STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY

Laurene Dickinson	)	Opinion No. 13-03WC
	)	
v.	)	By: George Belcher Hearing Officer
	)	
T. J. Maxx	)	
	)	For: Michael S. Bertrand Commissioner
	)	
	)	
	)	State File No. M-05516

Hearing held in Rutland, Vermont on October 25, 2002 and in Montpelier, Vermont on October 28, 2002
Record Closed on November 15, 2002

APPEARANCES:

Beth Robinson, Esq. for the Claimant (who was present at the hearing)
David McLean, Esq. for the Employer

EXHIBITS:

Joint Exhibit 1: Medical Records of Laurene Dickinson, Volumes 1 and 2 (516 pages) including medical records of:
- a) Convenient Medical Care
- b) VT Orthopedic Clinic
- c) RRMC
- d) VT Sports Medicine
- e) DHMC
- f) Mark Bucksbaum, M.D.
- g) Michael Dryer, M.D.
- h) Mt. Ascutney Hospital
- i) Restoration P.T.

Joint Exhibit 2: Video Deposition of Mark Bucksbaum, M.D.

Claimant's Exhibits

Claimant's Exhibit1: Curriculum Vitae of Mark Bucksbaum, M.D.
Claimant's Exhibit 2: Letter of July 19, 2002 from Dr. Bucksbaum to Atty Robinson
Claimant's Exhibit 4: Home Evaluation of 1/3/02 by Restorative Physical Therapy
Claimant's Exhibit 6: Interim note of 3/28/02 of Restorative Physical Therapy
Claimant's Exhibit 7: Letter to Atty Robinson from Patricia Nowick dated 05/17/02

Claimant's Exhibit 11:	Curriculum Vitae, Patricia Nowick
Claimant's Exhibit 12:	MMT note of 10/23/02
Claimant's Exhibit 13:	Restoration Physical Therapy Flow Chart
Claimant's Exhibit 14:	Curriculum Vitae of Diane Aja, P.T.
Claimant's Exhibit 15:	Diane Aja report

Defendant's Exhibits

Employer's Exhibit A:	Curriculum Vitae of Michael Kenosh, M.D.
Employer's Exhibit B:	Page 529 of The Guide to the Evaluation of Permanent Impairment, 5th edition
Employer's Exhibit D:	Louise Lynch work history
Employer's Exhibit E:	Curriculum Vitae of Louise Lynch, CWCE
Employer's Exhibit F:	Continuing Education of Louise Lynch
Employer's Exhibit G:	Louise Lynch Continuing Industrial Education
Employer's Exhibit H:	Letter of Wm. Miller to Dr. Bucksbaum dated 8/28/01
Employer's Exhibit I:	Letter of Wm. Miller to Dr. Bucksbaum dated 9/13/02

ISSUES:

1. Shall the Claimant receive a manual wheelchair pursuant to the Vermont Workers' Compensation Act?
2. Shall the Claimant receive a power wheelchair pursuant to the Vermont Workers' Compensation Act?
3. Is the Claimant entitled to temporary partial and temporary total disability benefits subsequent to June 11, 2000?
4. Is additional temporary total disability due for the period of November 12, 1998 through June 11, 2000, and, if so, how much?

STIPULATED FACTS:

1. Claimant was an employee of Defendant within the meaning of the Vermont Workers' Compensation Act on September 10, 1998.
2. Defendant was an employer within the meaning of the Act on September 10, 1998.
3. RSKCo. Insurance Company was the Workers' Compensation insurance carrier of the Defendant on September 10, 1998.
4. On September 10, 1998, Claimant suffered a personal injury by accident arising out of and in the course of her employment with Defendant.
5. At the time of the accident, Claimant had no dependents and currently Claimant has no dependents under the age of twenty-one.
6. At the time of the accident, claimant had an average weekly wage of $286.50 and a weekly net income of $234.59, resulting in a weekly compensation rate of $234.59.

7. Claimant was paid Temporary Total Disability ("TTD") from November 12, 1998 until June 11, 2000, at the rate of $192.79 per week.

8. Defendant reinstated temporary disability benefits on August 3, 2001, pursuant to and order from the Department of Labor and Industry. Defendant paid these benefits at the rate of $192.79 per week. Defendant terminated those temporary disability benefits on January 30, 2002, pursuant to approved Form 27.

