arrangement underscores a secondary goal of the Act: to be fair to employers as well as to workers.

Id. at 344. The purpose of the workers' compensation law is to provide injured workers with a specific recovery for specific injuries. *Johnson v. Ellamar Mining Co.*, 5 Alaska 740 (D. Alaska 1917).

> **AS 23.30.010. Coverage**. Except as provided in (b) of this section, compensation or benefits are payable under this chapter for disability . . . or the need for medical treatment of an Employee if the disability . . . or the Employee's need for medical treatment arose out of and in the course of the employment. To establish a presumption under AS 23.30.120(a)(1) that the disability . . . or the need for medical treatment arose out of and in the course of the employment, the Employee must establish a causal link between the employment and the disability . . . or the need for medical treatment. A presumption may be rebutted by a demonstration of substantial evidence that the . . . disability or the need for medical treatment did not arise out of and in the course of the employment. When determining whether or not the . . . disability or need for medical treatment arose out of and in the course of the employment, the board must evaluate the relative contribution of different causes of the disability . . . or the need for medical treatment. Compensation or benefits under this chapter are payable for the disability . . . or the need for medical treatment if, in relation to other causes, the employment is the substantial cause of the disability . . . or need for medical treatment. . . .
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> **AS 23.30.030. Required policy provisions.** A policy of a company insuring the payment of compensation under this chapter is considered to contain the provisions set out in this section.
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> (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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> **AS 23.30.095. Medical treatments, services, and examinations.** (a) The Employer shall furnish 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. . . . It shall be additionally provided that, if continued treatment or care or both beyond the two-year period is indicated, the injured Employee has the right of review by the board. The board

> may authorize continued treatment or care or both as the process of recovery requires. . . .

In addressing the extent of employers' obligations to provide medical services under the Act, the Alaska Supreme Court made the following observations:

> While the Workers' Compensation Act may require employers to authorize *some* medical care . . . , the Act does not require employers to pay for any and all treatments chosen by the injured employee. . . . . Alaska Statute 23.30.395 defines "medical and related benefits" as those "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 which arises out of or is necessitated by an injury*." Furthermore, the Act itself states that employers are responsible only for providing that medical care and those services "which the nature of the injury or the process of recovery requires." . . . . [T]he Board's proper function includes determining whether the care paid for by employers under the Act is reasonable and necessary.

Bockness v. Brown Jug, Inc., 980 P.2d 462, 466 (1999) (citations omitted) (emphasis in original).

The "process of recovery" language in the statute does not preclude an award for purely palliative care where evidence establishes that such care promotes an employee's recovery from individual attacks caused by a chronic condition. *Municipality of Anchorage v. Carter*, 818 P.2d 661; 665-666 (Alaska 1991). However, the statute does not require the board to provide continuing palliative care in every instance. Rather, the statute grants the board discretion to award such "indicated" care as the process of recovery requires. *Id*. at 664. The board retains discretion to not award continued care or to authorize care different from that specifically requested. *Id*. at 665.

When an injured worker's claim for medical treatment made within two years of the injury that is undisputedly work-related, its review is limited to whether the treatment sought is reasonable and necessary. *Weidner & Associates v. Hibdon*, 989 P.2d 727; 731 (Alaska 1999). When an injured worker's claim for continued treatment beyond two years from the date of injury is reviewed, the board is not limited to reviewing the reasonableness and necessity of the particular treatment sought, but has discretion to authorize indicated medical treatment "as the process of recovery requires" and to choose among reasonable alternatives. *Id*.

Workers' compensation panels have addressed an employer's obligation to provide a motor vehicle for handicapped modifications, versus the cost of modifications alone, several times in past decades, beginning with *Meyn v. Bucher Glass*, AWCB Decision No. 81-0052 (February 18, 1981). Although the *Meyn* decision is no longer available, *Geyer v. Quadrant General*, AWCB Case No. 600230 (July 25, 1986) quoted extensively from *Meyn* and applied it as follows: "We have previously addressed this issue in [*Meyn*]. In that case Employee needed a specially modified van for transportation. We awarded only the cost of the difference between the type of vehicle he drove before injury and the specially modified van. In that case we stated:

> As to the van itself, the decision is more difficult. Presumably the applicant had the need for a vehicle before the injury. However, after the injury the only vehicle suitable for the applicant is a van. Presumably, the applicant would purchase a new or better vehicle for himself every few years even if he had not been injured. Hence, the injury did not produce the need for the vehicle itself but it did produce the need for a particularly type of vehicle. We believe the need for a specialized van, which may be more expensive, converts that extra expense, if any, to an 'apparatus' needed for the applicant's medical care.
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> Therefore, we agree with the Defendant that the purchase of a vehicle itself is not the Defendant's responsibility. However, since the van itself may cost more than a standard, mid-sized American car we believe the Defendant should pay this difference, if any. Although this is somewhat speculative, we believe a just and equitable resolution of this issue justifies this speculation by the Board.

