

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS  
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS  
FT. LAUDERDALE DISTRICT OFFICE

Victoria Murray Rosso,  
Employee/Claimant,

OJCC Case No. 02-053101GBH

vs.

Accident date: 2/10/1989

AT&T Corp., and AT&T  
Communications/Sedgwick CMS,  
Employer/Carrier/Servicing Agent.

Judge: Geraldine B. Hogan

**AMENDED FINAL COMPENSATION ORDER**

This matter came before the undersigned Judge of Compensation Claims (JCC) on July 20, 2016 pursuant to a Motion for Rehearing filed by the Claimant on July 6, 2016. Following a July 20, 2016 hearing, I granted the Motion for Rehearing and vacated the Final Compensation Order entered on June 28, 2016. This Amended Final Compensation Order adjudicates the benefits requested in the PFB filed on February 15, 2016<sup>1</sup> and the claim for authorization for pool care maintenance for a year (3/17/15 to 3/16/16) per Dr. Gayles' recommendation on 3/16/15 as requested in the PFB filed on April 28, 2015. I reserved jurisdiction over the issues raised in PFBs filed on April 25, 2016 and May 3, 2016 because the parties had not mediated the issues raised in those PFBs prior to the June 6, 2016 final hearing.

**A. Stipulations:**

1. The undersigned has jurisdiction over the parties and subject matter.
2. That venue of the claim is in Broward County.
3. There was an employer/employee relationship on the date of accident.
4. Accident or occupational disease accepted as compensable

**B. Claims and Defenses:**

1. Authorization for pool care maintenance for a year (3/17/15 to 3/16/16) per Dr. Gayles' recommendation on 3/16/15.
2. The Claimant requested authorization, as medically necessary, pursuant to the recommendations of Dr. John Atwater, for Claimant's compensable injuries as specifically delineated in the attached home assessment performed by Specialty Allocations dated 8/21/2015 and the letter to Dr. Gayles dated 9/28/2015 the following:

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<sup>1</sup> Claimant withdrew the request for handicap sticker for vehicle use requested in the PFB filed on 2/15/2016.

- a. Lawn and yard service maintenance and assistance with all activities that require heavy lifting that Claimant is unable to perform;
  - b. Home renovations [i.e. ramp access on all entry/exit areas, outdoor motion sensor lighting, kitchen pull down shelves & slide out drawers, kitchen stove with controls on front, widening of all doorways to allow for mobility scooter/wheelchair, smooth flooring, bathroom (roll in bathroom shower, ADA approved handicap commode with side bars, portable bidet, wheelchair accessible vanity, grab bars, hand held shower head, walk-in bathtub)];
  - c. Attendant care at least four hours a day [i.e. showering/bathing, dressing, laundry assistance, grocery shopping, meal prep, long distance transport, house cleaning (washing dishes, vacuuming, dusting, changing bed linen, etc.)];
  - d. Home physical therapy to assist with aquatic exercises and safety in and out of pool area;
  - e. Evaluation and treatment with a podiatrist regarding her left foot drop and right foot drop issues. Claimant requires a custom AFO that properly fits and supports her left foot as well as evaluation of return of the right foot drop, as well as an evaluation for specialized shoes;
  - f. Authorization for orthopedic care with Dr. John Atwater for her compensable ongoing spinal issues. Claimant withdrew this claim in her trial memorandum and on the record at the final hearing.
3. The Employer/Servicing Agent (E/C) asserted the following defenses:
- a. The medically necessary prescriptions provided to the Claimant do not state which physician provided the prescription. Furthermore there are no medical records from Dr. Gayles providing the requested care is medically necessary or due to the Claimant's industrial injury.
  - b. Pool maintenance: The Claimant has already been authorized for aquatic therapy, and therefore the request is denied. Furthermore, pool maintenance has not been deemed medically necessary.
  - c. Lawn maintenance: The medically necessary prescription provided to the Claimant does not state which physician provided the prescription. Dr. Gayles does not discuss medical necessity and such is denied.
  - d. Miscellaneous heavy work: The medically necessary prescription provided to the claimant does not state which physician provided the prescription. Further, there are no medical records from Dr. Gayles discussing the requested care is medically necessary and thus is denied.

