

RECEIVED

Jul 01 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM
South Carolina Workers' Compensation Commission
Appellate Panel

Appellate Case No. 2024-000294

Hector Lopez-Vasquez, Claimant/Appellant,

v.

Ox Paper Tube & Core Carolina
LLC, Employer, and Berkshire
Hathaway Homestate Insurance,
Carrier Respondents.

INITIAL BRIEF OF APPELLANT

Andrew W. Creech
Elrod Pope Law Firm
212 E. Black Street
Rock Hill, SC 29732
(803) 324-7574
Acreech@elrodpope.com

Jordan C. Calloway
McGowan, Hood, Felder & Phillips, LLC
1539 Health Care Drive
Rock Hill, SC 29732
(803) 327-7800
jcalloway@mcgowanhood.com

Attorneys for Appellant

TABLE OF CONTENTS

Table of Authorities.....	iii
Statement of the Issues on Appeal.....	1
Statement of the Case.....	1
Statement of the Facts.....	4
Standard of Review.....	9
Argument	
1. Section 42-15-60(A) requires payment for the attendant care Ms. Roldan-Dimas provided Claimant.....	10
2. The commission erred in construing section 42-15-60(A) to exclude family member attendant care services prior to a finding of total and permanent disability.....	15
3. The commission’s policy analysis of section 42-15-60 was unwarranted and its conclusions were misguided.....	18
4. Accepting attendant care from a nurse or home health aide is not a plausible or medically advisable option for Claimant.....	22
Conclusion.....	26

TABLE OF AUTHORITIES

Case Law

South Carolina Cases

<u>Clark v. Aiken County Government</u> , 366 S.C. 102, 620 S.E.2d 99 (Ct. App. 2005).....	23, 24
<u>Creswick v. University of South Carolina</u> , 434 S.C. 77, 862 S.E.2d 706 (2021).....	13, 19
<u>Curtis v. State</u> , 345 S.C. 557, 549 S.E.2d 591 (2001).....	11
<u>Doe v. Keel</u> , 440 S.C. 427, 892 S.E.2d 282 (2023).....	17
<u>Epstein v. Coastal Timber Co.</u> , 393 S.C. 276, 711 S.E.2d 912 (2011).....	11
<u>Hall v. United Rentals, Inc.</u> , 371 S.C. 69, 636 S.E.2d 876 (Ct. App. 2006).....	12, 22-24
<u>Hartzell v. Palmetto Collision, LLC</u> , 419 S.C. 87, 796 S.E.2d 145 (Ct. App. 2016).....	9
<u>Hinton v. South Carolina Department of Probation, Parole & Pardon Services</u> , 357 S.C. 327, 592 S.E.2d 335 (Ct. App. 2004).....	13
<u>Hodges v. Rainey</u> , 341 S.C. 79, 533 S.E.2d 578 (2000).....	19
<u>In re Jairus J. V.</u> , 425 S.C. 481, 823 S.E.2d 208 (Ct. App. 2019).....	13
<u>In re Matter of Decker</u> , 322 S.C. 215, 471 S.E.2d 462 (1995).....	13
<u>Lewis v. L.B. Dynasty</u> , 411 S.C. 637, 770 S.E.2d 393 (2015).....	9, 14
<u>Pelfrey v. Oconee County</u> , 207 S.C. 433, 36 S.E.2d 297 (1945).....	14

<u>Pierre v. Seaside Farms, Inc.</u> , 386 S.C. 534, 689 S.E.2d 615 (2010).....	14
<u>Pressley v. Rea Construction Co., Inc.</u> , 374 S.C. 283, 648 S.E.2d 301 (Ct. App. 2007).....	9
<u>Risinger v. Knight Textiles</u> , 353 S.C. 69, 577 S.E.2d 222 (2002).....	22
<u>Shealy v. Aiken County</u> , 341 S.C. 448, 535 S.E.2d 438 (2000).....	6
<u>South Carolina Department of Social Services v. Michelle G.</u> , 407 S.C. 499, 757 S.E.2d 388 (2014).....	12
<u>State v. Hamilton</u> , 276 S.C. 173, 276 S.E.2d 784 (1981).....	11
<u>Thompson v. South Carolina Steel Erectors</u> , 369 S.C. 606, 632 S.E.2d 874 (Ct. App. 1997).....	14-16
<u>Turner v. Daniels</u> , 404 S.C. 430, 746 S.E.2d 40 (2013).....	19
<u>Wilkinson v. Palmetto State Transportation Co.</u> , 382 S.C. 295, 676 S.E.2d 700 (2009).....	20
Other Jurisdictions	
<u>Boylan v. Verizon Wireless</u> , 736 S.E.2d 773 (N.C. App. 2012).....	21
<u>Carbajal v. Industrial Commission of Arizona</u> , 219 P.3d 211 (Ariz. 2009).....	12, 14
<u>Edward Kraemer & Sons, Inc. v. Downey</u> , 852 P.2d 1286 (Colo. App. 1992).....	16
<u>Larson v. Squire Shops, Inc.</u> , 742 P.2d 1003 (Mont. 1987).....	13
<u>Mabry v. County of Cook</u> , 733 N.E.2d 737 (Ill. App. 2000).....	12
<u>Mehaffey v. Burger King</u> , 749 S.E.2d 252 (N.C. 2013).....	12

<u>Piatt v. Barnhart</u> , 231 F. Supp. 2d 1128 (D. Kan. 2002).....	12
<u>Ross v. Northern States Power Co.</u> , 442 N.W.2d 296 (Minn. 1989).....	18, 21
<u>Tesoro v. Alvarez</u> , 281 S.W.3d 654 (Tex. App. 2009).....	12
<u>Timmons v. North Carolina Department of Transportation</u> , 473 S.E.2d 356 (N.C. App. 1996).....	15

Statutes

Minn. Stat. § 176.135 (1)(a).....	18
S.C. Code Ann. § 1-23-380(5)(e).....	9
S.C. Code Ann. § 42-1-560(c).....	19
S.C. Code Ann. § 42-15-60.....	<u>passim</u>
S.C. Code Ann. § 42-15-70.....	19

Secondary Sources

Black’s Law Dictionary (5th ed. 1979).....	12
Mosby’s Med. Dictionary (8th ed. 2009).....	12
Sloan-Dorland Ann. Med.-Legal Dictionary (1987).....	12
<i>South Carolina Damages</i> (James L. Ward Jr. & Edward J. Westbrook eds., 2009).....	22

STATEMENT OF THE ISSUES ON APPEAL

1. Whether the South Carolina Workers' Compensation Law provision governing "medical . . . and other treatment" (S.C. Code Ann. § 42-15-60(A)) covers services of a claimant's family member that are equal to those offered by a nurse or home health aide.
2. Whether the South Carolina Workers Compensation Commission erred in imposing a licensure requirement for attendant care providers that is not stated or implied in section 42-15-60(A).
3. Whether the South Carolina Workers Compensation Commission erred in going beyond section 42-15-60's plain language to deny payment for family member attendant care based on unfounded policy concerns.
4. Whether Claimant had good cause for refusing Employer's preferred attendant care providers who could not work in his home and when a family member's services would be more beneficial to his recovery.