Geyer then continued:

> In this case, we find ourselves constrained by our prior decisions and Professor Larson's discussions. We find the Defendants are 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. We agree with Employee that his wife's car is just that, her car, and should not be converted to his use.

See also Hubbard v. Top Notch Cutting, AWCB Decision No. 06-0329 (December 15, 2006) (quoting *Meyn* and *Geyer*, but distinguishing facts and declining to address the legal issue of whether a van can be construed as a "device" or "apparatus" under the Act.). As an interim measure, *Geyer* also instructed the employer to investigate the availability of public transportation until such time as the employee could obtain a modified vehicle, and if suitable

public transportation was not available, ordered the employee to provide the employee with cab fare for transportation to and from medical appointments. *Id*.

In his treatise, Professor Larson explains:

> As to specially equipped automobiles for paraplegics, Alabama, Colorado, Kansas, Mississippi, Maryland, New Mexico, New York, North Carolina, and South Dakota have denied reimbursement, on the ground that an automobile is simply not a medical apparatus or device.[13] Some states[14] have held *contra*. Pennsylvania has approved installation of hand controls in claimant's automobile.[15] 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.[15.1]

1 Arthur Larson & Lex Larson, *Larson's Workers' Compensation Law*, § 94.03[1] (2008).[1] In one of Professor Larson's cited decisions, where a Florida Court of appeals concluded a van

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n.13 at § 94.03D[1] (2005) citing: *Ex parte City of Guntersville*, 728 So.2d 611 (Ala. 1998); *Ex parte Mitchell*, 2008 Ala. Lexis 20 (January 25, 2008) (citing *Ex parte City of Guntersville*); *Bogue v. SDI Corp.*, 931 P.2d 477 (Colo. Ct. App. 1996); *ABC Disposal Servs. v. Fortier*, 809 P.2d 1071 (Colo. Ct. App. 1990); *Manpower Temp. Servs. v. Siosin*, 529 N.W.2d 259 (Iowa 1995); *Hedrick v. U.S.D. No. 259*, 935 P.2d 1083 (Kan. Ct. App. 1997); *R&T Constr. Co. v. Judge*, 594 A.2d 99 (Md. 1991); *Georgia-Pacific Corp. v. James*, 733 So.2d 875 (Miss. Ct. App. 1999); *Fogelman v. Duke City Auto. Servs.*, 999 P.2d 1072 (N.M. 2000); *Nallan v. Motion Picture Studio Mechanics Union, Local #52*, 360 N.E.2d 353 (N.Y. 1976); *Kranis v. Trunz, Inc.*, 458 N.Y.2d 10 (N.Y. App. Div. 1982); *McDonald v. Brunswick Elec. Membership Corp.*, 336 S.E.2d 407 (N.C. Ct. App. 1985); *Meyer v. North Dakota Workers' Comp. Bureau*, 512 N.W.2d 680 (N.D. 1994); *Phillips Petroleum Co. v. Carter*, 914 P.2d 677 (Okla. Ct. App. 1995); *Petrilla v. Workmen's Comp. App. Bd.*, 692 A.2d 623 (Pa. Commw. Ct. 1997); *Johnson v. Skelly Oil Co.*, 359 N.W.2d 130 (S.D. 1984).

n.14 citing: *Terry Grantham Co. v. Industrial Comm'n*, 741 P.2d 313 (Ariz. Ct. App. 1987); *Film Transit v. Chambers*, 64 S.W.3d 775 (Ark. Ct. App. 2002); *Brigham & Willingham v. Mapes*, 610 So. 2d 623 (Fla. Dist. Ct. App. 1992); *Applegate Drywall Co. v. Patrick*, 559 So. 2d 763 (Fla. Dist. Ct. App. 1990); *Aino's Custom Slip Covers v. DeLucia*, 533 So. 2d 862 (Fla. Dist. Ct. App. 1990); *See Temps & Co. Servs. v. Cremeens*, 597 So. 2d 394 (Fla. Dist. Ct. App. 1992); *But see Kraft Dairy Group v. Cohen*, 645 So. 2d 1072 (Fla. Dist. Ct. App. 1994); *Wilmers v. Gateway Transp. Co.*, 575 N.W.2d 796 (Mich. Ct. App. 1998); *Mickey v. City Wide Maint.*, 996 S.W.2d 144 (Mo. Ct. App. 1999).

n.15 citing: *Rieger v. Workmen's Comp. App. Bd.*, 521 A.2d 84 (Pa. Commw. 1987).

n.15.1 citing: *Weakland v. Toledo Engineering Co., Inc*., 656 N.W.2d 175 (Mich. 2003).