- e. Medical Care/Testing: The Claimant continues to treat with her own personal care physician who is a podiatrist. Further the medically necessary prescriptions provided to the Claimant do not state which physician provided the prescription. There are no records from Dr. Gayles discussing the medical necessity and thus is denied.
- f. PICA: No PICA due or owing.
- g. Authorization and recommendation made by Dr. John Atwater are not deemed medically necessary and are denied. Claimant has not shown, nor proven the home assessment relied upon is medically necessary to her industrial injury. The home assessment was unauthorized and not reviewed by an authorized physician.
- h. Lawn and yard maintenance is not medically necessary; nor requested by an authorized physician and is denied.
- i. All home renovations requested through the home assessment are not medically necessary nor requested by an authorized physician and are denied.
- j. Attendant care has not been found to be medically necessary, nor requested by an authorized physician and thus is denied.
- k. Home physical therapy is [neither] medically necessary, nor requested by an authorized physician thus is denied.
- l. Claimant has been evaluated by her authorized treating physicians for her condition related to her left drop foot. No request has been made by an authorized treating physician, nor has been found to be medically compensable and thus is denied.
- m. Dr. Atwater is not an authorized treating physician, nor have his services been found to be medically necessary and thus are denied.

**C. Findings of Fact and Conclusions of Law:**

- 1. Claimant, a 73 year old female, sustained a compensable work related accident on February 10, 1989. Authorized treatment included a lumbar fusion surgery on April 25, 2014. She continues to experience pain and difficulty walking as a result of the compensable accident and injuries.
- 2. The medical providers, currently authorized, are Dr. Devin Datta, orthopedic surgeon, Dr. Richard Gayles, pain management, and Dr. Margaret Mortensen, psychologist. Claimant also saw Dr. John Atwater, an unauthorized orthopedic surgeon.

### **Objection to Deposition Testimony and Medical Records of Dr. John Atwater**

3. E/C objected to the admissibility of Dr. Atwater's deposition transcript and his medical reports because he was not an authorized medical provider. Sec. 440.13(5) (e) Fla. Stat. (1994) provides that no medical opinion, other than the opinion of a medical advisor appointed by the Judge of Compensation Claims, an independent medical examiner, or an authorized treating physician is admissible in proceedings before the JCC. Because this statute was not in effect at the time of the Claimant's accident, Claimant is not bound by its restrictions on the admission of medical testimony. *See Cowins v. Landmark Learning*, 885 So. 2d 421, 422 (Fla. 1st DCA 2004) (holding that sec. 440.13(5) (e), Fla. Stat. (1994) is substantive in nature and cannot be applied retroactively). Therefore, E/C's objection to the admissibility of Dr. John Atwater's testimony and his medical reports is overruled. I will rule on objections to specific questions separately.
4. E/C asserted that the benefits requested are not medically necessary as a result of the compensable accident and injuries.
5. Sec. 440.13(2)(a) Fla. Stat. (1989) provides, in pertinent part, that the employer shall furnish to the employee such medically necessary remedial treatment, care, and attendance by a health care provider and for such period as the nature of the injury or the process of recovery may require, including medicines, medical supplies, durable medical equipment, orthoses, prostheses, and other medically necessary apparatus.
6. Sec. 440.13(1) Fla. Stat. (1989) defines medically necessary, in relevant part, as any service or supply used to identify or treat an illness or injury which is appropriate to the patient's diagnosis, consistent with the location of service and with the level of care provided.
7. Claimant asserted that E/C waived their medical necessity defense as a matter of law pursuant to sec. 440.13(3) (d) and (i) Fla. Stat.
8. Sec. 440.13 (3) (d) Fla. Stat. (2015) provides, in part, that, "A carrier must respond, by telephone or in writing, to a request for authorization from an authorized health care provider by the close of the third business day after receipt of the request. A carrier who fails to respond to a written request for authorization for referral for medical treatment by the close of the third business day after receipt of the request consents to the medical necessity for such treatment. All such requests must be made to the carrier...." Sec. 440.13(3)(i) allows 10 days for the carrier to respond to a written request from an authorized medical provider for benefits costing more than \$1,000.00.
9. The first issue is whether the benefits requested are medically necessary. If the

