

State of South Carolina  
Workers' Compensation Commission

DECISION AND ORDER

THE HONORABLE T. SCOTT BECK

SCWCC File No.: 2202001

Hector Lopez Vasquez

Claimant,

v.

Ox Paper Tube & Core Carolina, LLC

Employer,

and

Berkshire Hathaway Homestate Companies,

Carrier,

Defendants.

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SC Court of Appeals

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District 7

Hearing held in Richland County, South Carolina,  
on October 19, 2022

Per notice timely and properly served upon all Parties of Interest.

Appearances: Andrew W. Creech, of Elrod-Pope Law Firm, appeared on  
behalf of Claimant.

Amity S. Edmonds, of Gallivan White Boyd PA, appeared on  
behalf of Defendants.

Purpose of Hearing: To determine issues on Form 50 and Form 51

Court Reporter: Megan R. Brown, ABC Reporting Service, 247 Summerland  
Avenue, Batesburg, South Carolina 29006, 803-532-5255

Filed: May 23, 2023

## **I. APA SUBMISSIONS**

### **Claimant's APA Submissions**

APA No. 1. Reports from Atrium Health – Carolinas Medical Center, dated February 21, 2022, through March 2, 2022, consisting of pages 4 to 38;

APA No. 2. Reports from Kindred at Home, dated March 4, 2022, through May 2, 2022, consisting of pages 39 to 94;

APA No. 3. Reports from Charlotte Eye, Ear, Nose & Throat, dated March 8, 2022, through May 26, 2022, consisting of pages 95 to 132;

APA No. 4. Reports from Carolina Neurosurgery & Spine Associates, dated March 16, 2022, consisting of pages 133 to 144;

APA No. 5. Reports from Affinity Health Center, dated March 18, 2022, through May 5, 2022, consisting of pages 145 to 152;

APA No. 6. Reports from Atrium Health – Plastic & Reconstructive – CLT, dated March 23, 2022, consisting of pages 153 to 154;

APA No. 7. Reports from Sima A. Desai, MD, Carolina Rehabilitation- Charlotte, dated March 17, 2022, through July 20, 2022, consisting of pages 155 to 175;

APA No. 8. Reports from Celena Earl, MRC, CRC, with The Shae Group, LLC, dated April 28, 2022, consisting of pages 176 to 178;

APA No. 9. Reports from Atrium Health – MSK Institute Fort Mill, dated May 12, 2022, consisting of pages 179 to 185;

APA No. 10. Reports from Charlotte Surgery Center, dated May 20, 2022, consisting of pages 186 to 189;

APA No. 11. Reports from Novant Health Imaging Center, dated May 31, 2022, consisting of pages 190 to 193;

APA No. 12. Reports from Metrolina Diagnostic Center, dated June 22, 2022, consisting of pages 194 to 195;

APA No. 13. Reports from Sima Desai, MD- Carolinas Rehabilitations- Charlotte, dated July 20, 2022, consisting of pages 199 to 201;

APA No. 14. Reports from Charlotte Eye, Ear, Nose & Throat, dated July 22, 2022, consisting of pages 202 to 206;

APA No. 15. Reports from AH Musculoskeletal Ins. – Rock Hill, dated June 29, 2022, consisting of pages 210-219;

APA No. 16. Reports from Charlotte Eye, Ear, Nose, & Throat, dated August 23, 2022, consisting of pages 220 to 226.

#### **Defendants' APA Submissions**

APA No. 17. Reports from Affinity Health Center dated December 3, 2019, through August 12, 2021, consisting of pages 227 to 252;

APA No. 18. Reports from Carolina Medical Center dated February 28, 2022, through March 2, 2022, consisting of pages 253 to 288;

APA No. 19. Reports from Kindred at Home dated March 4, 2022, through June 1, 2022, consisting of pages 289 to 422;

APA No. 20. Reports from Family Dental dated April 29, 2022, consisting of page 423

APA No. 21. Report from Atrium Health Musculoskeletal Institute dated July 29, 2022, consisting of pages 424 to 425;

APA No. 20. Report Dr. Maria F. Lopes- Virella, MD, Ph.D., consisting of pages 426 to 430.

#### **Defendants' Exhibits**

Exhibit A. Transcript of Ms. Roldan-Dimas's June 9, 2022 Deposition

Exhibit B. Curriculum Vitae of Dr. Maria Lopes- Virella

- Exhibit C. July 13, 2022 Subpoena to Claimant's Attorney
- Exhibit D. July 25, 2022 E-mail Correspondence with Claimant's Attorney
- Exhibit E. Salary and Wage Information for Home Health Care Aide

## **II. STIPULATIONS**

Counsel for the claimant and counsel for the Defendants stipulated at the hearing to the following issues:

1. The purpose of the hearing was to determine issues set forth on the Forms 50 and 51.
2. Specifically, the purpose of the hearing was to determine whether Claimant was entitled to 24-hour attendant care services under the § 42-15-60(A) of the South Carolina Workers' Compensation Act for his various injuries sustained on February 18, 2022, while employed by the Defendant, Ox Paper Tube & Core Carolina, LLC. Therefore, the South Carolina Workers' Compensation Commission has jurisdiction over this case.
3. The parties agreed the claimant was entitled to attendant care; however, the parties disagreed as to the daily duration of attendant care and the required qualifications of an attendant care provider.
4. All parties received timely and proper notice of the scheduled hearing.
5. Venue for the hearing was properly set in York County.
6. The Commission file is made part of the record with the exception of self-serving declarations and unstipulated medical records.
7. The claimant's average weekly wage and corresponding compensation rate are held in abeyance at this time.
8. The APA submissions of both parties are admitted without objection.
9. Defendants and Claimant submitted Legal Memorandums in support of their positions, which were admitted as part of the Commission's record.

