

Wheelchair Accessible, Handicapped Adaptive Housing: What is the Defendant's Obligation to Pay?

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In claims in which an injured employee sustains an injury rendering him or her wheelchair-bound, an issue often arises as to whether and to what extent the employer is obligated to provide wheelchair accessible, handicapped adaptive housing. Under N.C. Gen. Stat. §97-2(19), the Commission has discretion to determine the type of medical treatment an employer must pay, as long as it is reasonably required to effect a cure or give relief. In prior cases, the Courts have determined that the expense of housing is an ordinary necessity of life, to be paid from the indemnity compensation as provided by the Act. However, the Courts state that when an injury requires the modification of housing to accommodate an injured employee, the costs for modification are not an ordinary expense of life and constitute necessary medical treatment to be provided by the employer.

Recently, the Court of Appeals filed two decisions related to the extent of the costs the employer is obligated to pay when an injured employee requires accommodations to housing due to a compensable injury. In *Espinosa v. Tradesource*, Mr. Espinosa was rendered a paraplegic as a result of a compensable injury. Prior to the injury, Espinosa had shared a rental house with three others and paid \$237.50 per month in rent. Following the accident, the house in question was not suitable to accommodate his wheelchair and could not be modified in a manner to make it suitable. Therefore, Espinosa rented a wheelchair accessible apartment at a cost of \$881.00 per month. The Court held that the employer was responsible for paying the difference in the amount of Espinosa's rent before the injury and his rent after the injury. This was based upon the above rationalization that, while housing expenses are an ordinary necessity of life, the additional costs to provide accommodative housing due to his injury constitutes medical treatment which the employer, in the discretion of the Commission, may be required to pay.

Several months following the *Espinosa* decision, the Court again examined this issue in the case of *Tinajero v. Balfour Beatty*. Mr. Tinajero suffered a compensable injury rendering him a quadriplegic. Prior to the injury, Tinajero lived in an apartment with two others and paid a portion of the rent. Following his accident, the employer placed Tinajero in a nursing home and paid for additional nursing services. Concluding that the nursing home was having a negative impact on his mental health, a recommendation was made to remove Tinajero from the nursing home and he moved into a wheelchair-accessible apartment. Rather than requiring the employer to pay only the difference between the costs of his pre-injury housing expenses and his post-injury housing expense, as the Court had done in the *Espinosa* case, the Court ordered the employer to pay the full costs of Tinajero's housing expenses once he moved to the apartment.

While the two cases appear to contradict each other, they instead highlight the often over-looked provision in the Act giving the Commission the discretion to determine what constitutes necessary and reasonable medical treatment and to order such further treatment as may be necessary. While there is no outright requirement that an employer pay the entire cost of adaptive housing, there is also no bright line rule that the employer is *only* obligated to pay for the additional modifications or costs to make housing accessible. Rather, if the parties dispute what is necessary, the Commission can exercise its discretion in determining the injured employee's entitlements.

For practical purposes, in such a claim where an employee's pre-injury housing is not suitable, first look to determine if reasonable modifications can be made to the dwelling. If not, examine the options of paying the difference in costs for a suitable apartment or rental home or the costs of providing an accessible home on the employee's own land. Keep in mind that, should the parties disagree, the Commission will ultimately exercise its discretion in determining if the employer should pay for the difference in costs or the entire costs of the employee's housing.

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