evidence does not support a finding that the benefits requested are medically necessary, the next issue is whether E/C consented to medical necessity by failing to respond timely to a request for authorization from an authorized health care provider. Additionally, as argued by Claimant's counsel, the law must be liberally construed in favor of the Claimant.

10. **Lawn and yard service maintenance and assistance with all activities that require heavy lifting that Claimant is unable to perform:** Claimant testified that she is unable to rake and mow her yard. To support denial of lawn and yard service maintenance E/C cited *Delong v. 3015 West Corporation*, 558 So. 2d 108 (Fla. 1st DCA 1990). In *Delong*, although claimant presented testimony from his treating physician to the effect that it was medically necessary for someone other than claimant to mow his yard; the physician admitted that avoiding yard work would not improve claimant's condition or aid his recovery. The First District affirmed the JCC's denial of lawn care service. The court held that competent, substantial evidence to supported the judge's finding that lawn care service was not "medically necessary" for treatment of claimant's injury. *Id.* at 109.
11. The facts in the instant case are distinguishable from the facts in *Delong*. In the instant case, Dr. Mortensen's diagnoses included depression and anxiety. She testified that Claimant's inability to maintain her yard makes the Claimant feel depressed and anxious. Dr. Mortensen agreed that if the Claimant received help maintaining her yard, her issues with depression, anxiety and low self-esteem would improve. Although Dr. Gayles testified that lawn care maintenance was an unusual request, one that none of his other patients have been provided, Dr. Mortensen's testimony supports a finding that lawn care and maintenance is medically necessary.
12. **Home renovations [i.e. ramp access on all entry/exit areas, outdoor motion sensor lighting, kitchen pull down shelves & slide out drawers, kitchen stove with controls on front, widening of all doorways to allow for mobility scooter/wheelchair, smooth flooring, bathroom (roll in bathroom shower, ADA approved handicap commode with side bars, portable bidet, wheelchair accessible vanity, grab bars, hand held shower head, walk-in bathtub)]:**
13. Marilyn Litwin is a registered nurse and senior director of rehabilitation consulting with Specialty Allocations. She is also a Certified Nurse, Life Care Planner and Disability Management Specialist. Claimant's counsel contacted Ms. Litwin and asked her to conduct an attendant care and home assessment evaluation regarding the Claimant. Claimant's counsel provided Ms. Litwin with medical records to review and Ms. Litwin visited the Claimant at the Claimant's home. Following her assessment, she generated a home assessment report dated August 24, 2015.
14. Claimant testified that all of the doorways in her house require her to use at least one step to enter and exit her home. Some days she has trouble exiting her house

because she drags her left foot. She stated that she is starting to drag her right foot as well. She testified that she also has difficulty getting food from her refrigerator.