### III. STATEMENT OF THE CASE

This case was heard by the undersigned Commissioner on October 19, 2022, at which time the parties and their representatives appeared and evidence was received. Claimant sought benefits under the South Carolina Workers' Compensation Act for a compensable injury by accident he sustained on February 18, 2022. Specifically, Claimant initially filed pleadings seeking an award of 24-hour attendant care services; however, during the pre-hearing conference, Claimant amended their position and was seeking an award of 15-hour attendant care services daily for his various injuries, which he requested the Commission order to be provided by his fiancée, Juliana Roldan Dimas. Additionally, although Claimant initially asserted a claim for aggravation of pre-existing diabetes, at the hearing Claimant confirmed he was no longer seeking a finding of compensability for his pre-existing diabetic condition. Claimant argued attendant care benefits should be provided by his fiancé pursuant to S.C. Code Ann. § 42-15-60(A), on the basis that Claimant's authorized treating physician, Dr. Sima Desai, recommended Claimant receive attendant care and opined Claimant's fiancé was the most appropriate caregiver according to an April 6, 2022 medical questionnaire. Claimant contended that even though Claimant's fiancé was not a licensed or trained healthcare provider, since the attendant care was ordered by the authorized treating physician, it qualified as a form of medical care that has been considered necessary by the attending physician, as contemplated by Section 42-15-60(A).

While Claimant admits Defendants offered attendant care with a professional and licensed health care provider, which Claimant declined, Claimant contends Defendants should be ordered to compensate Ms. Roldan-Dimas for providing attendant care services because she is better suited to care for Claimant and preferred to a third-party provider by Claimant. Claimant relies on testimony from Dr. Desai that Claimant is familiar and comfortable with Ms. Roldan-Dimas and in her experience, brain injury patients recover better when are cared for by loved ones. Moreover, Ms.

Roldan-Dimas is Spanish-speaking and able to communicate with Claimant. Additionally, Claimant resides in a home owned by Ms. Roldan-Dimas' daughter, Andrea Angeles-Roldan, and her husband, who disapprove of a third-party in their home. Lastly, Claimant cites various cases supporting their position that the Commission is endowed with legislative authority to allow and award a reimbursement of attendant care performed by a loved one.

Defendants admit Claimant sustained a compensable injury by accident on February 18, 2022, and further acknowledge Claimant is entitled to attendant care. However, Defendants contend they retain the right to control medical care and any such attendant care should be provided by a licensed, skilled, and trained medical professional of their choosing pursuant S.C. Code Ann. § 42-15-60(A). Specifically, Defendants argue that since Claimant has not yet been deemed to have sustained permanent and total disability, the Commission must award medical treatment pursuant to S.C. Code Ann. § 42-15-60(A), which limits the treatment available to "medical, surgical, hospital, and other treatment, including medical and surgical supplies as reasonably may be necessary." It was Defendants position that because Claimant's fiancé, Ms. Roldan-Dimas, is not qualified to provide medical services or treatment pursuant to section 42-15-60(A), the Commission was without authority to Order Defendants to compensate Ms. Roldan-Dimas for providing non-professional attendant care. Ms. Roldan-Dimas is only 9<sup>th</sup> grade educated, admits she only understands a little English, is not capable of reading English, and has no medical or first aid training. Accordingly, Defendants contend she is not qualified to provide "medical, surgical, hospital, and other treatment," under the Act.

Moreover, Defendants' argued that Dr. Desai's opinions on whether Ms. Roldan-Dimas was qualified to provide attendant care for Claimant, on which Claimant so heavily relies, failed to meet the expert standards as required under *Young v. Tide Craft, Inc.*, 270 S.C. 453, 242 S.E.2d 671 (1978). Defendants contend Dr. Desai failed to take into consideration the material facts of the case. Specifically, Dr. Desai confirmed in her September 12, 2022 deposition she had no direct knowledge

of Ms. Roldan-Dimas' education, training or experience relating to providing attendant care, her ability to assist with ambulation or transfers, Claimant's diabetic condition, or Ms. Roldan-Dimas' ability to manage Claimant's diabetic condition. Likewise, Dr. Desai further acknowledged she had no knowledge of the specific care being provided to Claimant and was not aware Claimant had previously declined professional attendant care services offered by Defendants.

Lastly, Defendants rely on the expert report of Dr. Maria Lopes-Virella, M.D., Ph.D., who, after reviewing Claimant's medical records and the deposition testimony of Ms. Roldan-Dimas, opined Ms. Roldan-Dimas is not a licensed health care provider and is not qualified to provide attendant care to Claimant. That said, Dr. Lopes-Virella opined Claimant requires attendant care a licensed, skilled, and trained medical professional for activities of daily living, medication administration, and glucose monitoring for at maximum 1.5-hours a day.

Accordingly, Defendants sought an Order from the Commission finding (1) they retained the right to direct any and all medical care required for Claimant pursuant to 42-15-60(A); (2) that any necessary attendant care services required by Claimant must be provided by a licensed, skilled, medical professional; and, (3) that Claimant is limited to no more than 15 hours per day of attendant care.

#### **IV. EVIDENCE OF THE CASE**

##### **Medical Evidence**

On February 18, 2022, Claimant suffered a compensable injury by accident when a 500-lb roll of paper fell on Claimant resulting in multiple intercranial hemorrhages, facial fractures, and a traumatic brain injury. (Claimant's APA 1, p. 5; Defendants' APA 18, p. 283). Claimant received immediate emergency medical attention at Carolinas Medical Center where he received treatment for extensive skull, nasal, and facial fractures, as well as right lower extremity and ankle pain. Following a lengthy hospital stay, Claimant was discharged on March 2, 2022, with various injuries to include:

subdural hemorrhage, subarachnoid hemorrhage, Lefort II fracture, altered mental status, pre-existing diabetes, acute pain due to traumatic brain injury, dysphagia, crush injury, multiple facial fractures, and a temporal bone fracture. (Claimant's APA 1, p. 35). Upon discharge, he was recommended for home health skilled nursing, as well as home health occupational, speech, and physical therapy.

Accordingly, Defendants provided for a Registered Nurse Evaluation with Kindred Home Health on March 4, 2022, to assess Claimant's skilled nursing needs. Following a detailed evaluation, it was determined Claimant required skilled nursing three times per week due to complexities of medication and disease management. Defendants provided the recommended home health aid through Kindred Home Health who assisted Claimant from March 4, 2022 to March 29, 2022, and monitored Claimant's vital signs, assessed pain complaints, administered insulin and other medications, assisted in diabetic management, and instructed caregivers on ways to reduce fall risk. These visits lasted between approximately one hour to nearly an hour and half on average. (*See* Claimant's APA 2, Defendants' APA 19).