[1] In addition to *Grantham*; *Soison*; *James*; and *Chambers* cited by Larson, Employee also relies on *Timothy Browser Construction Company v. Kowalski*, 605 So.2d 885 (Fla. App. 1992); *Brawn v. Gloria's Country Inn*, 698 A.2d 1067 (Maine 1997); *Oklahoma Gas & Electric Co. v. Chronister*, 114 P.3d 455 (Okla. App. 2004); *Sedgwick Claims Management Services v. Jones*, 166 P.3d 548 (Or. App. 2007); *Griffiths v. Workers' Compensation Appeal Board*, 943 A.2d 242 (Pa. 2008); *Simmons v. Precast Haulers, Inc.*, 849 N.W.2d 117 (Neb. 2014).

could be considered a compensable "apparatus" under that state's law, the decision also held testimony indicating that a van would be beneficial and pleasant, safer and more convenient for the claimant was insufficient evidence of the medical necessity for such a van. *Aino's Custom Slip Covers v. DeLucia*, 533 So. 2d 862; 865 (Fla. Dist. Ct. App. 1990).

Ex parte City of Guntersville, 728 So.2d 611 (Ala. 1998), involved a case where the employee's doctor had opined the modified van was "medically necessary that [the employee] obtain a van with a wheelchair lift in order to restore his mobility to the highest possible level of independent functioning," and the employee requested the employer reimburse him for the full purchase price of a van. The employee also contended the van was reasonably necessary for transportation to and from his doctors' appointments. The employer agreed to pay for the cost of installing a wheelchair lift in the van, but denied responsibility for the full purchase price of the vehicle. *Id*. at 613.

The Supreme Court of Alabama noted the two dissenting judges at the Court of Civil Appeals agreed the wheelchair lift would be considered "other apparatus" under the statute, but did not agree the state legislature intended the entire cost of a wheelchair-accessible van be included in that term. Instead, those judges would have adopted the reasoning of the West Virginia Supreme Court in *Crouch v. West Virginia Workers' Compensation Comm'r*, 184 W.Va. 730, 403 S.E.2d 747 (1991). In that case, the West Virginia court held a van could be "an approved mechanical appliance" under its statute, but because the injured employee testified that he would have owned automobile had he not been injured, the value of an average, mid-priced automobile of the same model year as the van the employee purchased should be deducted from the amount awarded by the court as compensation for the purchase price of the van. *Id*. at 614. *See also Mickey v. City Wide Maint.*, 996 S.W.2d 144 (Mo. Ct. App. 1999) (holding the logic applied in *Crouch* was "reasonable," and limiting the liability of the employer to the cost of a converted van minus "the cost of an average, mid-priced automobile of the same year as the purchased van."). *Id*. at 152-153.

City of Guntersville then examined case law from other jurisdictions and found other courts that have decided the issue fell into three categories: 1) those holding that the purchase price of the

vehicle was not compensable; 2) those holding that it is compensable; and 3) those holding that, while the full purchase price may not be compensable, some part of it may be. The Supreme Court of Alabama began its analysis of their statute with Professor Larson, who observed workers' compensation systems were a delicate balance between the interests of employees and employers, where "the employee and his or her dependents, in exchange for . . . modest but assured benefits, give up their common law right to sue the employer for damages for any injury covered by the act . . . ." *Id*. at 616 (quoting Larson § 1.10(e) (1997)). Based on Larson's observations, the *City of Guntersville* court found that adopting the employee's position would "disturb the balance of interests that is at the heart of the workers' compensation system," and "stretch the workers' compensation statute beyond its intended meaning." It was also unpersuaded by the employee's transportation argument, noting transportation costs were expressly provided for elsewhere under the act. *Id*. at 616-617.

The Supreme Court of Michigan adopted what Professor Larson refers to as "the better rule" in *Weakland v. Toledo Engineering Co., Inc*., 656 N.W.2d 175 (Mich. 2003). The Michigan court in that decision found a judge's dissent in *Wilmers v. Gateway Transp. Co.*, 575 N.W.2d 796 (Mich. Ct. App. 1998); particularly persuasive, where he discussed the difference between a van and other "appliances" provided under the statute. The use of the term "other" in the statute, *Weakland* concluded, together with the listing of specific adaptive aids, such as crutches, hearing aids, dentures, glasses, etc., created an unambiguous legislative intent to mandate that an employer only supply devices of a like kind. *Id.* at 355-357.