15. Dr. Gayles testified regarding home renovations. He stated that the Claimant has improved clinically somewhat, and he thought it may be prudent to have the Claimant re-evaluated to see what she is like now as opposed to what she was like last year. He also indicated that he would defer to Ms. Litwin's opinions regarding the home assessment because his focus was on the physical examination of the Claimant and he did not visit the Claimant's home.
16. The Adjuster agreed that Dr. Mortensen's February 22, 2016 report noted in her recommendations, "per home study." She never responded to this recommendation. According to the adjuster's testimony she did not have the assessment report from Specialty Allocations, but she had seen it.
17. E/C asserted that home renovations requested through the home assessment are not medically necessary nor requested by an authorized physician.
18. In *Diamond R. Fertilizer v. Davis*, 567 So. 2d 451,455 (Fla. 1st DCA 1990) the court held that section 440.13(2) Florida Statutes, provides that an E/C must provide "medically necessary" benefits. The claimant's need must be **clearly** established. If the claimant's need is readily apparent, nonmedical evidence may provide adequate support for such an award.
19. In the instant case Dr. Atwater was questioned about the home assessment report. Although Dr. Atwater agreed that he signed a letter and stated that he was in complete agreement with **some** of the suggestions that were made to help the Claimant, he did not have any real recollection of the assessment at the time of his deposition and he could not find the report in his file. Additionally, he did not state which suggestions he agreed with.
20. In the Final Compensation Order I relied on *Diamond R. Fertilizer v. Davis* and found that the evidence did not support a finding that the following benefits are medically necessary or that E/C waived the medically necessary defense: Home renovations [i.e. ramp access on all entry/exit areas, outdoor motion sensor lighting, kitchen pull down shelves & slide out drawers, kitchen stove with controls on front, widening of all doorways to allow for mobility scooter/wheelchair, smooth flooring, bathroom (roll in bathroom shower, ADA approved handicap commode with side bars, portable bidet, wheelchair accessible vanity, grab bars, hand held shower head, walk-in bathtub)].
21. In the Motion for Rehearing Claimant asserted that I did not take into consideration, as argued in the pretrial memorandum, that for this 1989 date of accident the law is to be liberally construed in favor of the claimant. In *Alexander v. Peoples Ice Company*, 85 So. 2d 846, 847 (Fla. 1955) the Court held that the [workers'

compensation] act should be construed liberally and where doubt exist it should always be resolved in favor of the [worker]. Additionally, in *Johnson v. Dicks*, 76 So. 2d 657, 661 (Fla. 1954) the Court held that in [workers'] compensation the claimant is not bound by the preponderance of evidence rules or the rule which requires proof to the exclusion of a reasonable doubt as in criminal cases.

22. Applying sec. 440.13(2)(a) Fla. Stat. (1989) liberally in favor of the Claimant to the facts of this case, the evidence supports a finding that some home modifications are medically necessary. According to the Claimant's testimony she she has problems walking and getting food from her refrigerator. Dr. Mortensen's February 22, 2016 report noted in her recommendations, "per home study." Dr. Atwater agreed that he signed a letter and stated that he was in complete agreement with some of the suggestions that were made to help the Claimant. Dr. Gayles also indicated that he would defer to Ms. Litwin's opinions regarding the home assessment. The only evidence offered regarding the specific home modifications necessary to assist the Claimant was the testimony and assessment report of Ms. Litwin. Therefore, liberally construing the law in favor of the Claimant supports a finding that the recommendations provided in Ms. Litwin's home assessment report are medically necessary.
23. **Attendant care at least four hours a day [i.e. showering/bathing, dressing, laundry assistance, grocery shopping, meal prep, long distance transport, house cleaning (washing dishes, vacuuming, dusting, changing bed linen, etc.)]:**
24. Claimant testified that some days she cannot clean her house. On November 12, 2013 Dr. Gayles wrote a letter to the carrier requesting assistance for the Claimant. Specific requests included housekeeping assistance, someone to perform yard maintenance for her home and transportation for medical appointments, grocery shopping and pharmacy.
25. An Attendant Care Prescription, dated 4/25/14 and included with Joint Exhibit #3, indicated that Dr. Gayles prescribed professional attendant care from 4/25/14 to 10/25/14 **four to five days a week, for three hours per day**. The prescription also noted that the type of assistance required included personal care. Examples provided included bathing and dressing. Dr. Gayles also prescribed non-professional attendant care from 4/25/14 to 10/25/14 for **two days a week, for three to four** hours a day.
26. During her testimony the adjuster agreed that the non-professional attendant care was only [recommended] **for two days a week, three to four hours a day**. However, Dr. Gayles also noted that professional attendant care was prescribed four to five days a week for three hours per day. The adjuster did not believe that the attendant care was ever provided.
27. When asked about Ms. Litwin's recommendation of assistance four hours a day

with showering and bathing and dressing, Dr. Gayles stated that he would have to defer judgment to the person who has the certification to do those evaluations and make those decisions.

