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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

T K BROOKS CONTR, *Petitioner Employer,*

CAROLINA CASUALTY INSURANCE CO, *Petitioner Insurance Carrier,*

v.

THE INDUSTRIAL COMMISSION OF ARIZONA, *Respondent,*

JUVENAL ORTIZ, as Personal Representative of the ESTATE OF
MANUEL ORTIZ, *Respondent Employee.*

No. 1 CA-IC 22-0005

FILED 11-1-2022

Special Action - Industrial Commission

ICA Claim No. 20181640475

Carrier Claim No. BNUW-9746

The Honorable Janet Weinstein, Administrative Law Judge

AFFIRMED

COUNSEL

Broening Oberg Woods & Wilson PC, Phoenix
By Jerry T. Collen, Kelley M. Jancaitis
Counsel for Petitioner Employer and Insurance Carrier

Industrial Commission of Arizona, Phoenix
By Gaetano J. Testini
Counsel for Respondent

Snow Carpio & Weekley PLC, Phoenix
By Brian A. Weekley
Counsel for Respondent Employee

MEMORANDUM DECISION

Presiding Judge David D. Weinzweig delivered the decision of the Court, in which Judge Randall M. Howe and Judge D. Steven Williams joined.

WEINZWEIG, Judge:

¶1 T K Brooks Contracting, Inc. (“Employer”) and Carolina Casualty Insurance Co. (“Carrier”) petition for special action review of the Arizona Industrial Commission’s (“Commission”) palliative care award to Manual Ortiz. We affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Ortiz suffered a traumatic brain injury to both frontal lobes in May 2018. He fell more than 14 feet from a ladder when working on a construction project for Employer, leaving him permanently impaired with significant residual cognitive dysfunction. Ortiz was hospitalized, admitted to an inpatient rehabilitation facility. He was discharged in August 2018, and returned home to live with Mrs. Ortiz, his wife of 40-plus years. But he was never the same. At first, he needed his wife’s help to “get up and walk around, get dressed and with daily life activities.” He “no longer needed help to perform the activities of everyday living” by December 2020, but still needed reminders and prodding “to complete those basic daily activities and to be reminded of his limitations.”

¶3 Soon after the accident, Ortiz applied to Carrier for worker compensation, and Carrier accepted the claim for medical care and benefits. The claim was closed in May 2020 with permanent impairment, and Carrier agreed to cover supportive care, including “professional home care giver services for four (4) hours per day[,] five (5) days per week.” But Carrier denied Ortiz’s request to compensate Mrs. Ortiz for her attendant and caregiver services.

¶4 Ortiz requested an investigation and hearing under A.R.S. § 23-1061(J), seeking compensation for his wife’s attendant and caregiver services. Over four days, ALJ Janet Weinstein heard testimony from Ortiz,

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his wife, his daughter-in-law, and two neurologists. Dr. Christina Kwasnica was Ortiz's personal neurologist; Dr. Leo Kahn was an independent neurologist hired to examine Ortiz.

¶5 Both neurologists concluded that Ortiz would require full-time supervision to make sure he takes his medicine and completes basic daily tasks, and to "keep him out of danger or help him get out of it in an emergency." Dr. Kwasnica testified that Ortiz did not require "constant nursing or skilled care," but said he could not be "left alone" because he "still lacked awareness of how the brain injury impacted him and his abilities[,] and lacked awareness of his limitation." Beyond his wife's supervision and prompting, Dr. Kwasnica recommended that Ortiz have a professional caregiver to take him into the community for four hours per day. Dr. Kwasnica added that a full-time primary caregiver would usually receive 24-48 hours per week for respite.

¶6 For his part, Dr. Kahn concluded that Ortiz "does not need someone to sit by him every moment of the day or watch over him at night when he is asleep, but that someone had to be home with him and secure the house or be aware if [he] were to get up and leave the premises." If Mrs. Ortiz had been unable to help, Dr. Kahn would have recommended that Ortiz be placed in a group home.