STATEMENT OF THE CASE

This workers' compensation matter began when Hector Lopez-Vasquez ("Claimant") filed an Employee's Notice of Claim and/or Request for Hearing ("Form 50") on April 26, 2022 (Form 50; Single Commissioner's Order at 17 ¶ 2). Claimant sought an award and payment of attendant care services provided by his longtime partner (Julianna Roldan-Dimas) for injuries suffered on February 18, 2022, while working for Ox Paper Tube & Core LLC ("Employer") in York, South Carolina. (Single Commissioner's Order at 17 ¶¶ 1-2). Prior to the hearing, the parties resolved the issue as to how much back payment was owed for previously rendered attendant care services. (Commissioner Order at 22 ¶¶ 33). The issue at the hearing was payment for required attendant care services moving forward. Claimant argued 15 hours of attendant care per day to be provided by his long-term significant other Julianna Roldan-Dimas should be ordered based on the recommendation of Claimant's treating physician, Dr. Sima Desai, (whom Employer selected and authorized) and extenuating circumstances in the home Claimant shared with his extended family. (Claimant Br. to Appellate Panel at 2).

The parties agreed Claimant is entitled to attendant care (Single Commissioner's Order at 4 ¶ 3), but Employer challenged both the amount of attendant care Claimant's condition warranted and the qualifications required of the caregiver. (Single Commissioner's Order at 19 ¶¶ 14-15). Employer relied on a proposed expert who had never evaluated or treated Claimant (Dr. Maria Lopez-Virella) to argue his condition required only 90 minutes of attendant care per day and that the care must be provided by a nurse or licensed home health care aide. (Single Commissioner's Order at 19 ¶ 15; at 27 ¶ 23). Furthermore, Dr. Lopez-Virella is only board certified in pathology and lipidology, and does not treat patients with brain injuries but rather patients with diabetes. Finally, Dr. Lopez-Virella did not even produce an actual medical report, but instead simply checked boxes from a questionnaire Employer drafted. A hearing on the disputed attendant care issues was held before South Carolina Workers Compensation Commissioner T. Scott Beck on October 19, 2022. (Single Commissioner's Order at 5).

Claimant presented records documenting his post-accident medical care as well as deposition or live testimony from Dr. Desai, Ms. Roldan-Dimas, and Andrea Angeles-Roldan, Ms. Roldan-Dimas's daughter and one of the owners of the home where Claimant resides. (Single Commissioner's Order at 7-16). Commissioner Beck entered an order on May 23, 2023, finding Claimant had met his burden to prove a compensable accidental injury and entitlement to attendant care. (Single Commissioner's Order at 28-29). Commissioner Beck's order included the following conclusions of law which have not been challenged or appealed by the parties.

- Claimant's work-related injuries were substantial ("near catastrophic"), and his condition requires attendant care. (Single Commissioner's Order at 23-27 ¶¶ 7, 13, 22).
- Claimant's attendant care needs remained substantial at the time of the hearing despite recent improvement in his ability to perform some activities of daily living ("ADLs"). (Single Commissioner's Order at 27 ¶ 22).

- Specifically, Commissioner Beck credited Dr. Desai’s opinion that Claimant requires 15 hours of attendant care per day over Employer’s expert (Dr. Lopez-Virella) who claimed Claimant only required 1.5 hours per day of supervision. (Single Commissioner’s Order at 26-27 ¶¶ 21-22).
- Dr. Desai’s opinion carried more weight than Dr. Lopez-Virella’s because Dr. Desai was Claimant’s authorized treating physician, she had physically examined Claimant, and she was more familiar with his condition. (Single Commissioner’s Order at 27 ¶ 23).
- An order for attendant care services met all the requirements imposed by S.C. Code Ann. § 42-15-60(A) as the 15 hours per day of attendant care services Dr. Desai recommended “tend[ed] to lessen the period of disability” Claimant would experience. (Single Commissioner’s Order at 23, 26 ¶¶ 8, 21).

The order also noted Dr. Desai’s testimony that Mr. Roldan-Dimas was “capable” of providing the care Claimant required. (Single Commissioner’s Order at 18 ¶ 10). Having seen Ms. Roldan-Dimas’s interactions with Claimant during medical appointments, Dr. Desai concluded she was “the most appropriate caregiver” in light of her close relationship with Claimant and the assistance he required with ADLs. (Single Commissioner’s Order at 18 ¶ 10).

Yet, Commissioner Beck concluded he lacked statutory authority to award payment for the attendant care services Ms. Roldan-Dimas provided. (Single Commissioner’s Order at 24 ¶ 13) (stating that “the commission is constrained to award benefits as permitted by statute” and “may only award benefits pursuant to its statutory authority . . .”). Citing the text of S.C. Code Ann. § 42-15-60(A) and (C), as well as various policy concerns, the order concluded the commission lacked power to award payment for attendant care services provided by a claimant’s non-nurse family member prior to a finding that the claimant was totally and permanent disabled. (Single Commissioner’s Order at 23-26 ¶¶ 8-20).

Claimant then filed a timely Request for Commission Review (“Form 30”), challenging the single commissioner’s interpretation of section 42-15-60 and the order’s resulting limitation

on the attendant care services available to Claimant. A panel of the full Commission held a virtual hearing on Claimant's appeal on August 28, 2023. On February 5, 2024, the appellate panel entered its decision and order affirming the single commissioner's order. (Appellate Panel decision). The panel decision essentially adopted the single commissioner's factual findings and legal conclusions verbatim. Id. at 5-14. Claimant filed a notice of appeal on March 1, 2024. (Notice of Appeal).

STATEMENT OF THE FACTS

Claimant worked for Employer, a manufacturer of large paperboard tubes and cores for various industrial uses when, on February 18, 2022, he was crushed by a 500-pound commercial roll of paper. (Single Commissioner's Order at 6-7; at 17 ¶ 1). The incident caused multiple intercranial hemorrhages, facial fractures, right leg and ankle injuries, and a traumatic brain injury for which Claimant was admitted to Carolinas Medical Center in Charlotte, North Carolina ("CMC"). (Single Commissioner's Order at 7; at 17 ¶ 3). Claimant's CMC admission included nasal surgery and a variety of other treatment. (Single Commissioner's Order at 17 ¶ 3). At the time of his discharge on March 2, 2022, Claimant's long list of diagnoses included subdural hemorrhage, subarachnoid hemorrhage, Lefort II fracture, altered mental status, acute pain due to traumatic brain injury, dysphagia, crush injury, multiple facial fractures, and temporal bone fracture. (Single Commissioner's Order at 17 ¶ 4). Even after leaving CMC, Claimant's long road to recovery was certain to require occupational, speech, and physical therapy. (Single Commissioner's Order at 8).

