

State of South Carolina
Workers' Compensation Commission

APPELLATE PANEL DECISION AND ORDER

COMMISSION PANEL: Commissioner Aisha Taylor, Chair; Commissioner R. Michael Campbell II; and Commissioner Cynthia C. Dooley.

SCWCC File No.: 2202001

Hector Lopez-Vasquez,

Claimant,

v.

Ox Paper Tube & Core Carolina, LLC,

Employer,

and

Berkshire Hathaway Homestate Insurance Company,

Carrier,

Defendants.

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SC Court of Appeals

AFFIRMED

Hearing held via Zoom
on August 28, 2023

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/Appellant.

Amity S. Edmonds, of Gallivan White Boyd, P.A., appeared on behalf of Defendants/Respondents.

Court Reporter: Amber Scarborough, Creel Court Reporting, Inc., 1230 Richland Street, Columbia, SC, 29201, (803) 252-3443, contact@creelreporting.com

Filed: February 5, 2024

I. STATEMENT OF THE CASE

This case was heard by the Commissioner T. Scott Beck on October 19, 2022, in Columbia, South Carolina. This is an appeal from the Single Commissioner's May 23, 2023 Order, which denied the claimant's request for Defendants to be ordered to compensate his fiancé for providing non-professional attendant care under S.C. Code Ann. § 42-15-60. Specifically, the Single Commissioner found that while the claimant was entitled to an award of attendant care pursuant to S.C. Code Ann. § 42-15-60(A)(2007, as amended), such care must be provided by a licensed medical professional of Defendants' choosing based upon the plain language of the statute.

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. 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 attendant care was ordered by the authorized treating physician, it qualified as a form of medical care that had been considered necessary by the attending physician, as contemplated by Section 42-15-60(A).

There was no disputing Defendants consistently offered, and the claimant consistently declined, professional home health care as recommended by Dr. Desai. On April 26, 2022, the claimant filed a Form 50, Request for Hearing, wherein they checked box 7(b) indicating they were seeking "additional medical examination and treatment," consisting of 24-hour attendant care for the claimant. They also confirmed in the Form 50 that, "Claimant declined outside 3rd party care [offered by Defendants]" as he and Ms. Roldan-Dimas "agreed it would be best for [Ms. Roldan-Dimas] to care for [Claimant's] needs." As such, they alleged "Ms. Roldan-Dimas is entitled to payment for the care she is providing."

Defendants subsequently timely filed a Form 51, denying the claimant was entitled to any additional medical treatment as Defendants had authorized all causally related medical treatment

to which he was entitled. Prior to the hearing, the claimant and Defendants resolved the claimant's entitlement to attendant care through the hearing date pursuant to a Consent Order.

While Claimant admitted Defendants offered attendant care with a professional and licensed health care provider, which Claimant declined, Claimant contended Defendants should be ordered to compensate Ms. Roldan-Dimas for providing attendant care services because she is better suited to care for Claimant and was preferred to a third-party provider by Claimant. Claimant relied on testimony from Dr. Desai that Claimant was 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 admitted Claimant sustained a compensable injury by accident on February 18, 2022, and further acknowledged Claimant was entitled to attendant care. However, Defendants contended they retained 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 argued that since Claimant had 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, was 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 9th grade educated, admitted she only understands a little English, is not capable of reading English, and has no medical or first aid training. Accordingly, Defendants contended she was 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 relied, 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 relied 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.

A hearing was held on October 19, 2022, with the only issue being whether the single Commission would allow Defendants to retain their statutory right to direct medical care pursuant to S.C. Code Ann. § 42-15-60(A) for any attendant care needs to which the claimant was entitled, or whether the Commission would order Defendants to compensate the claimant's fiancé, Ms. Roldan-Dimas, for providing attendant care as requested by the claimant. The parties agreed the claimant was not at maximum medical improvement and, therefore § 42-15-60(C) was not applicable. Accordingly, any award of medical benefits was governed by subsection (A).

On May 23, 2023, the Single Commissioner issued a Decision and Order finding the claimant was entitled to an award of attendant care pursuant to S.C. Code Ann. § 42-15-60(A)(2007, as amended), but that such care must be provided by a licensed medical professional of Defendants' choosing based upon the plain language of the statute. The Single Commissioner held that since the claimant had not reached MMI, an award of medical benefits must be pursuant

to subsection (A), which did not contemplate non-professional unskilled services. Accordingly, the Commission was without authority to order Defendants to pay Ms. Roldan-Dimas for providing medical services. The Single Commissioner found that while subsection (C) includes more expansive language with regard to medical benefits which can be awarded after a finding of permanent and total disability, if the legislature intended for unskilled attendant care or 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). Likewise, the Single Commissioner held that finding a claimant's unlicensed significant other can render "treatment" pursuant to subsection (A), prior to a finding of permanent and total disability, creates a liability conundrum for Defendants should the claimant suffer a subsequent injury due to the fault of the unskilled attendant care, as Defendants would have no legal remedy or subrogation rights. Accordingly, the Single Commissioner held the claimant was entitled to 15 hours daily of licensed, professional in-home attendant care per day with a medical provider of Defendants' choosing, pursuant to S.C. Code Ann. § 42-15-60(A)(2007, as amended).