28. The adjuster reviewed Dr. Mortensen's June 23, 2015 report during her deposition. She agreed that Dr. Mortensen noted that the Claimant has frequent falls due to her dropped foot, failed back surgery and chronic pain. She also agreed that Dr. Mortensen recommended pool, lawn and **housekeeping** due to back surgery not healing. The adjuster testified that the carrier never responded to the June 23, 2015 recommendations of Dr. Mortensen.
29. The adjuster reviewed Dr. Mortensen's August 25, 2015 report. She agreed that Dr. Mortensen noted, home, lawn and pool neglect, and that the Claimant was very depressed. The adjuster agreed that Dr. Mortensen recommended that [the carrier] reinstate home, pool and yard help. The carrier never responded to the August 25, 2015 recommendations. The adjuster reviewed reports from Dr. Mortensen dated September 22, 2015 and October 13, 2015 that included similar recommendations that were not responded to by the carrier. The adjuster did not contact Dr. Mortensen to discuss any of her recommendations.
30. Dr. Mortensen testified that having assistance with keeping her home clean and assistance with heavy stuff like laundry, mopping and vacuuming, will help the Claimant improve her issues of depression and anxiety.
31. Under Florida law, housekeeping, transportation, other than to a doctor's appointment and other normal household duties that reflect on quality of life rather than medical necessity are generally considered gratuitous and not compensable. *Socolow v. Flanigans Enterprises*, 977 So. 2d 742, 744 (Fla. 1st DCA 2004). Care is compensable only if it is "medically necessary." *Id.*
32. The testimony of Dr. Mortensen and Dr. Gayles' Attendant Care Prescription, dated 4/25/14 support a finding that attendant care is medically necessary. Additionally, E/C waived the medically necessary defense by not responding to Dr. Mortensen's written recommendations provided in her reports.
33. Dr. Gayles' Attendant Care Prescription for professional attendant care four to five days a week, for three hours per day and non professional care two days a week for three to four hours a day, in addition to Ms. Litwin's recommendations, support a finding that attendant care for at least four hours a day is medically necessary.
34. **Home physical therapy to assist with aquatic exercises and safety in and out of pool area:** During his deposition Dr. Gayles reviewed a form dated July 1, 2015 and signed by him. In discussing this document during his deposition he agreed that he said "no" regarding a prescription for physical therapy. According to his testimony he believed the Claimant needed to transition into independent exercise.



The form indicated that Dr. Gayles said, “no” to aqua therapy. He further testified that he was not sure regarding aqua therapy because of the Claimant’s difficulty getting out of the pool with her foot, he stated that he figured he would just keep it safe, “stay on land.”

35. According to Dr. Mortensen’s testimony, the Claimant might benefit more from aqua therapy at another facility with other people as opposed to undergoing aqua therapy at home, isolated from others. She stated that she wasn’t sure how to answer questions regarding home therapy.
36. Based on the testimony of Dr. Gayles and Dr. Mortensen, I find that home physical therapy to assist with aquatic exercises and safety in and out of pool area is not medically necessary. Additionally, the evidence does not support a finding that E/C waived the medically necessary defense regarding the request for home physical therapy to assist with aquatic exercises and safety in and out of pool area.
37. **Authorization for pool care maintenance for a year (3/17/15 to 3/16/16) per Dr. Gayles’ recommendation on 3/16/15:** In the Final Compensation Order I noted that, “Although E/C asserted defenses to benefits requested in the April 28, 2015 PFB, which included authorization for pool care maintenance, Claimant specifically noted in the Pretrial Stipulation that the benefits requested in the April 28, 2015 PFB resolved.” In the Motion for Rehearing Claimant asserted that the JCC misconstrued the pleadings and status of this particular issue. Claimant asserted that at no time did claimant ever represent that the issue of “pool maintenance” was resolved. Counsel for E/C conceded that pool care maintenance was an issue that should have been addressed in the Final Compensation.
38. Claimant argued that the request for pool care maintenance was for the purpose of maintaining the pool for home exercises recommended by Dr. Gayles. Dr. Gayles noted in an April 30, 2015 report that, “[The Claimant] is motivated to exercise on her own and has modesty issues with the Cora Facility. [She] is advised to begin independent aquatic exercises and an Rx has been written for Pool Care Maintenance.” A prescription dated April 16, 2015 from the Pain Institute supports a finding that Dr. Gayles prescribed Pool Care Maintenance.
39. E/C asserted that the Claimant has already been authorized for aquatic therapy, and therefore the request was denied. E/C further asserted that pool maintenance has not been deemed medically necessary. However, the evidence supports a finding that Dr. Gayles’ recommendation for aquatic exercises was separate and distinct from aquatic therapy.
40. Claimant requested pool care maintenance from 3/17/15 to 3/16/16. However, the prescription for Pool Care Maintenance is dated 4/16/15. Therefore, Claimant is entitled to Pool Care Maintenance from 4/16/15 to 3/16/16.

