

Assessing Reasonable Value of Family-Provided Nursing Services

Minn. Stat. § 176.135, sub 1(b) provides that an employer “shall pay for the reasonable value of nursing services provided by a member of the employee’s family in cases of permanent total disability.” A determination of what nursing services are and the reasonable value of such services are questions of fact to be determined by the court—questions of fact that the courts have recognized will, at best, lead to an imprecise result. *Alexander v. LaLonde Enters*, 288 N.W. 2d 18 (1980)

Assigning a reasonable value to the services provided by family members is one of the most often questioned and debated areas in workers’ compensation cases. The approach taken by the courts is to compare the services provided to similar services for which payment is made. This can result in several valid measures of the value of the services for the finder of fact to consider in its valuation. The following may be considered valid comparative figures in specific situations.

- * Wage of the least-experienced licensed practical nurse at a nearby hospital.
- * Wage of the most-experienced nurse’s aide at a nearby hospital.
- * Wages earned by an aide (live-in or hourly) hired through a health care agency.
- * Department of Human Services Provider Reimbursement Rates (www.dhs.state.mn.us).
- * Median wage for personal care attendant, home health aide, or LPN from Bureau of Labor Statistics (www.bls.gov).
- * Median wage for personal care attendant, home health aide, or LPN from MN Department of Employment and Economic Development (<http://salary.iseekjobs.org>).
- * Labor market surveys showing current open positions and current wages being paid.

The court’s desire to have comparative figures on which to base compensation has also led to the rejection of a litigant’s position that did little more than criticize the comparative services provided by the other side. Thus, each side should attempt to place a value on the figures provided. Here are a few issues to consider when developing a proposal for reasonable value:

- * Payments made to family members through the workers’ compensation system are usually tax-free.
- * Most family members providing care have no formal training and are not certified, licensed, or registered.
- * Services administered by a family member are generally within the scope of practice of a home health aide/personal care attendant. (See MN Rule 4668.0100 or 4668.0825.)
- * Family providers are legally permitted to perform more advanced paramedical or medically related tasks such as bowel or bladder care and administration of medications without formal education or certification.

- * Family providers of home care are not usually supervised by an RN. Therefore, the liability is limited.
- * In many cases, family members providing care are not precluded from doing their own personal activities while also caring for the injured worker.
- * Agency rates charged for home care provided by family members are rarely an appropriate measure for determining wages because they factor in profit, expenses, professional liability, and oversight.
- * Family providers of home nursing services should be considered independent contractors privately hired by the injured worker. Therefore, payment for these services should be made directly to the injured worker to avoid the possibility of establishment of an employer-employee relationship between the insurer or self-insurer and the family provider.
- * Housekeeping services generally are not services that qualify as “medical treatment” under Minn. Stat. § 176.135, since they do not involve customary “nursing” services. *Schmidt v Ramsey Clinic, slip op. (W.C.C.A Jan 26, 1995)*

In order for family-provided nursing services to be eligible for reimbursement, the WCRA requests that the following requirements be met:

- * Hours of service need to be supported by an on-site assessment conducted by an RN.
- * Personal cares (ADLs) must be broken out from homemaking/housekeeping (IADLs). Some exceptions may be made when 24-hour care is needed.
- * Determination of rates must be clearly documented.
- * Services must be prescribed by a physician.
- * All other avenues (e.g., home remodeling, adaptive equipment, alarms, etc.) must be evaluated in order to maximize independence.
- * Services provided by family members must be periodically reviewed by an RN. (See MN Rule 4668.0845 for suggested guidelines.)

Summary

The family member who provides required nursing care for an injured worker with a permanent total disability is entitled to compensation for those services. While that premise can be simply expressed, establishing a value for those services is not easy. Each situation for providing home care services needs to be carefully considered and properly monitored to ensure that the injured worker is getting the most appropriate care and is in the most appropriate environment to receive such care.

For a more in-depth discussion on home care services, including the planning and implementing of home care as well as sample care plans, please contact us for a copy of our “Guidebook for Management of Serious Claims: Home Health Care.” If you have any questions regarding home care services in workers’ compensation cases, please contact the WCRA claims services department.