Claimant's post-hospital treatment was overseen by physical medicine and rehabilitation specialist Dr. Sima Desai, who first saw Claimant on March 17, 2022. (Single Commissioner's Order at 8, 15). Claimant's extensive injuries led to consultations and treatments with a number of other specialists in fields including neurosurgery, plastic surgery, ear nose and throat ("ENT")

medicine, orthopedics, and psychiatry. (Single Commissioner's Order at 9; at 18 ¶ 7). Knee surgery was recommended for a torn meniscus in Claimant's right knee. (Single Commissioner's Order at 9-10). On top of everything else, Claimant suffered severe dental injuries requiring the services of an oral surgeon and creating severe dietary issues that remain to this day. (Single Commissioner's Order at 9; Claimant's Br. to App. Panel at 4). In sum, Claimant's complicated and multifaceted medical treatment was arduous and is ongoing, with Claimant not yet reaching maximum medical improvement. (Single Commissioner's Order at 10).

Claimant's injuries severely hampered his ability to care for himself and to complete ADLs. In the months after his discharge from CMC, Claimant could not bathe without assistance, prepare his own (pureed) meals, travel on his own to doctors' appointments, or even use the restroom without someone outside the door to aid as needed. (Single Commissioner's Order at 12; at 21 ¶ 28). Claimant required assistance in administering his many medications and in physically moving about his home. (Single Commissioner's Order at 12; Hearing Tr. at 20-22). While Claimant's condition has improved, substantial limitations linger, and the timetable for achieving maximum medical improvement remains uncertain. (Single Commissioner's Order at 21 ¶ 29).

In light of these circumstances, Dr. Desai recommended Claimant receive continuous attendant care services. She typically recommends brain injury patients like Claimant have someone at home with them at all times. (Single Commissioner's Order at 15). Claimant's head and leg injuries render him unsteady on his feet, and a caregiver's presence is needed to reduce his risk of falling. (Single Commissioner's Order at 22 ¶ 30). Accordingly, Dr. Desai initially ordered attendant care services be provided 24 hours a day. However, as Claimant's condition had somewhat improved, Dr. Desai later testified he only requires attendant care for all waking hours (6 a.m. to 9 p.m.)—a total of 15 hours per day, 7 days per week. (Single Commissioner's Order at

20 ¶ 17). Employer offered the opinion of Dr. Maria Lopes-Virella, who despite not having personally evaluated Claimant, concluded his condition only required 1 ½ hours per day of attendant care services. (Single Commissioner’s Order at 19 ¶ 14).

Julianna Roldan-Dimas, Claimant’s partner for more than 12 years, quit her full-time job to provide the attendant care Claimant needs (Single Commissioner’s Order at 21 ¶ 24), and her efforts as a caregiver have been invaluable to Claimant’s progression. Dr. Desai, who has witnessed Ms. Roldan-Dimas’s interactions with Claimant during medical appointments, was so satisfied with the quality of care provided that she concluded Ms. Roldan-Dimas is both “able to provide the 24/7 supervision that [Claimant] currently needs” and is “the most appropriate caregiver.” (Single Commissioner’s Order at 18 ¶ 10). Dr. Desai testified in detail why a family member like Ms. Roldan-Dimas is best suited to provide attendant care for a patient like Claimant:

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 one[] is that comfortability with someone they know is able to provide the competent care he needs.

(Single Commissioner’s Order at 19 ¶ 12). Dr. Desai also testified she knew of no challenges by any of Claimant’s other medical providers to Ms. Roldan-Dimas’s competency or suitability to care for Claimant. (Single Commissioner’s Order at 19 ¶ 11).

Witnesses testified Ms. Roldan-Dimas taking on the role as Claimant’s caregiver was also necessitated by several practical considerations. For one, Claimant communicates almost exclusively in Spanish and, while Employer has sent home health nurses to assist Claimant in the past, they were not Spanish speakers. Whenever these nurses or aides came to assist Claimant, Ms. Roldan-Dimas’s daughter (Andrea Angeles-Roldan) or another family member would have to be present to serve as a translator. (Hearing Tr. 19, lines 19-24). Plus, Claimant is more comfortable

with a family member like Ms. Roldan-Dimas providing the type of physical contact and assistance with bodily functions that his condition requires. (Single Commissioner’s Order at 22 ¶ 32; Hearing Tr. 30, lines 10-11). Most importantly, the testimony indicated Claimant’s living situation would not allow for the presence of non-family caregivers. Claimant and Ms. Roldan-Dimas live in a home owned/occupied by her daughter Andrea, Andrea’s husband Juan, and their two young daughters. (Single Commissioner’s Order at 14; Hearing Tr. 43). As the homeowners, Andrea and Juan both expressed opposition to permitting strangers in their home to provide attendant care services to Claimant. Juan was concerned for the safety of his daughters, and Andrea’s concerns were also based in her history as a sexual abuse survivor. (Hearing Tr. at 45-46).

Claimant’s claim to the Commission sought payment to Ms. Roldan-Dimas for the attendant care services she provides him. (Form 50). In addressing that request, Commissioner Beck noted his appreciation for “the difficulty and hardship that Claimant and his family have experienced” and noted Dr. Desai’s opinion that Ms. Roldan-Dimas is both “qualified and in the best position” to provide the services Claimant needs. (Single Commissioner’s Order at 24 ¶ 13). However, Commissioner Beck interpreted the South Carolina Workers’ Compensation Law’s medical payments statute (S.C. Code Ann. § 42-15-60) to prohibit an award for attendant care provided by a non-nurse family member prior to a finding that Claimant is totally and permanently disabled. (Single Commissioner’s Order at 24-26 ¶ 13-20). In light of this statutory interpretation, Commissioner Beck found Claimant was entitled to up to 15 hours per day of attendant care services from a home health care aide or nurse only, Employer was required to pay for those services, and Employer had no responsibility for payment to Ms. Roldan-Dimas. (Single Commissioner’s Order at 26-27 ¶ 21).