41. **Evaluation and treatment with a podiatrist regarding her left foot drop and right foot drop issues. Claimant requires a custom AFO that properly fits and supports her left foot as well as evaluation of return of the right foot drop, as well as an evaluation for specialized shoes:**
42. According to the arguments of Claimant's counsel, the Claimant is seeking: (1) an evaluation and treatment with a podiatrist; (2) A custom AFO brace that properly fits the Claimant; and (3) an evaluation for specialized shoes. In the Final Compensation Order I found that the evidence did not support a finding that an evaluation and treatment with a podiatrist regarding her left foot drop and right foot drop issues were medically. In the Motion for Rehearing, Claimant asserted that I did not address whether E/C waived the medically necessary defense.
43. Dr. Gayles testified that he did not believe a prescription for a podiatrist was necessary. He explained that if the Claimant had issues with the foot drop, an orthopedic physician would be better. He stated that this was something that Dr. Datta could handle. Dr. Gayles stated that the Claimant improved with respect to her orthopedic care and putting someone into an AFO foot brace would stop or limit progress.
44. E/C asserted that there has been no recommendation by an authorized treating physician related to the need for an evaluation and treatment with a podiatrist regarding the Claimant's bilateral foot drop issues. E/C further asserted the requests for a left AFO brace, evaluation of right foot drop, and specialized shoes are without merit, and a referral was not made by an authorized physician.
45. The adjuster reviewed a report from Dr. Datta dated June 12, 2014. She agreed that this report included an order for a left AFO brace. She testified that the prior adjuster authorized the recommended brace on June 20, 2014. Dr. Datta noted in his July 29, 2014 report that the Claimant was having some problem with the left AFO brace prescribed because of the left foot drop. He noted that it seemed to be "rubbing" her. He further noted that the Claimant will see the orthotist to have this evaluated.
46. In the Final Compensation Order I found that the evidence did not support a finding that an evaluation and treatment with a podiatrist regarding her left foot drop and right foot drop issues were medically necessary.
47. On rehearing Claimant argued that E/C waived the medical necessity defense by not responding to the Medically Necessary Prescriptions dated March 16, 2015. Claimant further argued that I did not address waiver of the medically necessary defense regarding the claim for a podiatrist and proper fitting AFO brace in the Final Compensation Order. Claimant reiterated that in 2014 the carrier provided an AFO brace. However, the brace did not properly fit and the request was for a properly fitting brace.