FINDINGS OF FACT ON THE EVIDENCE:

1. This case involves the question of whether the Claimant is so impaired by reason of her injury that she requires use of a wheelchair. There is disagreement between the testifying doctors and the testifying occupational therapist and physical therapist. The case boils down to the credibility and persuasiveness of the Claimant and the testifying medical professionals. (The matter was heard as an expedited case under Workers' Compensation Rule 7, but the trial was extensive with over 500 pages of exhibits and over 100 pages of proposed findings.)

2. On September 10, 1998 the Claimant suffered a personal injury by accident arising out of and in the course of her employment with the Defendant. She was lifting a box of pillows and heard a "popping" in her knee.

3. This incident set in motion a long series of evaluations and treatments, summarized as follows:

    a) The Claimant was initially diagnosed by Tim Lensing, PA-C with a left knee sprain;

    b) Dr. Joseph Vargus performed an arthroscopy on December 2, 1998 and found a partial torn medial meniscus, chrondromalacia of the patella;

    c) In December, 1998 and January of 1999, she was found to have a quadriceps atrophy; while she had hoped that the surgery would simply repair the knee problem, she was not free of pain; she participated in physical therapy between January of 1999 and May of 1999 including 44 visits to Vermont Sports Medical Center;

    d) Dr. Charles Carr treated the Claimant in July of 1999 by steroid injection; Dr. Carr is a rehabilitation specialist at Dartmouth-Hitchcock Clinic; Dr. Carr noted atrophy of her left thigh which was beyond what a simple knee injury would indicate; at this time she was still using crutches to walk;

    e) In August of 1999 the Claimant saw Dr. Gilbert Fanciullo, a pain specialist at the Dartmouth Hitchcock Clinic; he treated the Claimant for pain with medications;

    f) In that same month, the Claimant was given an Independent Medical Evaluation by Dr. Frederick Lord; he was of the opinion that she could return to work for four hours per day, he noted the left leg atrophy, and he recommended lumbar pain blocks which the claimant had between September and December of 1999; the pain blocks were ineffective; the

Claimant recommenced physical therapy at the suggestion of Dr. Fanciullo;

g) In January of 2000 Dr. Bagley performed an electromyography (EMG) and found that there was a partial injury to her "distal rectus femorus" which was gradually improving; she was later prescribed a neuromuscular electrical stimulation unit, discharged from the pain clinic and referred back to Dr. Carr;

h) In March of 2000 Dr. Carr found that she had not greatly improved and that the atrophy of the left leg was still present; he recommended that she participate in physical therapy and use a soft knee brace;

i) In the same month, Dr. Bucksbaum was retained by the Employer to perform an independent medical examination (IME) on the Claimant; he noted that she was using a cane, a soft knee brace, that she had knee pain and atrophy of her left quadriceps; he determined that she had reached maximum medical improvement and he assessed a permanency rating of 5% whole person, primarily basing the rating on the leg atrophy; he also suggested an exercise program and a different type of brace;

j) In May of 2000, the Claimant returned on her own to Dr. Bucksbaum; at that time she was not being offered significant hope for treatment with other treatment providers and she hoped to improve her functional capacity by investigating the brace which he had recommended; Dr. Bucksbaum discussed her situation and began a treating relationship with her; with a newly recommended brace, the Claimant returned to work on June 11, 2000 on a part time basis;

k) The return to work was not successful, because of pain and problems with the leg brace; with work and with exercise, both Dr. Bucksbaum and the Claimant had hoped for improvement in her leg and knee; instead she became worse; her employer noted that she was in significant pain in December of 2000 and asked her to cut back on her hours; as of January of 2001 the atrophy was getting worse, indicating that the nerve injury, if that was the problem, had not healed as hoped; because the Claimant was getting worse, Dr. Bucksbaum retracted his prior determination of medical end result; he prescribed a different leg brace;

l) In the Spring of 2001, the Claimant was prescribed a course of Neurontin for neuropathic pain; this was unsuccessful; in June of 2001 she had another EMG by Dr. Dreyer which test revealed a likely partial injury to her femoral nerve; the nerve injury impacts muscles in the leg; she was referred to Patricia Nowik, P.T. to help her work with a functional electronic stimulator;

m) In August of 2001, Dr. Bucksbaum restricted the Claimant from work and prescribed a “long-leg” brace; the long-leg brace is a significant device; the function of the brace is to take the weight of the patient off of the leg and knee and to transmit the weight from the pelvis, through the brace, to the ground; there were a variety of adjustments and modifications to the device; the Claimant had to change her life significantly to adjust to the brace; she had to learn how to walk with it, drive with it; get it on and off, and how to exercise daily life functions; it was hard for her; there were sores which developed and abrasions to her skin and clothes; she had pain from the brace and lumps in her tendons; in addition, the lack of natural walking and functioning associated with her injury was causing difficulties in other areas; her back, shoulders and neck began to have pains and soreness;