Moreover, despite Dr. Lopez-Virella's lack of personal experience treating Claimant, Commissioner Beck accepted her opinion that limiting attendant care services to a home healthcare aide or nurse was required to ensure Claimant's best possible recovery. (Single Commissioner's Order at 27 ¶ 23). Claimant's appeal of all these rulings was rejected by the Full Commission in a February 5, 2024 order that adopted the single commissioner's analysis in full. (Appellate Panel Decision and Order). This appeal follows.

STANDARD OF REVIEW

A ruling by the South Carolina Workers' Compensation Commission Appellate Panel should not stand if unsupported by substantial evidence or if it was controlled by an error of law. Hartzell v. Palmetto Collision, LLC, 419 S.C. 87, 92, 796 S.E.2d 145, 147 (Ct. App. 2016). "Substantial evidence" means sufficient proof that "when the whole record is considered," the cited evidence "would allow reasonable minds to reach the conclusion" the Appellate Panel stated in its order. Id. (quoting Shealy v. Aiken Cnty., 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000)). Similarly, the Administrative Procedures Act appeal provision allows a reviewing court to "reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are . . . clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record." S.C. Code Ann. § 1-23-380(5)(e). Courts must interpret workers' compensation statutes liberally in favor of coverage to "further the beneficent purpose of the Workers' Compensation Act." Lewis v. L.B. Dynasty, 411 S.C. 637, 641, 770 S.E.2d 393, 395 (2015). When interpreting the statute at issue here (S.C. Code Ann. § 42-15-60), this Court has previously recognized statutory construction as a pure issue of law and this Court "is free to decide matters of law with no particular deference to the trial court." Pressley v. Rea Constr. Co., Inc., 374 S.C. 283, 287-88, 648 S.E.2d 301, 303 (Ct. App. 2007).

ARGUMENT

An employer must pay for many of its injured employee's ongoing expenses as the employee seeks to get back to normal or to at least curb the physical limitations comprising his new reality. S.C. Code Ann. § 42-15-60. As interpreted by South Carolina's appellate courts, these compensable expenses may start with bills for a hospital stay and medical supplies but extend broadly to include more mundane services provided by non-medical personnel. The essential

services Ms. Roldan-Dimas provides Claimant fall squarely within section 42-15-60's reach. She manages his medications, drives him to therapy, steadies him as he walks, and prepares food in the only manner he can consume it. Yet, the commission ruled Employer owes nothing for these services because Ms. Roldan-Dimas is not a nurse and the extent/duration of Claimant's disability has not yet been determined.

Those two extra requirements have no basis in section 42-15-60's text and structure or the cases interpreting any portion of the South Carolina Workers' Compensation Law. The single commissioner's order (and the appellate panel decision adopting its reasoning) fails as an exercise of statutory interpretation by neglecting to consider the plain meaning of section 42-15-60(A)'s key language ("medical, surgical, hospital, and other treatment") and skipping directly to a flawed public policy analysis. The misguided view of section 42-15-60 applied below is not the compensation system the General Assembly intended when it adopted the statute and is not consistent with other jurisdictions' rulings on similar questions. Worst of all, in Claimant's circumstances, disallowing payment for Ms. Roldan-Dimas's care effectively means Claimant will have to go without these services entirely. Given the statutory text, the medical evidence, and the Workers' Compensation Law's goal of making injured employees whole, the commission's ruling should be reversed and Ms. Roldan-Dimas's invaluable services should be compensated so Claimant may continue his recovery.

1. Section 42-15-60(A) requires payment for the attendant care Ms. Roldan-Dimas provided Claimant.

Resolving the parties' dispute over compensation for the care Ms. Roldan-Dimas provides Claimant depends on the proper interpretation of section 42-15-60(A)'s first sentence. The commission's discussion of that sentence failed to consider its plain meaning and how South Carolina courts have applied it in the past. The commission's resulting reading of section 42-15-

60(A) was overly narrow and an error of law that denies Claimant a benefit the statutory text intended to convey.

Employer “shall provide medical, surgical, hospital, and other treatment” to Claimant for at least ten weeks after his injury and longer in the event expert testimony suggests additional treatment will tend to lessen Claimant’s period of disability. S.C. Code Ann. § 42-15-60(A). The parties do not dispute Claimant presented an expert (Dr. Desai) to testify Ms. Roldan-Dimas’s attendant care services would tend to shorten Claimant’s disability. Thus, the sole legal question here is whether the services Ms. Roldan-Dimas provides Claimant qualify as “medical, surgical, hospital, and other treatment.” The commission’s order does not devote substantial attention to this question. The commission noted “other treatment” is undefined (Single Commissioner’s Order at 26 ¶ 19) and then immediately leapt to a public policy analysis to conclude family member-provided attendant care services could not qualify as “treatment.” (Single Commissioner’s Order at 26 ¶ 20).

The commission’s approach strayed from standard statutory construction principles. While correctly identifying “medical, surgical, hospital, and other treatment” as undefined terms, the commission failed to properly determine their meaning and application to the services in question. The mere fact that the terms are undefined does not mean one must expand beyond the statutory text to understand and apply them. Curtis v. State, 345 S.C. 557, 572, 549 S.E.2d 591 (2001) (citing State v. Hamilton, 276 S.C. 173, 276 S.E.2d 784 (1981) (holding that statute with undefined terms is not ambiguous if its words have “common, ordinary meaning”). Undefined statutory terms are assumed to carry their plain, ordinary meaning. Epstein v. Coastal Timber Co., 393 S.C. 276, 285, 711 S.E.2d 912, 917 (2011) (holding that statutory terms must be given plain and ordinary meaning rather than a “subtle or forced construction” that seeks to “limit or expand the statute’s

application”). Courts often consult dictionaries to identify the ordinary meaning of statutory terms. S.C. Dep’t of Soc. Servs. v. Michelle G., 407 S.C. 499, 757 S.E.2d 388, 394 (2014).

The operative terms (“medical . . . and other treatment”) have a well-understood meaning in both the legal and medical context. “Treatment” is an expansive term that covers all “services to cure or ameliorate the health effects of the [claimant’s] injury.” Carbajal v. Indus. Comm’n of Ariz., 219 P.3d 211, 213 (Ariz. 2009) (interpreting a similar workers’ compensation medical benefits statute). As a legal concept, “treatment” covers a broad swath of services provided to an injured person. Hall v. United Rentals, Inc., 371 S.C. 69, 82, 636 S.E.2d 876 (Ct. App. 2006) (noting section 42-15-60(A) authorizes order for services that “at least maintain the claimant’s degree of physical impairment”); Piatt v. Barnhart, 231 F. Supp. 2d 1128, 1130 (D. Kan. 2002) (quoting Black’s Law Dictionary 1346 (5th ed. 1979) (defining “treatment” as “a broad term covering all steps taken to affect a cure of an injury or disease; including examination and diagnosis as well as application of remedies”). Medical dictionaries are just as consistent in stating “treatment” applies to more than just medical interventions by healthcare professionals. “Treatment” also extends to services undertaken to *manage* a person’s quality of life in light of his medical condition. Mabry v. Cnty. of Cook, 733 N.E.2d 737, 744 (Ill. App. 2000) (citing Sloan-Dorland Ann. Med.-Legal Dictionary 746 (1987) (defining “treatment” as “the management and care of a patient for the purpose of combating disease or disorder). “Treatment” is understood in the medical field to encompass patient “management” through all services intended to “combat, ameliorate, or prevent a disease, disorder, or injury.” Tesoro v. Alvarez, 281 S.W.3d 654, 659 (Tex. App. 2009) (citing Mosby’s Med. Dictionary 1880 (8th ed. 2009)).