A dissenting justice in the Pennsylvania Supreme Court's *Griffiths v. Workers' Compensation Appeal Board*, 943 A.2d 242 (Pa. 2008), decision took the same approach as the dissenting judge in *Wilmers*, and the Michigan Supreme Court in *Weakland*, while interpreting whether a van, or just a lift and modifications to the van, was an "orthopedic appliance." The statute in question required an employer to provide "payment for medicines and supplies, hospital treatment, services and supplies and orthopedic appliances, and prosthesis in accordance with this section."

Griffiths at 254. The dissenting judge noted a vehicle was not *ejusdem generis*[2] with other items in the statute for which the legislature had required an employer to pay.[3] *Id*. at 260.

> Perhaps we could shoehorn into "orthopedic appliance" the items used to accomplish the retrofitting of a van; however, the van itself simply cannot be made to fit any reasonable understanding of the term.
>
> There is a significant difference between requiring an employer to provide appliances to outfit a claimant's van, and requiring the employer to buy a van for a claimant in the first place. Under the sweeping decision of the majority, employers must hereafter provide appliances that, the majority holds, include a vehicle. Many claimants will be undoubtedly surprised to find they could use just such an appliance. If there is to be a significant expansion of compensation payable, it should be accomplished by the General Assembly, in clear terms, not by a court calling a van an orthopedic appliance. This claimant undoubtedly could use a van, but the legislature did not require his employer to give him one. It required treatment and supplies, but no vehicle. We, who have no means of knowing the financial and collateral consequences of this expansion of obligation, may not displace the legislature and change the statute to require more.
>
> One may buy an "orthopedic appliance" in many places—the Ford dealership is not one of them.

Id. at 260-261. In affirming a compensation judge's ruling that a modified van was not an artificial member, a New Mexico Court of Appeals said the legislature intended "artificial member" to refer to "prosthetic devices that are attached to, or used in immediate proximity to, the injured worker's body." *Fogelman v. Duke City Auto. Servs.*, 999 P.2d 1072; 1074 (N.M. 2000).

> **AS 23.30.120. Presumptions**. (a) In a proceeding for the enforcement of a claim for compensation under this chapter it is presumed, in the absence of substantial evidence to the contrary, that
>
> (1) the claim comes within the provisions of this chapter . . . .

[2] Black's Law Dictionary 594 (9th ed. 2009) defines *ejusdem generis* as "a canon of construction holding that when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same class listed."

[3] The Alaska Supreme Court applies a similar rule when interpreting statutory terms. Where one statute 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. *Matter of Hutchinson's Estate*, 577 P.2d 1074; 1075 (Alaska 1978); *Nelson v. Municipality of Anchorage*, 267 P.3d 636; 642 (Alaska 2011).

"The text of AS 23.30.120(a)(1) indicates that the presumption of compensability is applicable to *any* claim for compensation under the workers' compensation statute." *Meek v. Unocal Corp*., 914 P.2d 1276, 1279 (Alaska 1996) (emphasis in original). Medical benefits including continuing care are covered by the AS 23.30.120(a) presumption of compensability. *Municipality of Anchorage v. Carter*, 818 P.2d 661, 664-65 (Alaska 1991). The Alaska Supreme Court in *Sokolowski v. Best Western Golden Lion*, 813 P.2d 286, 292 (Alaska 1991) held a claimant "is entitled to the presumption of compensability as to each evidentiary question."

The presumption's application involves a three-step analysis. *Louisiana Pacific Corp. v. Koons*, 816 P.2d 1379, 1381 (Alaska 1991). First, an employee must establish a "preliminary link" between the "claim" and her employment. In less complex cases, lay evidence may be sufficiently probative to make the link. *VECO, Inc. v. Wolfer*, 693 P.2d 865, 871 (Alaska 1985). Whether or not medical evidence is required depends on the probative value of available lay evidence and the complexity of the medical facts involved. *Id.* An employee need only adduce "some," minimal relevant evidence, *Cheeks v. Wismer & Becker/G.S. Atkinson, J.V.*, 742 P.2d 239, 244 (Alaska 1987), establishing a "preliminary link" between the "claim" and the employment, *Burgess Construction Co. v. Smallwood*, 623 P.2d 312, 316 (Alaska 1981). Witness credibility is not examined at this first step. *Excursion Inlet Packing Co. v. Ugale*, 92 P.3d 413, 417 (Alaska 2004).