n) Again in August of 2001, the Employer caused the Claimant to be examined by Dr. Lord for an IME; Dr. Lord’s opinion was not significantly different from that of Dr. Bucksbaum, except that he felt that she had the capacity to work a very light schedule;

o) During the fall of 2001, the Claimant’s condition became worse with simple household functions becoming difficult and multiple body-point pain and spasms becoming an issue; Patricia Nowick, the physical therapist observed that the “quad muscles “ were getting worse and that the knee was not tracking properly; the more that the Claimant was on her feet, the more she had spasms and shoulder pain; both Pat Nowik and Dr. Bucksbaum, at one point raised the possibility of a wheel chair for relief and mobility; the Claimant was very resistant to the idea of a wheelchair as being inconsistent with ultimate recovery;

p) On January 16, 2002, Dr. Bucksbaum once again determined a medical end result and he assigned a permanency rating this time of 60% based upon the use of the brace; the Claimant had gone from a cane, to soft braces, to a long leg brace, to a long-leg brace and crutches; her ability to function, both for employment and daily living, had withered over a long course of treatments, therapy, electronic devices, testers, and pain;

q) In February of 2002, at the suggestion of Dr. Bucksbaum, the Claimant was evaluated by Dr. Stephen Mann, a psychologist; he found that she was not engaging in excessive somatic thought, but that she was clinically depressed by reason of her injury; during a time in February, the long-leg brace was sent out for repair; during this time, the Claimant was severely restricted in her ability to get around or do much of anything;

r) In February of 2002, the Claimant was evaluated by Diane Aja, an Occupational Therapist, for a Functional Capacity Examination (FCE); Ms. Aja determined her tests to be valid based on the repeatability, confirmation by objective standards, consistency, and distracted performance; her conclusion was that the Claimant had extreme limitations on her ability to walk, and that a power wheelchair would benefit the Claimant by relief of her shoulders from overuse (due to the use of the crutches) and increased distance capability; in addition she would have increased energy and extended arm use; Ms. Aja did not support a manual wheelchair;

s) On April 30, 2002 Dr. Bucksbaum recommended a manual and power wheelchair (the manual as a back-up);

t) Dr. Michael Kenosh performed an Independent Medical Exam on May 13, 2002; he had full access to her medical records, which he thoroughly reviewed; he performed a physical examination; he noted significant left leg atrophy, but that there was no evidence of muscle spasms in the back and that the Claimant had normal upper body strength; at one point in the exam he noted that the motion was "ratcheting" showing lack of full, unrestricted effort; he determined that the documented injury to the nerve and knee were not sufficient for the resulting pain and lack of function; finally, it was his opinion that the prescription of a wheelchair was inappropriate for the level of functional impairment of the Claimant; he concluded that there was mild nerve damage to the femoral nerve and that her atrophy was probably a reflex sympathetic dystrophy;

u) Louise Lynch performed a Functional Capacity Examination on August 8, 2002; she determined that the Claimant could walk short distances in succession with short breaks and that she had, at the date of the assessment, the capability of working doing part-time sedentary work; Ms. Lynch noted weakness in all muscle groups of the left leg and observable back problems including trigger points and areas of weakness; she determined that the Claimant could walk 20 feet without crutches; she concluded that the Claimant performed the tests to her true ability.

4. It is worthwhile here to note some facts concerning credibility. First, Laurene Dickinson has consistently wanted to get better and to be healed. She has consistently followed the recommendations of her doctors and therapists. She has worked hard at therapy, with much pain and effort, with the ultimate goal of returning to her job and to her prior abilities. There is overwhelming evidence that she is not a malingerer or that she has not been fabricating symptoms. To the contrary, she was very resistant to the idea of a wheelchair when it was first raised because she saw it as giving up upon the goal of recovery.

5. Dr. Bucksbaum's ultimate opinion concerning degree of impairment and the extent of the injury is enhanced by the fact that it is inconsistent with his prior opinion. While he could err on the side of his professional consistency (and the Employer argues that he is professionally inconsistent, and, thus, less persuasive), his opinion is supported by the consistent physical decline of the Claimant and the objective findings of the EMG tests, both recent and past.