48. Joint Exhibit #5 included the “Medically Necessary Prescriptions” signed by a physician’s assistant. This document included, “Prescription for Proper AFO Drop Foot Brace” and “Prescription for Podiatrist – evaluate footwear.”
49. According to the testimony of Dr. Gayles, his physician’s assistant, Michael Thomas, signed the Medically Necessary Prescriptions. He identified the signature on the form. Dr. Gayles believed that the form was sent to the carrier, but he did not see a specific response to the Medically Necessary Prescriptions in his file.
50. The evidence supports a finding that Dr. Gayles’ physician’s assistant prepared the March 16, 2015 Medically Necessary Prescriptions. In a Response to the April 28, 2015 Petition for Benefits, prepared on May 7, 2015, E/C asserted that, “Proper Foot Brace – Authorization of the Claimant’s foot brace is disputed at this time. The medically necessary prescriptions provided to the claimant do not state which physician provided this script. Furthermore, there are no medical records from Dr. Gayles providing the requested care is medically necessary or due to the claimant’s industrial injury.”
51. In a Response to the February 15, 2016 Petition for Benefits, prepared on February 26, 2016, E/C asserted, “There is no record from an authorize physician indicating that podiatric care is medically necessary or due to the Claimant’s industrial injury. Request[s] for custom fit AFO, treatment to right foot drop, and specialized shoes [are] not approved.”
52. The evidence supports a finding that E/C waived the medically necessary defense to the requests for (1) an evaluation and treatment with a podiatrist; (2) A custom AFO brace that properly fits the Claimant; and (3) an evaluation for specialized shoes. Dr. Gayles believed the prescriptions were sent to the adjuster. Even if they were not, the adjuster did not respond within 3 days from receiving the Medically Necessary Prescriptions that were filed with the PFB. Moreover, in *United Sheet Metal Co. & Liberty Mutual Ins. Co.*, 520 So. 2d 616, 617 (Fla. 1st DCA 1988) the court agreed that the evidence did not establish that the carrier ever received a letter from the doctor regarding the recommendation for a hot tub. However, the court held that, assuming the doctor did not send the letter, neither the statute nor decisional law compelled a deputy to visit upon the claimant rather than the carrier the consequence of such communication failure by an authorized doctor.
53. Additionally, applying sec. 440.13(2)(a) Fla. Stat. (1989) liberally in favor of the Claimant to the facts of this case, the evidence supports a finding that the benefits provided in the Medically Necessary Prescriptions, (1) an evaluation and treatment with a podiatrist; (2) A custom AFO brace that properly fits the Claimant; and (3) an evaluation for specialized shoes are medically necessary.

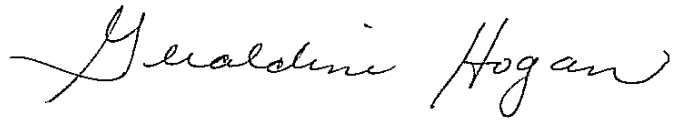
WHEREFORE, it is ORDERED and ADJUDGED that,

1. The claim for authorization for pool care maintenance for a year (3/17/15 to 3/16/16) per Dr. Gayles' recommendation on 3/16/15 is GRANTED in part. Claimant is entitled to Pool Care Maintenance from 4/16/15 to 3/16/16.
2. The claim for authorization of **lawn and yard service** maintenance and assistance with all activities that require heavy lifting that Claimant is unable to perform is GRANTED.
3. The claim for authorization of **home renovations** [i.e. ramp access on all entry/exit areas, outdoor motion sensor lighting, kitchen pull down shelves & slide out drawers, kitchen stove with controls on front, widening of all doorways to allow for mobility scooter/wheelchair, smooth flooring, bathroom (roll in bathroom shower, ADA approved handicap commode with side bars, portable bidet, wheelchair accessible vanity, grab bars, hand held shower head, walk-in bathtub)] is GRANTED.
4. The claim for authorization of **attendant care at least four hours a day** [i.e. showing/bathing, dressing, laundry assistance, grocery shopping, meal prep, long distance transport, house cleaning (washing dishes, vacuuming, dusting, changing bed linen, etc.)] is GRANTED.
5. The claim for authorization of **home physical therapy** to assist with aquatic exercises and safety in and out of pool area is DENIED.
6. The claims for authorization of evaluation and treatment with a **podiatrist** regarding her left foot drop and right foot drop issues; and **custom AFO brace that properly fits** and supports her left foot as well as evaluation of return of the right foot drop, as well as an **evaluation for specialized shoes** are GRANTED.
7. The claim for authorization of orthopedic care with Dr. John Atwater for her compensable ongoing spinal issues was withdrawn.
8. Any objections not ruled upon are deemed overruled<sup>2</sup>.