The claimant continued to receive treatment with various medical providers, including neurosurgeon Dr. William Stetler, Jr., and physical medicine and rehabilitation specialist, Dr. Sima Desai. Dr. Stetler evaluated the claimant on March 16, 2022, at which time he diagnosed Claimant was resolved traumatic subarachnoid and subdural hemorrhage, and cribiform plate fracture without evidence a CSF leak. With respect to his traumatic brain injury, Dr. Stetler opined he required no further surgical intervention and had thankfully made a good recovery. Accordingly, Dr. Stetler opined he required no restrictions from his perspective, although he was not able to return to work from all of his other injuries. (Claimant's APA, pp. 139-144).

Claimant presented for his first post-operative evaluation with Dr. Desai on March 17, 2022. Dr. Desai evaluated his various injuries and recommended multiple referrals to other specialists to treat and evaluate his injuries. Specifically, she recommended a plastic surgery evaluation for his

facial fractures, orthopaedic evaluation for his right later proximal tibial cortical defect, neuro-ophthalmological referral, vision therapy, and therapies consisting of occupational therapy, physical therapy, speech therapy, and audiology. Dr. Desai did not, however, make any recommendation for home health attendant care. (Claimant's APA, pp. 156-160).

Prior to evaluating Claimant again and despite making no recommendation for home health attendant care when she saw Claimant on March 16, 2022, subsequently, on April 6, 2022, Dr. Desai completed a medical questionnaire at the request of Claimant. Specifically, Dr. Desai checked "yes" to questions asking whether Claimant required 24-hour attendant care, 7 days per week, and whether Claimant's "significant other, Ms. Julianna Roldan-Dimas, is capable of providing the required 24-hour attendant care" to Claimant. (Claimant's APA, pp. 161-162). Subsequently, on May 12, 2022, Dr. Desai completed a letter at the request of Ms. Roldan-Dimas, who was seeking an extension of her FMLA from work, indicating Claimant's "wife will be required to care for him at home as his caregiver 24 hours a day/7 days per week."

Given Dr. Desai's multiple referrals, Defendants provided Claimant with various specialists' evaluations, including plastic surgery, ENT, and physiatry. (Claimant's APA, pp. 112-113, 153-175). Defendants also provided Claimant with dental care at Family Dental of Rock Hill for injuries to his teeth, as well as evaluation with an oral and maxillofacial surgeon for fact pain. (Claimant's APA, pp. 203-206; Defendants' APA, p. 423).

Defendants also provided treatment for claimant's right knee injury with Dr. James Rentz at Atrium Health Musculoskeletal Institute in Rock Hill. The claimant underwent a right knee MRI on June 22, 2022, which revealed a subacute fracture of the posterior lateral tibial plateau, as well as degenerative free edge tear of the poster horn and body of the medial meniscus. (Claimant's APA, p. 195). On June 29, 2022, Claimant presented to Dr. Rentz complaining of right knee pain, as well as feeling as if his knee will give out particularly if he twists or turns with weightbearing. While he

reported physical therapy had helped to some extent, he continued to experience pain. Dr. Rentz diagnosed him with a medial meniscus tear of the right knee and recommended arthroscopic surgery consisting of partial medial meniscectomy. He placed the claimant on work restrictions consisting of sit-down work only until after surgery, at which point his restrictions would be reassessed. (Claimant's APA, pp. 211-215).

At the time of the hearing, Claimant was continuing to treat with various specialists at Charlotte Ear Note & Throat Associates for right corneal ulceration, facial paralysis, dysphagia, nasal valve collapse, and closed fracture of the nasal bone, and none of the treating physicians have opined he has reached maximum medical improvement. (Claimant's APA, pp. 95-132, 202-206, 220-226). The most recent medical report submitted into evidence was from Claimant's evaluation by Dr. Cuite with Charlotte ENT Associates, on August 23, 2022, who continued to recommend further treatment and care for facial and right eye trauma. (Claimant's APA, pp. 220-226).

Defendants' obtained medical questionnaire and records review from Dr. Maria Lopez-Virella, a Board-Certified Physical in Pathology and Lipidology, as well as a Professor at the Medical University of South Carolina. Dr. Lopez-Virella reviewed Claimant's pre-accident and post-accident medical records, as well as the questionnaires completed by Dr. Desia and the June 9, 2022 deposition testimony of Julianna Roldan-Dimas. Ultimately, Dr. Lopez-Virella opined Claimant did not require 24/7 attendant care, although she believed he needed limited attendant care to assist with activities of daily living and taking medications. She felt he required attendant care three (3) times daily for approximately 30 minutes each visit until he was able to perform those tasks on his own, and specifically opined such attendant care should be provided by a "licenses and trained skilled home health care aide or nurse to ensure the best possible recovery from Claimant's February 18, 2022 work accident." Moreover, Dr. Lopez-Virella opined that based upon her review of Ms. Roldan-Dimas' deposition testimony pertaining to her education and qualifications that she was not qualified

to provide medical, surgical, hospital, and/or other treatment that may be necessary as a result of Claimant's work accident. (Defendants' APA, pp. 426-430).

### **Testimony of Julianna Roldan-Dimas**

Ms. Julianna Roldan-Dimas was deposed prior to the hearing on June 9, 2022, and also testified at the hearing concerning Claimant's condition and her qualifications to provide the necessary attendant care. Claimant and Ms. Roldan-Dimas live together at Ms. Roldan-Dimas' daughter's residence. (Roldan-Dimas Depo. p. 7:18-8:9). Ms. Roldan-Dimas testified her daughter and her husband own the home, and she and Claimant, along with her son, and two young granddaughters ages five and eight all live at the residence together. Ms. Roldan-Dimas testified it's a 4 bedroom house and that 7 people live there total. (Hr. Tr. 17) She and Claimant have been together for 12-13 years; however, she confirmed they are not legally married. (Roldan-Dimas Depo. p. 13:17-21).

Ms. Roldan-Dimas is originally from Mexico and can only speak or understand "very little" English. (Roldan-Dimas Depo. p. 9:7-9,12:13-19; Hearing Tr. 28:9-18). She also confirmed in her deposition that she completed the 9<sup>th</sup> grade in Mexico but is unable to read any English. (Roldan-Dimas Depo. p. 13:5-16). Additionally, at the hearing, she confirmed that if she were needed to complete daily logs in English of the claimant's daily progress and details of the attendant care she was providing, she would be unable to do so. (Hearing Tr. 28:9-18).