CONCLUSIONS OF LAW:

The Wheelchair

1. In Workers' Compensation cases the claimant has the burden to establish all facts essential to support her claim. *Goodwin v. Fairbanks, Morse and Co.*, 123 Vt. 161 (1963). There must be created in the mind of the trier of fact something more than a possibility, suspicion or surmise that the incidents complained of were the cause of the injury and the inference from the facts proved must be the more probable hypotheses. *Burton v. Martin Lumber Co.*, 112 Vt. 17 (1941). Sufficient competent evidence must be submitted verifying the character and extent of the injury and disability. *Egbert v. Book Press*, 144 Vt. 367 (1984).

2. An employer "shall furnish reasonable surgical, medical and nursing services and supplies to an injured employee." 21 VSA Sec. 640 (a).

3. In this case there are countervailing opinions concerning the reasonableness of the wheelchair between Dr. Bucksbaum (in favor) and Dr. Kenosh (against); Patricia Nowick P.T. and Diane Aja, P.T. (in favor) and Louise Lynch P.T. (against). There is no issue about a manual wheelchair since it would not be functional for the Claimant's needs. The real issue is the reasonableness of a powered wheelchair. When determining the weight to be given expert opinions in a case, this Department traditionally has looked to several factors: 1) whether the expert has a treating physician relationship with the claimant, including the length of the time the evaluator provided treatment; 2) the professional education and experience of the expert; 3) the evaluation performed, including whether the expert had all medical records in making the assessment, and 4) the objectivity and logical support underlying the opinion. *Yee v. International Business Machines*, Opinion No 38-00 WC (Nov. 9, 2000); *Miller v. Cornwall Orchards*, Opinion No. 20-97 (Aug. 4, 1997).

4. Dr. Bucksbaum is the treating physician for the claimant. He had a long relationship with her, which started as an independent medical examiner. He has had the opportunity over a two-year relationship of treating physician/patient to explore all aspects of the Claimant's condition. He has consulted with other treatment providers and has seen the Claimant in various conditions. He has experienced the frustration of the Claimant's continued failure to improve. Dr. Kenosh, on the other hand, is not the treating physician. He did a thorough evaluation of her medical records, including an in depth analysis of the EMG studies. He examined the Claimant for about 15 minutes. For these reasons, Dr. Bucksbaum's opinion is entitled to greater weight.

5. Both physicians have excellent qualifications and training and there is no preference to be given on the second criteria. Likewise, both physicians had a very good working knowledge of the medical records, reports and the like concerning the Claimant's history and condition.

6. Concerning the fourth criteria, Dr. Kenosh's impression of the Claimant's condition was that her leg pain and atrophy was related to a mild femoral neuropathy, possible complex regional pain syndrome, and symptom magnification secondary to fear avoidance/somatization. Page 437, Joint Medical Exhibit. His opinion was based in large part upon his conclusion that the degree of weakness and disability observed would not have been expected given the electrodiagnostic findings. His opinions about somatization and symptom magnification were based upon his observations during his examination ("ratcheting and giveaway", lack of observable clinical findings supporting other areas of pain, lack of guarding) and the report of Dr. Mann. According to Dr.Kenosh, "There is also evidence of symptom magnification on examination and in behavioral testing". Joint Medical Exhibit, page 442. Again, concerning the prescription for a wheelchair, Dr. Kenosh states, "Given this patient's examination and behavioral testing profile, with lack of objective evidence of significant pathology on extensive testing, I cannot find prescriptions for manual or power mobility to be medically reasonable and necessary". *Id.*, p. 445. Dr. Mann found that the Claimant was "not engaging in excessive somatic thought" (Joint Medical Exhibit, p. 331) and that there was "absolutely no evidence of a malingering response style" (page 333). She scored very elevated scores on fear and avoidance beliefs secondary to work activity, but given her history of pain and failed attempts to work through her pain; her beliefs would seem to have a basis in fact. Dr. Mann's conclusions were that she had depression associated with the injury and the consequent losses. Dr. Mann did not conclude that she was manufacturing symptoms or giving partial effort. (It should be noted that Dr. Kenosh disagreed with Dr. Mann's conclusions about the Claimant's psychological disability rating.)