DONE AND ORDERED this 12<sup>th</sup> day of August, 2016 in Lauderdale Lakes, Broward County, Florida.

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<sup>2</sup> Joint Exhibit #3 pg. 126:19-21 I sustain the objection to attendant care prescription not prepared by Dr. Gayles.  
Joint Exhibit #3 pg. 154: 10-13 I sustain the objection.  
Claimant's Exhibit #4 pgs. 20 -21 I sustain E/C's objection and agree with E/C's attorney that the doctor did not have the letter and Claimant's counsel, not Dr. Atwater, was testifying.  
Claimant's Exhibit #3 pg. 23: 8-13 I sustain the objection. Question was leading.

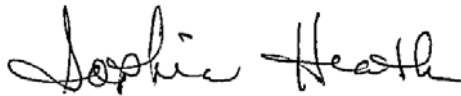


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**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true copy of the foregoing Order was furnished this 12th day of August, 2016 by electronic transmission to the carrier and the parties' counsel of record.



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Secretary to the Judge of Compensation Claims

**COPIES FURNISHED:**

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## **Appendix**

### **Judge's Exhibits**

1. Pretrial Stipulation filed on 4/18/2016 (Docket ID No. 200)
2. Petition for Benefits filed on 4/28/2015 (Docket ID No. 142)
3. Petition for Benefits filed on 2/15/2016 (Docket ID No. 183)
4. Response to Petition for Benefits filed on 5/7/2015 (Docket ID No. 144)
5. Response to Petition for Benefits filed on 2/26/2016 (Docket ID No. 191)

### **Joint Exhibits**

1. Deposition Transcript of Mildred Cintron with exhibits filed on 5/25/2016  
(Docket ID Nos. 214, 215, 216, 220, 221, 222, 223, 224, 225, 231, 232, 233, 234, 235)
2. Deposition Transcript of Dr. Margaret Mortensen with exhibits filed on 5/24/2016  
(Docket ID Nos. 209, 210, 211, 212, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245)
3. Deposition Transcript of Dr. Richard Gayles with exhibits filed on 6/1/2016  
(Docket ID Nos. 263, 264, 265, 266)
4. Deposition Transcript of Victoria Murray-Rosso filed on 6/1/2016 (Docket ID#262)
5. (Composite)
  - a. 11/12/2013 Correspondence from Dr. Richard Gayles  
(Docket ID No. 268 filed on 6/6/2016);
  - b. 4/16/15 Prescription of Dr. Richard Gayles filed on 4/28/2015  
(Included in Docket ID No. 143)
  - c. Medically Necessary Prescriptions of Dr. Richard Gayles dated 3/16/2015 filed on 4/28/2015  
(Included in Docket ID No.143)

### **Claimant's Exhibits**

1. Claimant's Trial Memorandum with Case Law Filed 5/31/2016  
(Docket ID Nos. 247, 248, 249, 250, 251)
2. Claimant's Reply to E/C's Trial Memorandum filed on 6/1/2016 (Docket ID No. 259)
3. Deposition Transcript of Marilyn Litwin with exhibits filed 5/31/2016  
(Docket ID Nos. 252, 253, 254, 255, 256)
4. Deposition Transcript of John Atwater with exhibits filed on 5/25/2016

(Docket ID Nos. 217, 218, 219) (Objection Overruled)

5. Claimant's Motion for Rehearing Filed on 7/6/2016 (Docket ID #273)

**Employer/Carrier's Exhibits:**

1. Employer/Carrier's Trial Memorandum of Law with Case Law  
(Docket ID Nos. 246, 257, 258)
2. Employer/Carrier's Closing Arguments Filed 6/3/2016 (Docket ID No. 267)
3. Employer/Carrier's Response to Claimants' Motion for Rehearing Filed on 7/8/2016  
(Docket ID#273)