At the time of Claimant's accident, Ms. Roldan-Dimas was working for Black and Decker, where she had worked for approximately 8 years. (Roldan-Dimas Depo. p. 16:10; Hearing Tr. 18:2-4). She worked on an assembly line making drills, working Monday through Friday from 7:00 AM until 3:30 PM. (Roldan-Dimas Depo. p. 17:1-18; Hearing Tr. 28:19-24). She earned \$16.00 per hour, for a total of approximately \$640.00 per week, or \$33,000.00 annually. (Hearing Tr. 29:4-10). After the accident, Ms. Roldan-Dimas went out on FMLA to care for Claimant. Once her FMLA expired,

she was forced to resign. Prior to working at Black and Decker, she worked at a different factory, American Eagle, in York, South Carolina, cleaning car rims. (Roldan-Dimas Depo. p. 18:2-18). She confirmed at the hearing that she has no other job or work experience, she has never worked in a medical or rehabilitation setting, and she has no certifications or on-the-job training. (Hearing Tr. 29:15-25). Ms. Roldan-Dimas has never been trained in first aid, fall management, or handling wound care. (Roldan-Dimas Depo. p. 19:12-21:1). At the hospital, the nurse instructed her on how to administer Claimant's daily insulin and check his insulin three times per day. (Roldan-Dimas Depo. p. 20:4-24). Initially, she logged the claimant's daily sugar readings in writing until they obtained a blood sugar monitoring machine. (Roldan-Dimas Depo. p. 22:23-23:10). Additionally, Ms. Roldan-Dimas testified that initially upon discharge from the hospital home health workers would come to the house for 45 minutes to 1 hour a day twice a week. She testified none of these workers spoke Spanish and that she had to make sure her daughter was present so she could serve as a translator. (Hr. Tr. 19: 15-24)

At the time of her June 9, 2022 deposition, Claimant was unable to take a bath, he continued to experience dizziness, he had to walk slowly, and he became fatigued easily. (Roldan-Dimas Depo. p. 27:4-14). As of her deposition, Ms. Roldan-Dimas assisted Claimant with bathing, she also cooked for him, pureed his foods, transports him to medical appointments, and would constantly check on him when he was using the restroom (albeit alone) to make sure he was doing alright. (Roldan-Dimas Depo. p. 29:8-17, 30:1-32:3). However, as of the time of the hearing, Ms. Roldan-Dimas confirmed the claimant was now able to change his own clothes, bathe himself, and dress himself, although she still had to "supervise" him in case he were to get dizzy. (Hearing Tr. 22:10-18).

However, Ms. Roldan-Dimas confirmed at the hearing she has not been trained in the duties of a home health care aid, she has no training in medical billing, she has no professional liability insurance, she has not been trained in fall prevention, she has no training in handling patients with

vestibular deficits, and she has no first aid training. (Hearing Tr. 31:3-32:5). Additionally, she confirmed that Defendants' have provided Claimant with a nurse case manager who speaks Spanish and coordinates all of Claimant's medical appointments. (Hearing Tr. 31:13-7). Ms. Roldan-Dimas confirmed she and Claimant had been offered 24/7 attendant care by Defendants upon his discharge from the hospital, but they declined to accept the treatment because Claimant was more comfortable "if I could be with him." (Hearing Tr. 30:8-11). Ms. Roldan-Dimas also testified that she discussed the offer of attendant care by a third-party provider with her daughter who owns the home, and that her daughter was not comfortable with that and would not allow it. (Hearing Tr. 25). Ms. Roldan-Dimas again emphasized that none of the prior home health workers spoke Spanish. (Hearing Tr. 26:10-15)

Likewise, she testified at the hearing that they would not accept transportation to/from Claimant's medical appointments provided by Defendants because she would rather do it herself. (Hearing Tr. 32:6-12). Ms. Roldan-Dimas testified she wanted the Commission to order Defendants to pay her approximately \$1,500.00 per week, which equates to more than \$78,000.00 per year, for providing care to Claimant, which is more than double what she earned prior to Claimant's accident while working for Black & Decker. (Hearing Tr. 37:4-16). Ultimately, Ms. Roldan-Dimas confirmed that despite Defendants' offering to provide professional in-home attendant care, consistent with recommendations of the authorized treating physician, she and Claimant declined to accept such treatment because they preferred she quit her job and stay home with him. (Hearing Tr. 37:17-38:19).

#### **Testimony of Andrea Angeles-Roldan**

Ms. Andrea Angeles-Roldan is 25 years old and is married to Juan Gonzalezs. (Hearing Tr. 42: 1-4). Mr. Gonzales works at CK construction and Andrea works part-time as a waitress at Charanda's Mexican Restaurant. (Hearing Tr. 42: 7-14). Andrea used to work full-time in the afternoons, and her mother would watch her children, but since the accident she has gone part-time

so she can watch her children while her mother takes care of Hector. (Hearing Tr. 42: 15-25). Andrea has two children ages eight and five that live with her and her husband. Additionally, Andrea's mother, brother, and Hector whom she considers her father also live in the home. The home is owned by Andrea and her husband Juan. (Hearing Tr. 43).

Andrea testified that her mother, Julianna, takes care of Hector every day but that they all chipped in when needed. After the accident Hector became quite depressed, especially when her young daughters were scared of him because of his deformities, but she believes having the family around him a lot has helped him improve. (Hearing Tr. 44 and 45).

Andrea testified that her mother talked to her about having a health aide come and stay at their home and help take care of Hector 24/7, but Andrea and her husband did not want a stranger in their home 24 hours a day, 7 days a week. Andrea further testified that she had been sexually abused as a child and is very protective over her daughters. Andrea does not like them being around people she does not know. (Hearing Tr: 45: 4-19). Andrea also testified her husband did not want a stranger staying in their home at all times.

Andrea testified that having someone in their home all the time would have completely changed the atmosphere and dynamic of their home. Andrea testified even when the home health nurses would initially come over for 45 minutes to 1 hour a couple times a week, it was enough to disrupt their normal family atmosphere. (Hearing Tr. 46:10-25; 47: 1-9).