7. Dr. Bucksbaum confronted the same dilemma of a persistent, worsening physical pain and function situation for the Claimant with unclear clinical justification. He worked with the Claimant using a variety of tools and medications. His conclusion was that the partial femoral nerve damage had a greater practical effect than might be expected. According to Dr. Bucksbaum the sensory parts of the nerve were not as damages as the motor portions of the nerve, which were significantly damaged, and as such they impact her ability to walk in a greater fashion than might be normally expected. Page 48-49 of Dr. Bucksbaum deposition testimony. Dr. Bucksbaum experienced, first hand, the Claimant's efforts toward cure, her attempts to use braces, electronic stimulators, medications, and her continued atrophy of her leg. Dr. Bucksbaum's conclusions are better grounded in logical support and objective evidence.

8. Dr. Kenosh was of the opinion that wheelchairs are reserved for those patients with amputations or severe impairments to both the lower and upper extremities. Dr. Bucksbaum was of the opinion that a power wheelchair was reasonable and medically necessary in this case for a number of reasons, including her limited upper body strength, the increase of her pain associated with the leg brace and crutches, the freedom to use her hands if she is relieved of the crutches, the ability to travel long distances without fatigue and pain in a wheelchair, the ability to travel over uneven terrain, and an increased sense of well-being associated with mobility.

9. The same balance of factors weighed in favor of the opinion of Patricia Nowick, P.T. and Diane Aja, P.T., as opposed to that of Louis Lynch, P.T. Both Patricia Nowick and Diane Aja found that the Claimant was giving full effort and valid responses in examinations and tests. Patricia Nowick was very persuasive in her descriptions of the strong desire of the Claimant to get better. Her opinions, based on many first hand observations over time, were that the pain and disability of the Claimant was significant and real. She described the Claimant as compliant concerning all tasks toward getting better. Diane Aja stated that "The results indicate that this Client gave reliable efforts that were not diminished or biased by disability behaviors or active choice to portray efforts that are less than true." Plaintiff's Exhibit 15. Further she stated, "Based on the evaluations today (2/27/02), I would support her need to a wheelchair accessible environment in order to improve her functional capacities in performing home activities. *Id.* Ms. Lynch concluded that, "The use of a motorized wheelchair (as well as a non-motorized chair under most work conditions) would allow and (sic) increase in mobility as an accommodation for her walking limitations, but this is not necessary as SEDENTARY work only requires occasional walking". Joint Medical Exhibit, P. 471. The opinions of Ms. Aja and Ms. Nowick are more persuasive.

10. A power wheelchair is medically reasonable and necessary for the condition of the Claimant.

Medical End Result in June of 2000

11. A "medical end result" is defined at the point at which a person has reached a substantial plateau in the medical recovery process, such that significant further improvement is not expected regardless of treatment. Workers' Compensation Rule 2.12. Temporary disability benefits continue until medical end result. Thereafter, a permanent disability rating is determined and permanent or partial disability benefits are awarded based upon the level of disability. The logical functions of the end result rule it to allow for a stabilization of condition before rating permanent disability. It is clear in this case, despite Dr. Bucksbaum's initial finding of medical end result in June of 2000 that the Claimant was not at a plateau in the recovery process. In fact, despite efforts to turn the decline of her condition around, she was getting worse. Dr. Bucksbaum was hopeful that with different treatments (Neurontin, an electronic stimulator, physical therapy) he could help improve the condition of Ms. Dickinson, but he was unable to do so. Dr. Lord was also of the opinion in August of 2001 that it would be appropriate to evaluate the Claimant in 6 months (about January of 2002) as being at maximum medical improvement. *See* Joint Medical Exhibit, Page 214. Thus, both Dr. Bucksbaum and Dr. Lord agreed at that time, that maximum medical improvement had not occurred.

12. The medical end point was mistakenly accessed in June 2000, and was correctly determined by Dr. Bucksbaum to have occurred on January 16, 2002.

Annual Adjustments/Weekly Net Income Cap

13. The final issue is whether the claimant's temporary disability compensation benefits should be annually adjusted if her compensation rate already equaled her "weekly net income."

14. Vermont's workers compensation act establishes an injured worker's temporary total disability benefit at 2/3rds of the worker's average weekly wage. It further provides that a worker should not receive more than the maximum compensation rate, nor less than the minimum compensation rate. Finally, it caps any compensation rate at the worker's "weekly net income". *See* 21 V.S.A. § 642. Based on the parties' stipulations[1], claimant's average weekly wage at the time of the injury was $286.50. Two thirds of this wage would be $191.00 a week. This amount is below the minimum weekly compensation rate in effect in September of 1998 (*see* Workers Compensation Rule 16), so the claimant was entitled to receive the minimum compensation rate. *See* 21 V.S.A. §601(19).