Second, once an employee attached the presumption, the employer must rebut it with "substantial" evidence that either, (1) provides an alternative explanation excluding work-related factors as a substantial cause of the disability ("affirmative-evidence"), or (2) directly eliminates any reasonable possibility that employment was a factor in causing the disability ("negative-evidence"). *Huit v. Ashwater Burns, Inc*., 372 P.3d 904; 919 (Alaska 2016). "Substantial evidence" is the amount of relevant evidence a reasonable mind might accept as adequate to support a conclusion. *Miller v. ITT Arctic Services*, 577 P.2d 1044, 1046 (Alaska 1978). The mere possibility of another injury is not "substantial" evidence sufficient to rebut the presumption. *Huitt* at 920, 921. The employer's evidence is viewed in isolation, without regard to an employee's evidence. *Miller* at 1055. Therefore, credibility questions and weight accorded the employer's evidence are deferred until after it is decided if the employer produced a sufficient quantum of

evidence to rebut the presumption. *Norcon, Inc. v. Alaska Workers' Compensation Board*, 880 P.2d 1051, 1054 (Alaska 1994); *citing Big K Grocery v. Gibson*, 836 P.2d 941 (Alaska 1992).

For claims arising after November 7, 2005, employment must be the substantial cause of the disability or need for medical treatment. *Runstrom v. Alaska Native Medical Center*, AWCAC Decision No. 150 (March 25, 2011) (reversed on other grounds by *Huitt*). If an employer produces substantial evidence work is not the substantial cause, the presumption drops out and the employee must prove all elements of the "claim" by a preponderance of the evidence. *Louisiana Pacific Corp. v. Koons*, 816 P.2d 1381 (*citing Miller v. ITT Services*, 577 P 2d. 1044, 1046). The party with the burden of proving asserted facts by a preponderance of the evidence must "induce a belief" in the fact-finders' minds the asserted facts are probably true. *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964).

> **AS 23.30.145. Attorney fees**. (a) Fees for legal services rendered in respect to a claim are not valid unless approved by the board, and the fees may not be less than 25 percent on the first $1,000 of compensation or part of the first $1,000 of compensation, and 10 percent of all sums in excess of $1,000 of compensation. When the board advises that a claim has been controverted, in whole or in part, the board may direct that the fees for legal services be paid by the employer or carrier in addition to compensation awarded; the fees may be allowed only on the amount of compensation controverted and awarded. . . .
>
> (b) If an employer fails to file timely notice of controversy or fails to pay compensation or medical and related benefits within 15 days after it becomes due or otherwise resists the payment of compensation or medical and related benefits and if the claimant has employed an attorney in the successful prosecution of the claim, the board shall make an award to reimburse the claimant for the costs in the proceedings, including a reasonable attorney fee. The award is in addition to the compensation or medical and related benefits ordered.

In *Harnish Group, Inc. v. Moore*, 160 P.3d 146 (Alaska 2007), the Alaska Supreme Court discussed how and under which statute attorney's fees may be awarded in workers' compensation cases. A controversion, actual or in-fact, is required for the board to award fees under AS 23.30.145(a). "In order for an employer to be liable for attorney's fees under AS 23.30.145(a), it must take some action in opposition to the employee's claim after the claim is filed." *Id*. at 152. Fees may be awarded under AS 23.30.145(b) when an employer "resists"

payment of compensation and an attorney is successful in the prosecution of the employee's claims. *Id*. In this latter scenario, reasonable fees may be awarded. *Id.* at 152-153.

In *Wise Mechanical Contractors v. Bignell*, 718 P.2d 971, 974-975 (Alaska 1986), the Court held attorney's fees awarded by the board should be reasonable and fully compensatory. Recognizing attorneys only receive fee awards when they prevail on the merits of a claim, the contingent nature of workers' compensation cases should be considered to ensure competent counsel is available to represent injured workers. *Id*. The nature, length, and complexity of services performed, the resistance of the employer, and the benefits resulting from the services obtained, are also considerations when determining reasonable attorney's fees for the successful prosecution of a claim. *Id*. at 973, 975.

> **AS 23.30.395. Definitions.** In this chapter,
> . . . .
>
> (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 which arises out of or is necessitated by an injury, and transportation charges to the nearest point where adequate medical facilities are available;
> . . . .
>
> (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. . . .
>
> **8 AAC 45.084. Medical travel expenses.** (a) This section applies to expenses to be paid by the employer to an employee who is receiving or has received medical treatment.
>
> (b) Transportation expenses include
>
> > (1) a mileage rate, for the use of a private automobile, equal to the rate the state reimburses its supervisory employees for travel on the given date if the usage is reasonably related to the medical examination or treatment;
> >
> > (2) the actual fare for public transportation if reasonably incident to the medical examination or treatment; and

> (3) ambulance service or other special means of transportation if substantiated by competent medical evidence or by agreement of the parties.
>
> (c) It is the responsibility of the employee to use the most reasonable and efficient means of transportation under the circumstances. If the employer demonstrates at a hearing that the employee failed to use the most reasonable and efficient means of transportation under the circumstances, the board may direct the employer to pay the more reasonable rate rather than the actual rate. . . .