On cross-examination Andrea testified that her kids are in school from 7:00 a.m. to 2:15 p.m. and that she watches them once they get out because her mother is focused on caring for Hector. (Hearing Tr. 47: 16-25; 48: 1-21)

#### **Testimony of Dr. Sima Desai**

On September 12, 2022, Defendants' deposed Dr. Sima Desai. Dr. Desai confirmed in her deposition that prior to being deposed, she discussed her testimony and the conclusions as to what

her testimony would be with Claimant's attorney, stating, "We concluded that his wife is able to provide the 24/7 supervision that he currently needs, and that I think she is the most appropriate caregiver for him given that she does provide all his current activities of daily living . . . as well, as providing him with mobility help." (Desai Depo. p. 12:20-13:3). When she initially saw Claimant for the first time on March 17, 2022, she did not address any recommendations for 24/7 attendant care. (Desai Depo. p. 19:21-20:9). Despite this, she acknowledged she completed the April 6, 2022 medical questionnaire at the request of Claimant's attorney, wherein she opined Ms. Roldan-Dimas was appropriate to provide 24/7 attendant care that she believe Claimant needed. She went on to testify she typically recommends brain injury patients have someone at home with them 24/7 anytime they have a head injury. (Desai Depo. p. 23:8-22). She did not initially make a referral for attendant care because it was her understanding Ms. Roldan-Dimas was providing care. (Desai Depo. p. 32:3-8).

Dr. Desai testified she believed Claimant and Ms. Roldan-Dimas to be married. (Desai Depo. p. 26:2-5). When asked about her knowledge of Ms. Roldan-Dimas's training, experience, and education for purposes of providing Claimant with necessary attendant care, she confirmed she had not had any specific discussions with Ms. Roldan-Dimas regarding this; rather, she based her assessment that Ms. Roldan-Dimas was appropriate to provide attendant care on her experience seeing Ms. Roldan-Dimas at medical appointments and watching her engage with Claimant. (Desai Depo. p. 26:6-22). To her knowledge, none of the home PT, home OT, or home speech professionals brought any concerns to Dr. Desai regarding Ms. Roldan-Dimas' level of care being provided to Claimant. (Desai Depo. p. 27:19-28:4). Dr. Desai confirmed she was not aware Defendants had offered Claimant a professional home health aide to provide the recommended attendant care, which Claimant had declined to accept. (Desai Depo. p. 32:24-33:3)

With regard to the extent of attendant care required by Claimant, Dr. Desai agreed that during period of time when Claimant sleeps, which is typically between 9:00 PM and 7:00 AM, he does not require attendant care. (Desai Depo. p. 37:4-38:1). She also agreed Ms. Roldan Dimas was not providing supervision to Claimant while she was sleeping, typically during the same hours as Claimant. (Desai Depo. p. 38:2-5). Likewise, she testified that no one individual was capable of providing 24/7 supervision as they “have to shower, they have to sleep...” (Desai Depo. p. 39:17-22). Ultimately, Dr. Desai opined that as of the time of her deposition, Claimant required attendant care during his waking hours, from 6:00 AM to 9:00 PM. (Desai Depo. p. 39:23-40:6; 55:12-19).

Dr. Desai testified that she feels “in brain injury patients, we find that loved ones do provide great care, because they’re connected through a bond with their significant other, and I think that’s a big thing that drives brain injury patients and their care for a loved ones [sic] is that comfortability with someone they know is able to provide the competent care he needs [sic] And so I think at this point, Juliana is competent to continue to provide that care that he needs.” (Desai Depo. p. 39:7-16).

Dr. Desai confirmed that as of the time of her deposition, Claimant mainly required attendant care to ensure he does not fall, testifying that he remained a high fall risk and anytime someone remains a fall risk, it is ideal to have someone at home with them until the fall risk declines. (Desai Depo. p. 54:18-55:4). However, she also confirmed he continues to make gains and at that point, he was only requiring supervision with activities of daily living. (Desai Depo. p. 33:16-34:2). Dr. Desai opined, “He is improving. He continues to make gains in physical therapy, occupational therapy, and speech therapy, which is very encouraging. Given the severity of his injury, he continues to make gains. So that’s very promising and encouraging for me.” (Desai Depo. p. 43:24-44:7). She could not, however, opine as to when he would reach maximum medical improvement. (Desai Depo. p. 44:18-45:17).

#### **V. FINDINGS OF FACT**

IT IS FOUND AS A FACT:

1. On February 18, 2022, a 500 pound roll of paper fell on Claimant resulting in multiple intercranial hemorrhages, multiple facial fractures, and traumatic brain injury. (Claimant's APA 1, p. 5; Defendants' APA 18, p. 283).
2. Claimant filed a Form 50 Hearing Request on April 26, 2022, seeking an award of 24-hour attendant care services for his various injuries. (Commission File). The parties agreed during the Hearing that Claimant was entitled to attendant care; however, they disagreed as to the amount and the provider's qualifications. (Hr. Tr. p. 13:4-13).
3. Claimant received immediate emergency care at Carolinas Medical Center and was admitted to the hospital until March 2, 2022. He received surgical treatment in the form of a closed nasal reduction and placement of doyle splints while hospitalized. (Claimant's APA 1, p. 16, 22-25, 32-34).
4. Upon discharge from the hospital, Claimant was diagnosed with serious injuries, including, subdural hemorrhage, subarachnoid hemorrhage, Lefort II fracture, altered mental status, pre-existing diabetes, acute pain due to trauma traumatic brain injury, dysphagia, crush injury, multiple facial fractures, and temporal bone fracture, (Claimant's APA 1, p. 35).
5. To monitor his progress after discharge, Defendants provided a professional, licensed home health aide to assist Claimant from approximately March 4, 2022 to March 29, 2022. The aide visited a few times per week and monitored Claimant's vital signs, assessed pain complaints, and instructed his caregivers on methods to reduce fall risks and methods to administer insulin and other medications. These visits lasted between one hour to nearly an hour and a half on average. *See generally* (Claimant's APA 2).