Ms. Roldan-Dimas’s work with Claimant falls comfortably within the plain meaning of “treatment.” See e.g. Mehaffey v. Burger King, 749 S.E.2d 252, 255 (N.C. 2013) (finding workers’

compensation statute's "catch-all provision for 'other treatment' has been understood to include attendant care services"); Larson v. Squire Shops, Inc., 742 P.2d 1003 (Mont. 1987) (holding that "domiciliary care provided by a member of an injured employee's family" can be "compensable as 'such other treatment'" as that phrase is used in medical payments statute). She transports Claimant to physician and therapy appointments, purees his food, "supervises" him while walking in light of his unsteady gait, and performs a number of other tasks to manage Claimant's complex medical conditions or ameliorate the effects his condition has on his quality of life. (Hearing Tr. at 20-22); In light of section 42-15-60(A)'s plain text extending benefits to "other treatment," it was improper for the commission to resort to perceived policy concerns to deny compensation. Creswick v. Univ. of S.C., 434 S.C. 77, 81-82, 862 S.E.2d 706, 708 (2021) ("If a statute's language is plain, unambiguous, and conveys a clear and definite meaning, there is no need to employ the rules of statutory interpretation" and courts "must apply the statute according to its literal meaning").

To the extent any interpretation of section 42-15-60 was needed, the commission failed to apply the rules established by South Carolina's appellate courts. For example, since every portion of the statutory text imparts meaning, a court must avoid an interpretation that renders any portion of the statute meaningless. Hinton v. S.C. Dep't of Prob., Parole & Pardon Servs., 357 S.C. 327, 342, 592 S.E.2d 335, 343 (Ct. App. 2004); In re Jairus J. V., 425 S.C. 481, 485, 823 S.E.2d 208, 210 (Ct. App. 2019) (quoting In re Matter of Decker, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995) ("we must read the statute so 'that no word, clause, sentence, provision, or part shall be rendered surplusage, or superfluous'"). The commission concluded that, because Ms. Roldan-Dimas is not a licensed medical provider, she cannot provide any form of "treatment" covered by section 42-15-60(A). (Single Commissioner Order at 26 ¶¶ 19-20). This interpretation overlooks

the fact that South Carolina courts have construed section 42-15-60's use of "medical" very broadly. This court has held "reasonably necessary medical" expenses can include construction costs incurred to make a claimant's home handicapped-accessible. Thompson v. S.C. Steel Erectors, 369 S.C. 606, 619, 632 S.E.2d 874, 881-82 (Ct. App. 1997). Thompson shows that, in this context, it is possible for "medical" to cover non-diagnostic or therapeutic services provided by a person with no medical training.

Section 42-15-60(A)'s expansive scope is only further buttressed by the General Assembly's choice to include the catch-all phrase "other treatment." The only way for "other" to have any substantive meaning is to recognize section 42-15-60(A) applies to more than "medical" services provided by licensed healthcare providers. Carbajal, 219 P.3d at 213 (construing similar statute and holding "the listed categories in [the statute] should be construed as encompassing expenses not generally covered by the others"). There would have been no reason to reference "other" treatment in the statutory text if the legislative intent was to impose a credential-based limitation on the treatment provider or a subject matter limitation on the type of compensable treatment. In Carbajal, Arizona's Supreme Court cited the statutory reference to "other" treatment as a basis for reversing a lower court's denial of compensation for spousal attendant care services. 219 P.3d at 213 (rejecting lower court's reasoning because it "effectively renders the phrase 'other treatment' superfluous").

Additionally, the commission failed to interpret the statute in question in line with its remedial purpose. As a workers' compensation statute, section 42-15-60 should have been interpreted broadly in favor of coverage. Lewis v. L.B. Dynasty, 411 S.C. 637, 641, 770 S.E.2d 393, 395 (2015); Pierre v. Seaside Farms, Inc., 386 S.C. 534, 689 S.E.2d 615, 619 (2010) (quoting Pelfrey v. Oconee Cnty., 207 S.C. 433, 440, 36 S.E.2d 297, 300 (1945) ("Common sense indicates

that a compensation law passed to increase workers' rights (because their common law rights were too narrow) should not thereafter be narrowly construed"). "Other treatment" should have received a broad interpretation just as South Carolina courts have read similar portions of section 42-15-60 broadly to ensure injured workers received the services their condition requires. If the statute's reference to "medical" costs is broad enough to include home renovations, "medical" or "other treatment" must also be broad enough to encompass the attendant care Ms. Roldan-Dimas provides Claimant. Thompson, 369 S.C. at 619, 632 S.E.2d at 881; see also Timmons v. N.C. Dep't of Transp., 473 S.E.2d 356, 359 (N.C. App. 1996) (finding statutory phrase "other treatment" includes home renovation costs). The commission's overly narrow reading of section 42-15-60(A) is not only undermined by its plain language, it is also at odds with the practical imperative that such statutes be read broadly to extend coverage to injured employees.

In sum, the commission erred in refusing to order payment for Ms. Roldan-Dimas's attendant care services because those services are covered by the plain language of section 42-15-60(A). The statute extends compensation broadly beyond traditional "medical" matters to include "other" services. The substantive limitation section 42-15-60(A) places on compensable services is that they must constitute "treatment," which in its plain meaning covers any service intended to manage a claimant's quality of life or to ameliorate the effects of his injury. Ms. Roldan-Dimas provides "treatment" on a daily basis by ensuring Claimant can eat, move around, take his medication, and access the therapy his condition requires.

2. The commission erred in construing section 42-15-60(A) to exclude family member attendant care services prior to a finding of total and permanent disability.

The commission erred not just by failing to give section 42-15-60(A) the reading its broad language requires but also by adding in requirements or restraints with no basis in the statutory text. Limiting attendant care to the work of a nurse or home health aide was improper because

section 42-15-60(A) imposes no credentialing requirements. Limiting family member attendant care to injured employees previously deemed totally and permanently disabled is equally unsupported by the text of section 42-15-60(A) and (C). The commission's flawed analysis has been rejected in other states, and its ruling should be reversed to allow Claimant to maintain access to the care he needs.