ANALYSIS

It is initially acknowledged, both parties make numerous contentions and cite to authorities that potentially raise an array of entangling legal and factual issues. This decision examines Employee's claim in light of an employer's obligation to provide *medical* benefits mandated by AS 23.30.095(a), and defined at AS 23.30.395(26), on the one hand; and an employer's obligation to provide *transportation* for medical treatment as mandated by AS 23.30.23.30.030(1), and clarified at 8 AAC 45.084, on the other. *City of Guntersville* at 616-617 (noting transportation costs were separately provided for from medical benefits under its workers' compensation act). Additionally, as demonstrated by the points of law section of this decision, many states' highest courts have struggled with the very issues presented here, often with inconsistent results, even within a given state. Finally, the issues have also proven most difficult to decide based, in no small part, on Employee's compelling circumstances, including his age and the severity of his injuries.

1) Does the Workers' Compensation Act provide for the purchase of an automobile as a medical benefit?

This question presents a purely legal issue of statutory construction. The Act requires employers to "furnish 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." AS 23.30.095(a) (emphasis added). "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. AS 23.30.395(26) (emphasis added). Thus, the question presented by the parties is, whether an automobile is either an "apparatus" or a "prosthetic device" under the Act.

The Alaska Supreme Court, just as the Alabama Supreme Court in *City of Guntersville*, has recognized the workers' compensation systems is a delicate balance between the interests of employees and employers, where employees give up their common law right to sue employers for damages in exchange for modest, but certain, benefits. *Suh* (citing Larson). "This *quid pro quo* arrangement underscores a secondary goal of the Act: to be fair to employers as well as to workers." *Id*. "While the Workers' Compensation Act may require employers to authorize some medical care . . . , the Act does not require employers to pay for any and all treatments chosen by an employee." *Bockness*. Although the Alaska Supreme Court has yet to decide the very issue presented here, as Professor Larson points out, the majority of courts that have decided the issue have found an automobile is not a medical apparatus or device. Instead, Professor Larson opines, "the better rule" is set forth in *Weakland*, which held the cost of modifying a van so that it can be operated by someone who is disabled may be a compensable medical expense, but the cost of the van itself is not.

Weakland applied a canon of statutory construction – *ejusdem generis*, which is used in defining the scope of a broad term when it follows a list of specific items. In such cases, the meaning given to the general term is restricted to include only things of the same kind, class, character or nature as those specifically enumerated. The term at issue in *Weakland* was "other appliances," which followed a list of specific items that included crutches, artificial limbs, eyes, teeth, eyeglasses, hearing apparatus. *Id*. at 349-350. *Weakland* observed the listed items shared a commonality in being artificial adaptive aids that serve to directly ameliorate the effects of a medical condition. *Id*. at 350. It found the "adaptive aid" ameliorating the effects of the medical condition and permitting utilization of the van were the vehicular modifications, while the van itself was simply a means of transportation. *Id*.

The Alaska Supreme Court applies a rule similar to *ejusdem generis* when interpreting statutory terms. Where one statute 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. *Hutchinson's Estate*; *Nelson*. As previously mentioned, the Act defines "medical and related benefits" as 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 23.30.395(26). The Act then goes on to specifically define "prosthetic devises" as eye glasses, hearing aids, dentures, and such other devices and appliances. AS 23.30.395(33). The word "such," in the catch-all phrases of "such devices," and "such other devices and appliances," in both statutes indicates a clear legislative intent to limit additional devices and appliances to those in the same category or class as eye glasses, hearing aids and dentures. As another court has observed, these are devices attached to, or used in close proximity to, the injured worker's body. *Fogelman*. An automobile is not such a device. *Weakland* (citing dissent in *Wilmers*).

The purpose of the Alaska Workers' Compensation Act is to provide injured workers with a specific recovery for specific injuries. *Ellamar Mining Co.* "We should not interpret statutes with disregard of common meaning simply to reward a clever argument or accomplish a comfortable result." *Griffith*s (dissent) at 260. "We, who have no means of knowing the financial and collateral consequences of this expansion of obligation, may not displace the legislature and change the statute to require more." *Id.* at 261. Therefore, as concluded by *Weakland*, while the cost of modifying an automobile might be a compensable medical expense under the Act, the cost of an automobile itself is not. If the Legislature had intended for employers to provide automobiles for employees under the Workers' Compensation Act, it should be accomplished by the Legislature itself, in clear terms, and not a workers' compensation panel calling an automobile a prosthetic device. AS 23.30.001(1) (instructing the Act should be interpreted to ensure medical benefits at a cost reasonable to employers); *Suh*; *Bockness*; *Ellamar Mining Co.*; *City of Guntersville*, *Weakland*; *Wilmer*s (dissent); *Griffiths* (dissent).