6. Claimant also underwent a neurosurgical evaluation by Dr. Stetler with Carolina Neurosurgery and Spine Associates on March 16, 2022. Dr. Stetler evaluated Claimant and determined that he was not a neurosurgical candidate. *See generally* (Claimant's APA 4).
7. Defendants provided multiple evaluations with physicians in various specialties including plastic surgery, oral maxillofacial, ENT, and physiatry. *See generally* (Claimant's APA 5-6). The medical records also reference referrals for dental care. *See generally* (Defendants' APA 20, p. 423).
8. As of the time of the hearing, Claimant continued to receives treatment with various specialists at Charlotte Eye Ear Nose & Throat Associates. The last treatment note submitted into evidence, dated August 23, 2022, indicates that he has not been released at maximum medical improvement by any of the physicians at that practice. *See generally* (Claimant's APA 3, 16, p. 221-226).
9. On April 6, 2022, Claimant's authorized treating physician with Carolina Rehabilitation, Dr. Desai, completed a physician questionnaire at the request of Claimant's Attorney, in which she opined to a reasonable degree of medical certainty, that Claimant required 24-hour attendant care 7 days per week and that his significant other, Ms. Roldan-Dimas "is capable of providing the required 24-hour attendant care." On May 4, 2022, Dr. Desai also completed a letter wherein she indicated Claimant continued to require 24/7 attendant care that was being provided by his "wife." (Claimant's APA 7, p. 161; *See also* Claimant's APA 7, p. 171).
10. Dr. Desai's statements in her questionnaire were consistent with her September, 12, 2022 deposition testimony. Specifically, she testified: "...his wife is able to provide the 24/7 supervision that he currently needs, and that I think she is the most appropriate caregiver for him given that she does provide all his current activities of daily living. . .as well as providing him with mobility help." (Desai Depo. p. 12:22-25,13:1-3).

11. Dr. Desai based her assessment on her experience seeing Ms. Roldan-Dimas at medical appointments and watching her engage with Claimant. (Desai Depo. p. 26:12-22). Claimant's providers for home PT, home OT, and home speech did not communicate any concerns to Dr. Deasi regarding Ms. Roldan-Dimas' level of care. (Desai. Depo. p. 27:19-28:1-3).
12. Dr. Desai testified: "I feel in brain injury patients, we find that loved ones do provide great care, because they're connected through a bond with their significant other, and I think that's a big thing that drives brain injury patients and their care for a loved ones [sic] is that comfortability with someone they know is able to provide the competent care he needs [sic] And so I think at this point, Juliana is competent to continue to provide that care that he needs. (Desai Depo. p. 39:7-16, 41:1-4).
13. Dr. Desai typically recommends that someone stay home 24/7 with a patient who has sustained a brain injury. (Desai Depo. p. 23:12-22). However, she agreed that Ms. Roldan-Dimas was not providing supervision to Claimant while she was sleeping each night. (Desai Depo. p. 38, ln. 2-5).
14. Defendants also obtained a questionnaire from Dr. Maria Lopez-Virella, a board-certified physician in pathology and lipidology and a Professor at the Medical University of South Carolina. After a review of Ms. Roldan-Dimas' testimony and the pre-accident and post-accident medical records, she also opined that Claimant required attendant care to assist with activities of daily living and medication management. However, according to Dr. Lopez-Virella, Claimant only required approximately 90 minutes, or 30-minute sessions three times per day. (Defendants' APA, pp. 426-430).
15. In Dr. Lopez-Virella's opinion, any necessary attendant care should be provided by a licensed and trained skilled home health care aide or nurse to ensure Claimant's best possible recovery. She also opined, based on her experience and review of the medical evidence and Ms. Roldan-

- Dimas' deposition testimony, Ms. Roldan-Dimas was not qualified to provide medical, surgical, hospital, and/or other treatment required by Claimant. (Defendants' APA 22, p. 429).
16. According to Dr. Desai's testimony, she initially did not make an attendant care referral because it was her understanding Ms. Roldan-Dimas was providing Claimant's care. (Desai Depo. p. 19:21-20:3, 32:3-8). Dr. Desai indicates in letters dated May 12, 2022 and July 20, 2022 that Claimant's severe injuries required Ms. Roldan-Dimas to care for him at home 24 hours per day 7 days per week. (Claimant's APA 7, p. 171; Claimant's APA 13, p. 200).
  17. At the time of her deposition, Dr. Desai opined that Claimant required attendant care during waking hours, from 6:00 AM to 9:00 PM. (Desai Depo. p. 39:23-40:6; 55:12-19).
  18. In addition to Claimant's facial injuries, he also injured his right knee in the accident. MRI results indicated that Claimant sustained a fracture of the posterior lateral tibial plateau. (Claimant's APA 12, p. 195). On June 29, 2022, Claimant presented to Dr. James Rentz with AH Musculoskeletal Institute in Rock Hill complaining of "pain in the knee and also episodes of the knee wanting to give out especially if he twists or turns with weightbearing." (Claimant's APA 15, p. 211).
  19. According to Dr. James Rentz's treatment note, dated June 29, 2022, Claimant sustained a medial meniscus tear of the right knee. Dr. Rentz recommended a right knee arthroscopy with partial medical meniscectomy. (Claimant's APA 15, p. 214).
  21. Ms. Roldan-Dimas, Claimant's significant other, testified during her deposition that both she and Claimant reside at her daughter's residence. (Roldan-Dimas Depo. p. 7:18-8:9).
  22. Ms. Roldan-Dimas and Claimant have been together for 13 years, but they are not married. (Roldan-Dimas Depo. p. 13:17-21).
  23. Ms. Roldan-Dimas testified during her deposition that she completed the ninth grade in Mexico but is unable to read English. (Roldan-Dimas Depo. p. 9:7-9, 12:13-19; Hearing Tr.

