

Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: December 6, 2012

513796

In the Matter of the Claim of
JOHN D. MILLER,
Respondent,
v

AFFIRMED Board's ruling that claimant's spouse is entitled to be reimbursed(paid) for serving as her husbands nursing aide.

JOYFUL FARMS et al.,
Appellants.

MEMORANDUM AND ORDER

WORKERS' COMPENSATION BOARD,
Respondent.

Calendar Date: November 13, 2012

Before: Mercure, J.P., Lahtinen, Malone Jr., Stein and
Garry, JJ.

Falge & McLean, PC, North Syracuse (John I. Hvozda of
counsel), for appellants.

Lekki, Hill, Duprey & Bhatt, PC, Canton (Genelle J. Bayer
of counsel), for John D. Miller, respondent.

Eric T. Schneiderman, Attorney General, New York City
(Christopher Ronk of counsel), for Workers' Compensation Board,
respondent.

Stein, J.

Appeal from a decision of the Workers' Compensation Board,
filed March 16, 2011, which, among other things, ruled that
claimant's spouse was entitled to payment for nursing and home
care services.

Claimant was rendered a paraplegic as the result of a 2006 workplace accident, and obtained workers' compensation benefits. His wife has provided needed care for him since his return home and, as such, claimant argued that she should be compensated pursuant to Workers' Compensation Law § 13 (a). A Workers' Compensation Law Judge directed that she be paid \$315 a week and, upon review, the Workers' Compensation Board increased the award to \$500 a week. The employer and its workers' compensation carrier (hereinafter collectively referred to as the employer) now appeal.

We affirm. The employer is responsible for claimant's medical care and treatment, including nursing and home care services "performed by claimant's spouse" (Matter of Manning v Niagara Mohawk Power Corp., 198 AD2d 561, 562 [1993]; see Workers' Compensation Law § 13 [a]; Matter of Haney v Schiavone Constr., 195 AD2d 628, 629 [1993]). Substantial evidence in the record supports the Board's finding that claimant's wife in fact provides such services in addition to tasks she previously performed around their home. Indeed, she now devotes significant portions of her time to caring for claimant including, among other things, maneuvering him in and out of bed, assisting him with his personal hygiene, obtaining and administering his medication, and exercising his legs and feet (see Matter of Leskin v Savin Constr. Co., 21 AD2d 717, 718 [1964]). The Board properly determined that she should be compensated for those services and was free to value them by relying upon the prevailing health cost data provided by claimant, particularly in view of the employer's failure to submit any evidence to call that data into question (see Matter of Haney v Schiavone Constr., 195 AD2d at 629-630; Matter of Mamone v Griege, 135 AD2d 967, 967-968 [1987]).

Mercure, J.P., Lahtinen, Malone Jr. and Garry, JJ., concur.

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ORDERED that the decision is affirmed, with costs to claimant.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court