Thereafter, the claimant filed a Form 30, alleging the Hearing Commissioner erred in finding the Commission was without authority to order Defendants to provide unskilled attendant care pursuant to S.C. Code Ann. § 42-15-60(A), and in failing to order Defendants to compensate Ms. Roldan-Dimas for caring for the claimant. The parties presented for oral argument before the Appellate Panel on August 28, 2023.

II. SINGLE COMMISSIONER FINDINGS OF FACT AND CONCLUSIONS OF LAW

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 vanous 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. Desai 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, In. 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).*

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 42-1 5-60(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 alteris' 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.

III. ISSUES ON APPEAL

Did the Single Commissioner err in making Finding of Fact #23 as it is completely irrelevant that Ms. Roldan-Dimas does not speak English and could not fill out logs in English?

Did the Single Commissioner err in finding that Ms. Roldan-Dimas refused Defendants offer of a third-party home health service provider only because the Claimant preferred her to provide the at-home care, when the record actually shows the offer was also declined because Ms. Roldan-Dimas and her husband live in Ms. Roldan-Dimas' daughter's home who would not allow a stranger in their home 24 hours a day, 7 days a week?

Did the Single Commissioner err in Conclusion of Law #8 by interpreting 42-15-60(A) to only allow attendant care service by a licensed professional?

Did the Single Commissioner err in Conclusion of Law #10 by interpreting the differences and limitations of treatment between 42-15-60(A) and 42-15-60(C)?

Did the Single Commissioner err in Conclusion of Law #11 in the interpretation of 42-15-60(A) and its limitation on the Commission's ability to order nursing services and other reasonable treatment or care prior to MMI?

Did the Single Commissioner err in Conclusion of Law #13 by finding the Commission is constrained in its authority to order unskilled nursing services pursuant to 42-15-60(A)?

Did the Single Commissioner err in Conclusion of Law #14 that despite the authorized treating doctor ordering unskilled attendant care, 42-15-60(a) prohibits the Commission's ability to do so prior to MMI?

Did the Single Commissioner err in Conclusion of Law #15 that the cited cases were instructive on the broad authority granted in 42-15-60(A)?

Did the Single Hearing Commissioner Err in Conclusion of Law #18 by declining to consider the Circuit Courts order on this issue instructive, and incorrectly interpreting that benefits were only issued per 42-15-60(c) when the Court in fact ordered back payment of attendant care beginning from the first day Claimant got out of the hospital which was clearly before he was at MMI?

Did the Hearing Commissioner err in Conclusion of Law #19 determining that unlicensed or non-professional care creates a liability conundrum?

Did the Hearing Commissioner err in Conclusion of Law #20 by concluding that by Ms. Roldan-Dimas being paid for the care she is providing to her husband that she could somehow be an employee of the Defendant, or that by her not speaking English that somehow limits her ability to properly monitor Claimant?

Did the Hearing Commissioner err in Conclusion of Law #21 in failing to order payment or reimburse Ms. Roldan-Dimas for her care services, and instead only concluding that Defendants must provide care services with a licensed professional skilled home health aide and/or nurse?

IV. DECISION OF THE APPELLATE PANEL

Based upon the applicable review and actions of the Single Commissioner in deciding based on the evidence of record, we concur with the Single Commissioner in this action affirming in full his decision on the following findings of fact:

FINDINGS OF 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. Desai 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).

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 42-1 5-60(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 alteris' 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-1117; 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

THEREFORE, based on the Single Commissioner's findings and considerations pursuant to a preponderance of the evidence and sworn testimony that the Single Commissioner entertained in this matter, we, the South Carolina Workers' Compensation Full Commission Appellate Panel, hereby find and accept the Single Commissioner's Order as the following:

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.

Columbia, SC (date)



Commissioner R. Michael Campbell II



Commissioner Aisha Taylor, Chair



Commissioner Cynthia C. Dooley

Order Served via email:

<p>Amity S. Edmonds Gallivan White & Boyd, PA aedmonds@gwblawfirm.com</p>	<p>Andrew W. Creech Elrod Pope Law Firm Acreech@elrodpope.com</p>
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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).

By Eugenia Hollmon on February 5, 2024