- 28:9-18). Additionally, at the hearing, she confirmed that if she were needed to complete daily logs in English of the claimant's daily progress and details of the attendant care she was providing, she would be unable to do so. (Hearing Tr. 28:9-18).
24. At the time of Claimant's accident, Ms. Roldan-Dimas worked full-time for Black and Decker on the assembly line from 7:00 AM to 3:30 PM, Monday through Friday. She was paid \$16.00/hour. (Roldan-Dimas Depo. p. 16:10, 17:1-18; Hearing Tr. 18:2-4, 28:19-24).
  25. Prior to her employment at Black and Decker, Ms. Roldan-Dimas cleaned car rims for American Eagle in York, South Carolina. (Roldan-Dimas Depo. p. 18:2-18).
  26. Ms. Roldan-Dimas has not received any on-the-job trainings or certifications and is not trained in first aid. However, the nurse at the hospital trained her on administering Claimant's insulin shots. She kept a written record of his blood glucose readings until Claimant was given a patch and a machine that records them digitally. (Hearing Tr. 29:15-25; Roldan-Dimas Depo. p. 19:12-21:1, 22:23-23:10).
  27. At the time of her June 9, 2022 deposition, Ms. Roldan-Dimas testified Claimant was unable to bathe himself, feels dizzy when standing up, is only able to walk at a slow pace, and becomes fatigued easily. (Roldan-Dimas Depo. p. 27:4-14).
  28. At the time of her deposition, she cooks, cleans, administers Claimant's medicines, purees his food, assists him with dressing himself, transports him to his medical appointments, and would constantly check on him when he was using the restroom (albeit alone) to make sure he was doing alright. (Roldan-Dimas Depo. p. 29:8-17, 30:1-32:3).
  29. Though Ms. Roldan-Dimas has assisted Claimant with ADLs, Dr. Desai testified that Claimant's condition was improving. "Given the severity of his injury, he continues to make gains." (Desai Depo. p. 44:3-7). She was unable to opine as to when he would reach maximum medical improvement for his brain injury. (Desai Depo. p. 44:18-45:17).

30. Dr. Desai testified that despite his gains in recovery, Claimant remains a high fall risk. It would be ideal to have someone with him at home until his fall risk drops. Accordingly, Dr. Desai recommended at-home attendant care to make sure that he does not fall at home. (Desai Depo. p. 54:18-25).
31. At the time of the Hearing, Ms. Roldan-Dimas testified that Claimant could change his clothes and bathe on his own, but he still required “supervision” in case he suffers from a vertigo episode. (Hearing Tr. p. 22:10-18).
32. According to Ms. Roldan-Dimas, Claimant was offered home health services by Defendants upon his release from the hospital, but those services were declined by her and Claimant. Claimant told her that he felt more comfortable having her assist him at home. (Hearing Tr. 30:8-11).
33. Prior to the hearing date, the parties entered into a Consent Order whereby Defendants agreed on a doubtful and disputed basis to pay Claimant \$46,000.00 for attendant care benefits from March 3, 2022 through October 19, 2022. (Commission File).

#### **VI. CONCLUSIONS OF LAW**

Accordingly, as provided under the South Carolina Code of Laws, § 42-17-40, and § 1-23-320, it is the determination of this Commissioner that:

1. Under S.C. Code § 42-3-180, this Commissioner has jurisdiction over the parties to hear the issues in dispute.
2. Under S.C. Code § 42-1-130, the claimant is a covered employee.
3. Under S.C. Code § 42-1-140, the employer was a covered employer.
4. Under S.C. Code § 42-1-150, there was an employee/employer relationship between the parties.

5. Under S.C. Code § 42-17-20, venue in York, South Carolina is proper and agreed to by the parties.

6. Under S.C. Code § 1-23-320(b), and Reg. 67-607, notice of the hearing was timely and properly served upon all parties of interest.

7. Under S.C. Code § 42-1-160, the claimant sustained a compensable injury by accident on February 18, 2022, when a 500-lb roll of paper fell on Claimant resulting in multiple intercranial hemorrhages, facial fractures, and traumatic brain injury.

8. Claimant is entitled to an award of attendant care, pursuant to S.C. Code Ann. § 42-15-60(A)(2007, as amended). However, such care must be provided by a licensed professional. This conclusion is consistent with the plain language of S.C. Code Ann. 42-15-60(A).

9. Pursuant to section 42-15-60(A), “The employer shall provide medical, surgical, hospital, and other treatment, including medical and surgical supplies as reasonably may be required...for an additional time as in the judgment of the commission will tend to lessen the period of disability as evidenced by expert medical evidence stated to a reasonable degree of medical certainty.” S.C. Code Ann. § 42-15-60(A)(2007, as amended).

10. Unlike the medical treatment statutes in some other states, South Carolina limits the treatment available to a Claimant prior to a finding of permanent and total disability to “medical, surgical, hospital, and other treatment,” which is governed by S.C. Code Ann. § 42-15-60(A)(2007, as amended). After a finding of permanent and total disability, “reasonable and necessary nursing services, medicines, prosthetic devices, sick travel, medical, hospital, and other treatment or care shall be paid during the life of the injured employee.” S.C. Code Ann. 42-15-60(C)(2007, as amended). This provision was added by legislative amendment in 1980.

11. In 2007, the Legislature again amended S.C. Code Ann. 42-15-60. However, that amendment added the requirement to subsection (A) that the medical treatment tend to lessen the

period of disability as shown by expert medical evidence stated to a reasonable degree of medical certainty. Though the Legislature twice had the opportunity, once in 1980 and once in 2007, to add “reasonable and necessary nursing services” or “other treatment or care” to subsection (A), it declined.

12. “What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, courts are bound to give effect to the expressed intent of the legislature.” Hodges v. Rainey, 341 S.C. 79, 85 (2000) (internal citations omitted).

13. The undersigned appreciates the difficulty and hardship that Claimant and his family have experienced because of this accident. As reflected in the medical records, Claimant sustained near catastrophic injuries that have resulted in multiple surgeries and many months of continuing rehabilitation. According to Dr. Desai, Ms. Roldan-Dimas is qualified and in the best position to care for her partner. However, the commission is constrained to award benefits as permitted by statute. If the legislature intended for unskilled nursing services to be awarded prior to a finding of permanent and total disability, it would have expressly included such a benefit in the enumerated list under subsection (A) either in 1980 when it added subsection (C) or in 2007 when it amended subsection (A). See Hodges, 341 S.C. at 85 (“‘[E]xpressio unius est exclusio alterius’ or ‘inclusio unius est exclusio alterius’ holds that ‘to express or include one thing implies the exclusion of another, or of the alternative.’”). There is no dispute that Claimant has not yet reached maximum medical improvement. Therefore, a finding of permanent and total disability and an award of benefits pursuant to S.C. Code Ann. § 42-15-60(C) is premature.