2) Alternatively, in the event Alaska Workers' Compensation Act does provide for the purchase of an automobile as a medical benefit, do the facts in this case support awarding one to Employee?

Since this question involves a factual inquiry into Employee's potential entitlement to a medical benefit under the Act, the presumption will be applied. AS 23.30.120; *Meeks*. It is undisputed the work injury caused Employee's C4 tetraplegia, therefore the presumption is attached. Employer then rebuts the presumption by the absence of medical prescriptions in the record,

either for a van, or for any specific modifications to a van. *Miller*. Employee is now required to prove he is entitled to a van by a preponderance of the evidence. *Koons*.

Employee testified, if he had his own van, he would go to the store, go shopping, see the countryside, take friends out and perhaps see a concert. He also contends he and his family would be better prepared to respond to emergency situations. His testimony and contentions in these regards is identical to the arguments presented, and rejected, in *City of Guntersville*. Additionally, at least one other court has specifically held testimony indicating a van would be beneficial, pleasant, safer and more convenient for the claimant was insufficient evidence to establish the medical necessity of the van. *DeLucia* at 865. *Cf. Miller* (requiring workers' compensation decisions be based on substantial evidence); *Bockness* (medical care must be reasonable and necessary). Here, Employee does not dispute there are no medical prescriptions in the record for either a van, or for any specific modifications to a van. His cited necessity is decidedly personal, not medical, in nature. If personal comfort and convenience were to suffice as substantial evidence of a medical necessity for a new automobile, as stated by the dissent in *Griffiths*, many claimants will be undoubtedly surprised to find they could just use one. Thus, even if a personal automobile were an apparatus of a prosthetic device under the Act, Employee would not be entitled to such an award.

Ultimately, Employee's work injury must still be, in relation other causes, the substantial cause of his need for an automobile. *Runstrom*. While Employee does not explicitly state he never needed a personal automobile in Nome, and only needs one now in Seattle as a result of his work injury; various contentions of Employee's counsel, particularly in his hearing brief, create an inference that this may be one of his positions. Should this be Employee's intent, his position here should also be analyzed, and it would create another factual dispute to which the presumption of compensability would apply. AS 23.30.120; *Meeks.*

Again, it is undisputed the work injury caused Employee's C4 tetraplegia, therefore the presumption is attached. *Wolfer*. Employer rebuts the presumption Employee's personal transportation need arose as a result of his work injury with Employee's testimony he had a driver's license since he was 16 years-old, only lost his license as the result of a DUI, and other

traffic citations he had received involved former vehicles he had owned. *Miller*. Employee is now required to prove, by a preponderance of the evidence, his need for a personal transportation arose as a result of his work injury. *Koons*.

Although Employee testified he would get rides from people around town and did not have a driver's license, a preponderance of the evidence, established by Employee's own testimony, shows Employee had a driver's license since he was 16 years-old and only lost his license as the result of a DUI. He owned a Suburban at the time of his work injury and he had owned other automobiles prior to that. Although the Suburban was not running at the time of the injury, Employee would use his mom's four-wheeler, and was injured at work while driving his daughter's truck. Employee's personal transportation needs pre-existed his work injury and did not arise as a result of it. *Miller*. Therefore, even if a personal automobile were an apparatus of a prosthetic device under the Act, Employee would not be entitled to an award of one on this basis, either.[4]

3) Is Employee entitled to the purchase of an automobile as a transportation benefit so that he can obtain medical treatment?

The Act requires employers provide injured workers with transportation so they can obtain medical treatment. AS 23.30.030(1); 8 AAC 45.084(c). Employee testified to a litany of complaints he has with the Cabulance service currently being provided by Employer. He testified the Cabulance service requires two-day's notice, has been late in arriving and he has missed medical appointments. Employee testified vehicles with side-loaders generally "work better" for him than vehicles with rear-loaders, and smaller vehicles are more uncomfortable than larger ones.

However, Employee's own testimony acknowledges Employer is already providing him with a medical transportation service. He further testified Employer has been providing additional

[4] Assuming an automobile were an apparatus or a prosthetic device under the Act, and assuming Employee were able to produce evidence one was medically reasonable and necessary, the Alaska Supreme Court has interpreted the "nature of the injury or the process of recovery" language at AS 23.30.095(a) as giving the board discretion to either order the treatment sought, *or an alternative*, such as paratransit public transportation available in Seattle. *Carter, Hibden*.

ambulance service for him to accommodate his treatment for bed sores. The regulation requires Employee to utilize the most reasonable and efficient transportation available. 8 AAC 45.084(c). It does not require Employer provide the most comfortable or convenient preferable. Employee's own testimony established Employer is meeting his medical transportation needs, so he presents no issue for adjudication. Employee is not entitled to the purchase of an automobile on a medical transportation basis.