As discussed in more detail below, expert and lay witness testimony before the commission established Ms. Roldan-Dimas is the best, and for practical purposes, only person who can provide Claimant the attendant care services he needs in the home he shares with his extended family. Yet, the commission concluded section 42-15-60 does not allow for it. (Single Commissioner Order at 24 ¶ 13). The commission did not cite any text from section 42-15-60 in support of this conclusion, and there is no language in the statute that imposes a licensure or occupation requirement on caregivers providing compensable services. Section 42-15-60 does not discuss caregivers at all. Plus, it is not as if payment to a spouse for attendant care is an unusual practice in South Carolina. See Thompson, 369 S.C. at 610, 632 S.E.2d at 877 (noting employer agreed to pay weekly benefits to employee "as well as \$ 1,000 per month to [employee's] wife to aid with his care"). In fact, declining to award an injured employee attendant care simply because the caregiver is a spouse would place South Carolina at odds with the vast majority of states to address the issue. See e.g. Edward Kraemer & Sons, Inc. v. Downey, 852 P.2d 1286, 1288 (Colo. App. 1992) ("Today it is nearly universally recognized that a spouse should be compensated for services rendered to an industrially injured employee, if those services are in the nature of nursing services").

The commission was equally misguided in looking to S.C. Code Ann. § 42-15-60(C) to conclude any family member attendant care is not compensable until the injured employee is found to be totally and permanently disabled. (Single Commissioner's Order at 25 ¶ 15). The

commission’s statutory interpretation process again failed to follow South Carolina law. The proper timing provision to consider here lies within section 42-15-60(A), not 42-15-60(C). Employer was required to provide “medical . . . and other treatment” for ten weeks after Claimant’s injury and “for an additional time” as will, in an expert’s view, “tend to lessen the disability.” S.C. Code Ann. § 42-15-60(A). As discussed above, the attendant care Ms. Roldan-Dimas provided Claimant falls squarely within the definition of “treatment,” and Dr. Desai testified Claimant’s condition requires the care Ms. Roldan-Dimas provides. (Single Commissioner Order at 18 ¶ 9). Thus, for Ms. Roldan-Dimas’s attendant care (like all services that qualify as “medical . . . or other treatment”), Employer’s duty to pay arose at the time of Claimant’s injury, remains active, and will only end when the “treatment” no longer tends to lessen Claimant’s disability.

The commission took a circuitous route to conclude a finding of total and permanent disability was a precondition to Employer’s duty to pay. The commission inferred this precondition by attempting to deduce legislative intent from what the General Assembly did not do—i.e. the legislature’s choice not to amend section 42-15-60(A) in 1980 and the limited amendment it chose in 2007. (Single Commissioner’s Order at 24 ¶ 13). There was no need to resort to negative inferences from decisions legislators forewent more than forty years ago. Instead, the court may derive legislative intent from the plain language used in section 42-15-60(A). Doe v. Keel, 440 S.C. 427, 431, 892 S.E.2d 282, 284 (2023) (“The plain language of a statute is the best evidence of legislative intent”). The attendant care in question is “treatment,” Employer’s duty to pay for it arose on “the date of [Claimant’s] injury” and that duty continues because the attendant care “will tend to lessen the period of disability” according to Dr. Desai.

Moreover, using the date when an employee’s disability is deemed final as a line of demarcation for the compensability of family member attendant care has been considered and

rejected elsewhere. In Ross v. Northern States Power Co., the Minnesota Supreme Court considered whether that state’s workers’ compensation act “requires an employer to pay for outpatient nursing services provided by an injured worker’s spouse when the employee is not permanently and totally disabled.” 442 N.W.2d 296, 296 (Minn. 1989). Reversing a lower court, Ross held payment was required as the date of a permanent disability finding did not determine an employment’s entitlement to family member attendant care. Id. at 297-98. Minnesota’s statute reads very similar to section 42-15-60(A) when defining the origin date and duration of an employer’s duty to pay. Minnesota employers must provide “treatment . . . as may reasonable be required at the time of the injury and any time thereafter to cure and relieve from the effects of the injury.” Minn. Stat. § 176.135 (1)(a). Like section 42-15-60(A), the Minnesota statute states that the duty to pay arises immediately after the employee’s injury and continues indefinitely (“any time thereafter”) for so long as the treatment yields tangible benefits. Ross found that to limit family member attendant care to instances of permanent disability “ignores” this key language defining the scope and timing of the employer’s duty to pay. Id. at 297. Noting a court’s duty to give meaning to all the statute’s text, Ross held that an employer must pay for family member attendant care services even before the employee is deemed permanently disabled. Id. at 298.

In short, the commission erred in concluding Claimant was not entitled to family member attendant care and in concluding such care is compensable only after there is a finding of total and permanent disability. Section 42-15-60’s text and persuasive authority reject both conclusions.

3. The commission’s policy analysis of section 42-15-60 was unwarranted and its conclusions were misguided.

Instead of using plain meaning, South Carolina precedent, and persuasive authority to determine whether family member attendant care is compensable “other treatment,” the commission concluded various policy concerns prevented this care from ever qualifying as

“treatment.” (Single Commissioner’s Order at 26 ¶¶ 19-20). Those conclusions are erroneous for two reasons. First, a resort to policy analysis was unnecessary in light of section 42-15-60’s plain meaning. Second, the policy concerns the commission raises are either unfounded or would apply in equal force to family member attendant care following a finding of permanent disability.

As discussed above, the meaning of “other treatment” and its application to Ms. Roldan-Dimas’s essential services to Claimant can be derived from the plain meaning of “treatment,” South Carolina court’s history of applying section 42-15-60 broadly to meet the full scope of an employee’s injury-related needs, and other states’ interpretation of similar statutory language. Armed with the plain meaning of the pertinent statutory text, the policy effects of the legislature’s chosen language were not the commission’s to parse. Creswick, 434 S.C. at 81-82, 862 S.E.2d at 708 (requiring application of the “literal meaning” of an unambiguous statute). Under such circumstances, the process of reading and applying the statute cannot involve “inject[ing] matters into [the statute] which are not in the legislature’s language.” Turner v. Daniels, 404 S.C. 430, 432, 746 S.E.2d 40, 41 (2013) (quoting Hodges v. Rainey, 341 S.C. 79, 87, 533 S.E.2d 578, 582 (2000)).