14. That Dr. Desai, Claimant’s authorized treating physician, has recommended unskilled attendant care does not disturb this conclusion. The Commission may only award benefits pursuant to its statutory authority regardless of whether the care or modalities are recommended by a physician.

15. Claimant cites various cases as support for the position that the Commission is endowed with the legislative authority to award such a benefit. However, those cases are distinguishable from the facts of this claim. In Harrison v. S.C. Wind & Hail, the Court of Appeals, in an unpublished decision, held that modifications to Claimant's second home were "reasonable and necessary medical costs" under S.C. Code Ann. 42-15-60(A) and reached a similar result in Thompson v. S.C. Steel Erectors. Harrison v. S.C. Wind & Hail, Op. No. 2021-UP-117; Thompson v. S.C. Steel Erectors, 396 S.C. 606 (1997). The dispute in this claim involves an award of unskilled attendant care. There is no dispute that attendant care provided by a licensed professional may be awarded under subsection (A). The dispute involves the attendant's qualifications and the propriety of allowing such care prior to maximum medical improvement and a finding of permanent and total disability. These two decisions are inapposite.

16. Likewise, Pressley v. REA Construction Co. is of little support. In that Case, the Court of Appeals awarded unskilled attendant care pursuant to S.C. Code Ann. § 42-15-60(C), an award entirely appropriate under the circumstances pursuant to the terms of that specific subsection which permits an award of "reasonable and necessary nursing services" or "other treatment or care" where claimants have been found to be permanently and totally disabled.

17. The North Carolina decisions Claimant cites are also of little assistance. One decision awards reimbursement for unskilled attendant care as "reasonable and necessary nursing services. . . or other treatment or care" for a claimant who is permanently and totally disabled. *See* Goodwin v. Swift & Co., 270 N.C. 690 (1967). The other decision awards attendant care prior to a finding that a claimant is permanently and totally disabled consistent with the subsequent 2011 amendments to North Carolina's Workers' Compensation Act. Those amendments included "attendant care services prescribed by a health care provider" in the definition of "medical compensation." N.C.G.S.A. § 97-2 (2011, as amended); N.G.S.A. § 97-25(a) (2017, as amended); *See also* London v. Snack Time

Catering, 136 N.C. App. 473 (2000). The language of South Carolina's medical treatment statute is notably dissimilar.

18. Claimant cites a prior Appellate Panel Decision, McDaniel v. Hans Lenger, LLC, 2011 WL 590089 (January 25, 2011). In this case, the Appellate Panel awarded back-due benefits for attendant care beginning on the date of the filing of the Form 50 (September 24, 2009), without a specific finding that Claimant was permanently and totally disabled. The Circuit Court reversed and awarded back due benefits for attendant care pursuant to § 42-15-60(C) beginning on the date of the injury because the statute awards the benefit "for the life of the injured employee." The benefits were awarded pursuant to subsection (C), not (A). Moreover, even if that decision was not based on subsection (C) which contains entirely different language than subsection (A) which is at issue in this case, prior Appellate Panel decisions are not binding authority.

19. Arguably, the phrase "or other treatment" is not defined. However, finding that a claimant's unlicensed or non-professional spouse, or significant other, can render "treatment" creates a liability conundrum.

20. Awarding unskilled attendant care pursuant to S.C. Code Ann. 42-15-60(A) complicates liability for subsequent injury if Claimant is hurt while receiving the unskilled care, could create an employee/employer relationship between Ms. Roldan-Dimas and Defendant-employer where none is intended, and creates an accountability gap in the monitoring of Claimant's progress. Importantly, in this instance, Claimant and Ms. Roldan-Dimas are not married and she is unable to speak or read any English, thereby further complicating any ability for her to provide proper documentation or monitoring of Claimant's medical care.

21. Pursuant to S.C. Code Ann. § 42-15-60(A), Claimant is entitled to up to 15 hours daily of licensed, professional in-home attendant care with a skilled home health care aide or nurse of Defendants' choosing, and Defendants are required to pay for and provide the same as of the

effective date of this Order. Defendants are not responsible to reimburse Ms. Roldan-Dimas for the costs of any attendant care provided from October 19, 2022, through the effective date of this Order, or continuing.

22. Dr. Desai opined that Claimant's condition is improving but he requires attendant care from 6:00am to 9:00pm (15 hours) daily. Conversely, Dr. Lopez- Virella opined that Claimant needed approximately an hour and half of supervision daily. In the months following the accident, Claimant required more intensive personal care and assistance with ADLs. However, at the time of the Hearing, Ms. Roldan-Dimas testified that Claimant could change his clothes and bathe on his own, but he still requires "supervision" in case he suffers from a vertigo episode. She has forgone gainful full-time employment at the rate of \$16.00 per hour for 8 hours per day to care for Claimant at her own choosing, considering there is no dispute Defendants have consistently offered, yet Claimant has declined to accept, professional attendant care services since Claimant was discharged from the hospital. Dr. Desai agreed that Ms. Roldan-Dimas is not providing care during the hours that she is asleep. It is unreasonable to find that Ms. Roldan-Dimas could work the equivalent of a double shift 7 days per week for the foreseeable future.

23. The undersigned gives less weight to Dr. Lopez-Virella's medical opinion as to the duration of required attendant care, as she was not Claimant's authorized treating physician, has not physically evaluated claimant, and would be less familiar with his condition. However, the undersigned agrees with Dr. Lopez-Virella's opinion that any ordered attendant care services must be provided by a licensed and trained skilled home health care aide or nurse to ensure Claimant's best possible recovery.

#### **ORDER**

**NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED** that Claimant has met the legal requisite burden of proof establishing a compensable injury by accident on February

18, 2022 and has established he is entitled to attendant care provided by a licensed and skilled professional with a provider of Defendants' choosing, pursuant to S.C. Code Ann. § 42-15-60(A).

**THEREFORE, IT IS ORDERED** that Claimant is entitled to 15 hours daily of licensed, professional in-home attendant care per day and Defendants are required to pay for and provide the same as of the effective date of this Order, provided such treatment is accepted by Claimant.

**AND SO IT IS ORDERED.**

May 23, 2023  
Columbia, SC

  
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T. Scott Beck, Commissioner

#### CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

May 23, 2023

By: Shawnee DeBruhl, Administrative Assistant to Commissioner Beck