4) Is Employee entitled to the difference in price between a standard, mid-sized car and a standard van equipped with necessary modifications?

Employer points to 35 years of "well-reasoned" board precedent and contends, if Employee's injury makes it impractical for him to use his personal vehicle, Employer may be deemed responsible for the difference in cost between a standard, mid-sized car and a standard van equipped with necessary modifications. The conclusions reached in the cases to which Employer points, *Meyn* and *Geyer*, were based on the express presumptions those employees needed a personal automobile before the injury, and since the work injury created a need for a particular type of vehicle, such as a van, "which may be more expensive," the employers should be held accountable for the difference between a standard, mid-sized American car and a van. Neither *Geyer*, nor presumably *Meyn*, cited any legal authority or factual findings to support their results. In fact, both decisions candidly acknowledge their holdings were "somewhat speculative," but believed a "just and equitable resolution of this issue justifies this speculation by the board." *Id*.

The *Hubbard* decision, on the other hand, expressly declined to address the legal issue whether an automobile was an apparatus or device under the Act altogether, and instead treated the issue as only a factual one. It held, since the employee testified he would walk, take a cab, rent an automobile, borrow a vehicle, or catch a ride with a friend before his injury, only the work injury produced the need for the employee to have a personal automobile, so the employer should provide him with one. *Hubbard* also did not cite any legal authority in support of its conclusion. For these reasons, neither *Meyn*, *Geyer* nor *Hubbard* will be followed.

Decisions that have applied the holding Employer proposes were based on the premise an automobile was a compensable apparatus or device under the applicable state's workers'

compensation statute in the first place. *Crouch*; *Mickey*. Since this decision reaches a different conclusion, Employee will not be entitled to the difference between an average, mid-sized automobile and a van of the same model year.

5) Is Employee entitled to attorney's fees and costs?

As this decision awards no additional benefits to Employee, his claim for attorneys' fees and costs will be denied. *Bignell*.

CONCLUSIONS OF LAW

(1) The Alaska Workers' Compensation Act does not provide for the purchase of an automobile as a medical benefit.
(2) Alternatively, in the event Alaska Workers' Compensation Act does provide for the purchase of an automobile as a medical benefit, the facts in this case do not support awarding one to Employee.
(3) Employee is not entitled to the purchase of an automobile as a medical transportation benefit.
(4) Employee is not entitled to an award of attorneys' fees and costs.

ORDER

Employee's November 27, 2015 claim is denied.

Dated in Fairbanks, Alaska on October 19, 2016.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Robert Vollmer, Designated Chair

/s/
Jacob Howdeshell, Member

APPEAL PROCEDURES

This compensation order is a final decision. It becomes effective when filed in the office of the board unless proceedings to appeal it are instituted. Effective November 7, 2005 proceedings to appeal must be instituted in the Alaska Workers' Compensation Appeals Commission within 30 days of the filing of this decision and be brought by a party in interest against the boards and all other parties to the proceedings before the board. If a request for reconsideration of this final decision is timely filed with the board, any proceedings to appeal must be instituted within 30 days after the reconsideration decision is mailed to the parties or within 30 days after the date the reconsideration request is considered denied due to the absence of any action on the reconsideration request, whichever is earlier. AS 23.30.127.

An appeal may be initiated by filing with the office of the Appeals Commission: 1) a signed notice of appeal specifying the board order appealed from and 2) a statement of the grounds upon which the appeal is taken. A cross-appeal may be initiated by filing with the office of the Appeals Commission a signed notice of cross-appeal within 30 days after the board decision is filed or within 15 days after service of a notice of appeal, whichever is later. The notice of cross-appeal shall specify the board order appealed from and the ground upon which the cross-appeal is taken. AS 23.30.128.

RECONSIDERATION

A party may ask the board to reconsider this decision by filing a petition for reconsideration under AS 44.62.540 and in accord with 8 AAC 45.050. The petition requesting reconsideration must be filed with the board within 15 days after delivery or mailing of this decision.

MODIFICATION

Within one year after the rejection of a claim, or within one year after the last payment of benefits under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, a party may ask the board to modify this decision under AS 23.30.130 by filing a petition in accord with 8 AAC 45.150 and 8 AAC 45.050.

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of BRYCE WARNKE GREEN, employee / claimant; v. PRO WEST CONTRACTORS L.L.C., employer; LIBERTY NORTHWEST INSURANCE CORP., insurer / defendants; Case No. 201500985; dated and filed in the Alaska Workers' Compensation Board's office in Fairbanks, Alaska, and served on the parties by First-Class U.S. Mail, postage prepaid, on October 19, 2016.

/s/
Jennifer Desrosiers, Office Assistant