There are also substantive flaws in the commission’s assertion that payment to Ms. Roldan-Dimas risks a “liability conundrum.” (Single Commissioner’s Order at 26 ¶ 19). The commission worried about the risk of Claimant being injured while within Ms. Roldan-Dimas’s care. (Single Commissioner’s Order at 26 ¶ 20). But, there is no indication that risk is higher with Ms. Roldan-Dimas as caregiver than with the home health aides Employer favors. Plus, even if that unlikely situation arose, the Workers’ Compensation Law is equipped with a process for addressing the claims and properly assigning liability. See e.g. S.C. Code Ann. § 42-1-560(c) (providing for assignment of claims against third parties from employee to employer/carrier); S.C. Code Ann. § 42-15-70 (addressing responsibility for malpractice of provider furnished by an employer).

The commission also raised concerns that Employer paying Ms. Roldan-Dimas could create an employer-employee relationship. However, there would have to be far more than just a statutorily-mandated payment from Employer (or, in this instance, its insurance carrier) to Ms. Roldan-Dimas to meet the legal test for an employer-employee relationship. That relationship depends on a showing that Employer has the right to control Ms. Roldan-Dimas's work. Wilkinson v. Palmetto State Transp. Co., 382 S.C. 295, 299, 676 S.E.2d 700, 702 (2009). The right to control goes well beyond method of payment to include the furnishing of equipment, the right to fire, and other direct evidence of the right or exercise of control over the work performed. Id. Nothing about the situation presented here risks the accidental formation of an employer-employee relationship as that relationship is defined in this state. This is akin to arguing that because Employer paid for the medical services Claimant received in the hospital, the hospital was now the employee of the Respondents. Such an argument is nonsensical. Finally, there is no evidence to support the commission's suggestion that Ms. Roldan-Dimas cannot adequately document Claimant's recovery process because she communicates in Spanish. (Single Commissioner's Order at 26 ¶ 20). Ms. Roldan-Dimas has properly charted Claimant's blood sugar readings when needed (J. Roldan-Dimas Dep. 22-23), and Claimant's home health notes praise Ms. Roldan-Dimas for "monitoring and integration of [Claimant's] ongoing home program." (Claimant's APA P. 94).

Moreover, even if these policy concerns were valid, they could not be used to make the distinctions between compensable and non-compensable attendant care attempted in the commission's order. The commission concluded attendant care by a nurse or home health aide is compensable in circumstances where family member care is not and that family member attendant care is compensable after a finding of total and permanent disability but not beforehand. (Single Commissioner's Order at 24 ¶ 13). But, the policy concerns used to reach these conclusions do not

support them. The alleged “liability conundrum” arising from potential injuries caused by Ms. Roldan-Dimas would be just as valid after Claimant is totally and permanently disabled—a point at which the commission acknowledges family member attendant care would be compensable. The misguided view that an employer-employee relationship could arise between Employer and Ms. Roldan-Dimas would have to also apply to Employer paying a nurse or home health aide to provide the same care.

Finally, if a policy analysis was appropriate here, the commission’s order omits major pieces of the puzzle. For one, recognizing Ms. Roldan-Dimas’s services as “other treatment” for section 42-15-60(A) purposes benefits all parties. Claimant gets the boost to his recovery Dr. Desai says brain injury patients receive when a family member is their caregiver (Single Commissioner’s Order at 19 ¶ 12 (quoting S. Desai Dep. 39, 41)), and Employer gets a financial benefit because it can pay Ms. Roldan-Dimas far less than a nurse or home health aide providing the same attendant care services. See Ross, 442 N.W.2d at 298 (interpreting statute to require payment for family member attendant care and noting “someone had to care for the employee [and] it benefitted both parties that a family member was willing and able to do so”); Boylan v. Verizon Wireless, 736 S.E.2d 773, 780 n. 3 (N.C. App. 2012) (“The record before us does not reveal why [employer] would prefer to pay over twice as much for a professional caregiver instead of paying one of [the claimant’s] family members” a much lower rate).

Plus, the practical reality of affirming the commission’s order here would be a substantial windfall to Employer. The commission’s order for nurse/home health aide care is something Claimant simply cannot use. He cannot utilize these services because the home owners at his residence will not permit it. Claimant would be stuck either going without these services or, far more likely, asking Ms. Roldan-Dimas to continue sacrificing her career to care for him without

any compensation. Either way, the financial winner is Employer because it is freed from any burden to pay for the care Claimant needs. Section 42-15-60 does not require such an inequitable result, and a workers' compensation system intended to ensure employees receive the necessary care to recover from work-related injuries should not permit that outcome. *S.C. Damages* 681 (James L. Ward Jr. & Edward J. Westbrook eds., 2009) (concluding that to deny payment to spouse would "only benefit employers and their insurance carriers at the expense of the injured employee's family members . . .").

4. Accepting attendant care from a nurse or home health aide is not a plausible or medically advisable option for Claimant.

Employer provided limited care by a home health aide for a short period after Claimant was discharged from CMC in March 2022. (Single Commissioner's Order at 17 ¶ 5). The commission later concluded Employer offered attendant care on an ongoing basis, and Claimant rejected that offer. (Single Commissioner's Order at 27 ¶ 22). These facts are not an acceptable basis for denying payment for the attendant care Ms. Roldan-Dimas provides.

Claimant's duty to accept the services Employer offers by the provider Employer chooses is limited. Section 42-15-60's text "does not allow an employer to dictate the medical treatment of injured employees." Risinger v. Knight Textiles, 353 S.C. 69, 73, 577 S.E.2d 222, 224-25 (2002). Generally, Employer may select the provider, but Claimant may refuse Employer's offer if there is "good cause" for doing so. S.C. Code Ann. § 42-15-60(A). Claimant may still receive compensation for treatment provided by others if "the circumstances justified the refusal." Id. A refusal is justified for a number of different reasons including instances where another provider is able to offer treatment the employer's preferred provider cannot. Hall v. United Rentals, Inc., 371 S.C. 69, 87, 636 S.E.2d 876, 885 (Ct. App. 2006) (noting employer's chosen physician "did not offer an alternative approach" to the unsuccessful conservative treatment options he offered to

employee); Clark v. Aiken Cnty. Gov't, 366 S.C. 102, 620 S.E.2d 99 (Ct. App. 2005) (when employee is “unable to obtain relief” from employer’s preferred provider, “he [is] justified in seeking treatment elsewhere”).

In total, section 42-15-60(A)’s “refusal” provision aims to ensure “a claimant is not required to sacrifice much-needed treatment merely to comply with an employee’s choice” of provider. Hall, 371 S.C. at 86, 636 S.E.2d at 885. In practical terms, that is precisely what is at issue here. Claimant receiving his attendant care from Ms. Roldan-Dimas rather than a nurse or home health aide Employer chooses is not, as the commission suggests, simply a matter of Claimant’s “comfort” level. (Single Commissioner’s Order at 22 ¶ 32).¹ Instead, the evidence before the commission showed using Ms. Roldan-Dimas for this treatment was in Claimant’s best medical interest. Plus, in light of Claimant’s housing situation, Ms. Roldan-Dimas was the only available provider.