[1] The parties have stipulated that claimant's weekly workers' compensation rate should be $234.59/week, which is equal to her weekly net income. See stipulated fact #6. The stipulated facts also indicate that the insurer has been paying claimant less than this weekly rate

15. In 1993 and 1994, a workers' compensation advisory commission recommended several changes to the Vermont Act. One specific recommendation was that claimant's temporary total disability compensation benefit be "capped" at the claimant's weekly net income. The council believed that if a worker was able to collect more in untaxed workers' compensation each week than he or she received in "take home pay", than the workers' incentive to return to work as quickly as possible was reduced. The legislature enacted this recommendation in 1994. When it did so, the department believed the intent of the provision was to limit temporary total benefits (wage replacement) and encourage prompt return to the workforce. The department adopted Workers' Compensation Rules 15.200 and 16.200 to apply this interpretation.

16. Section 650(d) provides that the average weekly wages are to be adjusted annually on July 1, so that "such compensation continues to bear the same percentage relationship to the average weekly wage in the state as computed under this chapter as it did at the time of the injury". The Claimant argues that the "weekly net income" cap should be similarly adjusted; the respondent argues that this would allow wages to exceed the weekly net income cap.

17. Prior to 1994, department policy had limited the annual adjustments in 21 V.S.A. §650(d) by the workers' gross average weekly wage. That is, adjustments were not applied after the worker's compensation rate reached his or her average weekly wage. The policy was evidently developed to ensure that collecting workers' compensation was not more lucrative than working. When the legislature adopted the "net income cap" provision in 1984, the department modified the pre-existing policy, and stopped applying the 650(d) adjustments when the worker's temporary total disability compensation rate reached the workers "weekly net income" amount. . In previous cases, this Department applied the cap. See, *Roethke v. Jake's Original Bar & Grill*, Op. No. 51-99WC (1999); *Fischer v. Karme Choling*, Op. No. 28-93WC (1994); *Runnals v. Can Do Special Events*, Op.No.56-96WC (Oct.5, 1996).

Correct Rate of Benefits/Request for Interest

18. The parties initially disputed the correct rate of payment for the period of November 12, 1998 to June 11, 2000. The parties have stipulated that claimant's weekly workers' compensation rate should be $234.59/week, which is equal to her weekly net income. See stipulated fact #6. The stipulated facts also indicate that the insurer has been paying claimant less than the weekly rate. The employer recalculated the payments and made a payment of $3,427.60 on October 28, 2002. Claimant has sought interest on this amount in her memorandum and proposed findings. No response to this request was filed. Since the employer has had the use of the disability payments, which were rightfully to be paid to the Claimant, statutory interest is awarded to the Claimant on this sum from June 10, 2000 to October 28, 2002. *See Marsigli Estate v. Granite City Auto Sales*, 124 Vt. 467 (1964).

19. The Claimant has sought an award of attorney's fees under 21 VSA § 678 (a). This case raised difficult and subtle questions concerning both factual and legal issues. The case was well-tried by both counsel and, clearly, much effort and preparation had gone into the case. The award of costs is a matter of law and the award of attorney's fees is discretionary with the Commissioner. The Claimant substantially prevailed in this case. Claimant's counsel expended 182.3 hours of attorney time and 20.8 hours in paralegal time. In addition, there was expended $8,083.88 in compensable expenses. There is awarded to the Claimant the sum of $17,343.00 in attorneys and paralegal fees and $8,083.88 in expenses, which are found to be reasonable and compensable pursuant to 21, VSA Sec, 678 and Workers' Compensation, Rule 10.

Summary

The Claimant is entitled to a powered wheelchair as a reasonable and necessary medical supply required by reason of her compensable injury. The Claimant is entitled to temporary total and partial disability benefits following June 11, 2000 until January 16, 2002 to be calculated consistently with this opinion. Interest at the legal rate is due on the underpayment of benefits prior to June 11, 2000 and the interest shall be calculated on $3,427.60 from June 11, 2000 until October 28, 2002. An award of attorney's fees and costs is made as set forth above.

Dated at Montpelier, Vermont this 10th day of April 2003.

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Michael S. Bertrand
Commissioner

Appeal:
Within 30 days after copies of this opinion have been mailed, either party may appeal questions of fact or mixed questions of law and fact to a Superior Court or questions of law to the Vermont Supreme Court. 21 VSA Sec. 670, 672.