¶7 The ALJ awarded 112 hours of covered care per week to Ortiz, beginning on August 24, 2018. The award included four hours per day for a professional caregiver (not from Mrs. Ortiz) to bring Ortiz into the community where he would participate in activities (28 hours per week), seven hours per day of supervision and prompting from Mrs. Ortiz (49 hours per week), and five hours per day of respite care for relief to the primary caregiver (35 hours per week). On administrative review, the ALJ affirmed that award. Carrier and Employer timely petitioned for statutory special action review. We have jurisdiction. *See* A.R.S. § 23-951(A); Ariz. R.P. Spec. Act. 10.¹

DISCUSSION

¶8 Carrier and Employer raise two arguments on appeal against the ALJ's award. "This court deferentially reviews factual findings of the ALJ, but independently reviews any legal conclusions." *Young v. Indus. Comm'n*, 204 Ariz. 267, 270, ¶ 14 (App. 2003). We view the evidence in the

¹ Ortiz has since passed away.

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light most favorable to upholding the award. *Munoz v. Indus. Comm'n*, 234 Ariz. 145, 147, ¶ 2 (App. 2014).

¶9 Arizona worker's compensation laws require coverage for "medical, surgical and hospital benefits or other treatment, nursing, medicine, surgical supplies, crutches and other apparatus, including artificial members, reasonably required at the time of the injury, and during the period of disability." A.R.S. § 23-1062(A). To determine the "compensability of services" under Section 23-1062(A), Arizona courts "should focus on the nature of the services provided, not on the identity of the service provider." *Carbajal v. Indus. Comm'n*, 223 Ariz. 1, 5, ¶ 19 (2009). "If an injured worker requires services compensable under § 23-1062(A), then the employer must provide them. If the employer fails to do so and thus puts that burden on the injured employee's spouse, compensation for the necessary services is required by the statute." *Id.*

¶10 Arizona courts have interpreted Section 23-1062(A) to cover both supportive care and palliative care. *Capuano v. Indus. Comm'n*, 150 Ariz. 224, 226 (App. 1986) (supportive care); *Carbajal*, 223 Ariz. at 5, ¶ 17 (palliative care). "Palliative care involves managing the claimant's symptoms or mitigating the effects of the claimant's injury." *Carbajal*, 223 Ariz. at 4, ¶ 16, n. 2 (citation omitted). "Once the claimant is medically stationary, treatment is necessarily palliative rather than curative because, by definition, it cannot improve the claimant's condition." *Id.* (citation omitted).

¶11 Carrier and Employer first argue the ALJ committed legal error because Section 23-1062(A) does not cover Mrs. Ortiz's palliative care services. We disagree. "[B]y extending compensation for services rendered after a claimant becomes medically stationary, the legislature intended to include coverage for reasonably required palliative care." *Id.* at 5, ¶ 17. And here, both neurologists concluded that Ortiz needed 24-hour supervision and prompting to tackle and accomplish the requirements of daily living. Mrs. Ortiz supplied that continuous supervision.²

¶12 Carrier and Employer next argue the ALJ lacked evidence to support the weekly award. We disagree. The ALJ received enough

² Carrier and Employer rely on this court's opinion in *Patches v. Indus. Comm'n*, 220 Ariz. 179 (App. 2009). Their reliance is misplaced because *Patches* relied on this court's since-vacated opinion in *Carbajal v. Indus. Comm'n*, 218 Ariz. 578 (App. 2008), *vacated*, 218 Ariz. 1 (2009), and because Ortiz's wife did not seek compensation for housekeeping services.

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evidence in support, including unanimous medical opinions, and we will not second-guess those factual findings. *Pac. Fruit Express v. Indus. Comm'n*, 153 Ariz. 210, 214 (1987) (“The findings of the Commission, if supported by sufficient competent evidence, will not be disturbed.”). And this court must affirm the ALJ’s award unless it “cannot be reasonably supported on any reasonable theory of [the] evidence.” *Phelps v. Indus. Comm’n*, 155 Ariz. 501, 506 (1987). We are unmoved that Carrier and Employer can point to different evidence in the record that might not support the award, including Ortiz’s testimony.

CONCLUSION

¶13 We affirm the award.



AMY M. WOOD • Clerk of the Court
FILED: AA