Furthermore, it is important to note Claimant has not “refused” any treatment ordered by a physician. The treating physician, Dr. Desai, whom Employer selected and authorized, recommended and ordered attendant care services be provided by Ms. Roldan-Dimas. Claimant is not refusing the medical treatment considered necessary by the “attending physician” rather he is requesting it be ordered, as Employer have refused to voluntarily provide it.

¹ That said, forcing Claimant to accept Employer’s preferred caregivers would present an uncomfortable and infeasible situation. Claimant communicates almost exclusively in Spanish, and the nurse/health care aides previously sent to his residence spoke no Spanish. (Single Commissioner’s Order at 12) (citing Hearing Tr. at 19, lines 15-24). The language barrier made it difficult to build rapport with any of these providers. Plus, to facilitate communications between Claimant and provider, Andrea and Juan’s young daughters were often called in to translate—further stoking Andrea and Juan’s concerns over having strangers constantly around their children. Id.

The medical evidence on provider selection is critical here. Dr. Desai, Claimant's authorized treating physician, testified Claimant requires attendant care at all waking hours. (Single Commissioner's Order at 15, 16) (citing S. Desai Dep. 23, 37-38). Claimant's condition continues to improve, but he still needs care to protect against falls and to supervise ADLs. (Single Commissioner's Order at 16) (citing S. Desai Dep. 33, 34, 54, 55). Dr. Desai determined Ms. Roldan-Dimas is fully capable of providing the care Claimant needs based both on personally observing her with Claimant during office visits and the fact that none of Claimant's other providers have expressed concern over the quality of care she provides. (Single Commissioner's Order at 19 ¶ 11) (citing S. Desai Dep. 26-28). More than just capable, Ms. Roldan-Dimas is considered by Dr. Desai to be "the most appropriate caregiver" for Claimant. (Single Commissioner's Order at 18 ¶ 10).

It is the nature of Claimant's health problems that makes having a family member as caregiver medically preferable even to a stranger with more credentials or medical training. Patients with brain injuries do not just prefer attendant care from a family member, they need the type of bond one feels with a spouse to maximize the value attendant care offers. (Single Commissioner's Order at 19 ¶ 12) (noting Dr. Desai's opinion that having a familial bond with a caregiver is "a big thing that drives brain injury patients" in their recovery). When a caregiver like Ms. Roldan-Dimas offers a tangible benefit to recovery Employer's preferred provider cannot provide, cases like Hall and Clark hold that the employee may refuse to accept the employer's provider selection and seek care elsewhere. The familial bond and resulting boost to Claimant's recovery that comes with Ms. Roldan-Dimas's services is something Employer's preferred nurse

or home health aide cannot offer, and section 42-15-60(A) provides that Employer should be required to pay for this treatment.²

Moreover, Claimant's refusal to accept Employer's preferred attendant care providers is justified not just because of the extra medical benefit he receives from Ms. Roldan-Dimas's care but also because a non-family member nurse or home health aide simply cannot operate in the home where Claimant resides. Claimant and Ms. Roldan-Dimas live with her daughter Andrea-Angeles-Roldan ("Andrea"), Andrea's husband Juan, Andrea and Juan's two young daughters, and Andrea's brother. (Single Commissioner's Order at 11). As the home's owners, Andrea and Juan strongly oppose allowing a stranger in their residence to provide the around-the-clock care Claimant needs. (Single Commissioner's Order at 13-14). An individual or group of strangers in milling about at all hours of the day would "completely change the atmosphere and dynamic of the home." (Single Commissioner's Order at 14). Andrea worries about having unfamiliar people in her home, a fear dating back to sexual abuse she suffered as a child. (Single Commissioner's Order at 14). Juan is similarly concerned about having strangers around the couple's young daughters on a daily basis. Id.

In the end, Andrea and Juan not only raised concerns but handed down a decision—they would not allow non-family member caregivers. (Single Commissioner's Order at 13) (citing Hearing Tr. at 25). As a guest in Andrea and Juan's home, Claimant has no standing to challenge

² The commission reached a contrary conclusion, ruling Claimant's care must be provided by a nurse or home health aide to obtain his "best possible recovery." (Single Commissioner's Order at 27 ¶ 23). However, there is no substantial evidence in the record to support that ruling. The commission cited only the opinion of Employer's expert Dr. Lopez-Virella. Id. As even the commission admits, Dr. Lopez-Virella's medical opinion is less probative than Dr. Desai because Dr. Lopez-Virella is not Claimant's authorized treating physician, has never physically evaluated Claimant, and is decidedly less familiar with his condition. Id. As an endocrinologist, Dr. Lopez-Virella has no expertise to offer on the treatment of Claimant's traumatic brain injury.

their decision. Thus, to receive attendant care from a nurse or home health aide, Claimant would have to uproot his entire life and seek alternative housing away from the extended family with whom he has resided for years. Claimant's condition makes such a shocking change not only implausible but also practically impossible. Under these circumstances, Claimant's refusal to accept Employer's preferred providers was justified, and he should not be disqualified from compensation for the essential care Ms. Roldan-Dimas provides.

CONCLUSION

Based on the arguments stated above, Claimant respectfully requests the court reverse the commission's order. Section 42-15-60(A)'s plain language requires Employer pay for "treatment" like the attendant care services Ms. Roldan-Dimas provides. There is nothing in section 42-15-60(A) or (C) limiting compensable attendant care to services performed by a nurse or home health aide before or after a finding Claimant is totally and permanently disabled. The commission committed a pure error of law in its statutory interpretation process and its conclusions on Ms. Roldan-Dimas' capacity to care for Claimant are contradicted by his treating physician or otherwise unsupported by substantial evidence. In the end, the commission's order denies payment for attendant care from the most qualified, most familiar, and only provider practically available to Claimant. That outcome is unsupported by statute, will devastate Claimant's efforts to recover from his injuries, and unjustly relieves Employer of the duty to care for its injured worker.

Respectfully submitted,

/s/ Jordan C. Calloway

Andrew W. Creech
Elrod Pope Law Firm
212 E. Black Street
Rock Hill, SC 29732
(803) 324-7574
Acreech@elrodpope.com

Jordan C. Calloway
McGowan, Hood, Felder & Phillips, LLC
1539 Health Care Drive
Rock Hill, SC 29732
(803) 327-7800
jcalloway@mcgowanhood.com

Attorneys for Appellant

Rock Hill, SC
July 1, 2024