NO. COA05-1091

NORTH CAROLINA COURT OF APPEALS

Filed: 19 September 2006

LOUISE PHILLIPS,
Employee,
Plaintiff-Appellee,

v.

North Carolina Industrial Commission
I.C. File No. 219411

ANGELO'S SHOES, INC.,
Employer,

and

NORTH CAROLINA INSURANCE GUARANTY ASSOCIATION,
Statutory Insurer,
Defendant-Appellants.

Appeal by defendants from opinion and award of the North Carolina Industrial Full Commission entered 24 March 2005 by Commissioner Thomas J. Bolch. Heard in the Court of Appeals 8 May 2006.

Richard B. Harper, for plaintiff-appellee.

Young Moore and Henderson P.A., by Joe E. Austin, Jr. and Angela N. Farag, for defendant-appellees.

JACKSON, Judge.

On 8 February 1992, Louise Phillips (plaintiff) injured her spinal cord when she lifted a television while employed with Angelo's Shoes, Inc. (defendant). Subsequently plaintiff was diagnosed as being an incomplete paraplegic, with Brown-Sequard Syndrome. On 13 April 1994,

the North Carolina Industrial Commission determined that plaintiff sustained her injury by accident arising out of and in the course of her employment with defendant, and she was awarded compensation for temporary total disability.

Since her initial compensable injury, plaintiff's physical condition has severely deteriorated, and she has developed numerous psychological problems as well as a neurogenic bowel and bladder problem. Over the course of the past fourteen years, plaintiff has seen numerous doctors, therapists, and vocational counselors, including: Randy Adams, an expert in vocational evaluation and rehabilitation; Dr. Mark Anderson, a urologist; Barbara Armstrong, a registered nurse and certified life care planner; Dr. Samuel Bowen, a physician with expertise in internal medicine; Dr. Del Curling, a neurosurgeon; Dr. Scott Cutting, a psychologist; Dr. Terence Fitzgerald, a psychologist; Dr. James Hoski, an orthopedic spine surgeon; Frank Radford, a rehabilitation case manager; Dr. Andrea Stutesman, a physician with expertise in physical medicine and rehabilitation; Dr. Roy Sumpter, a vocational consultant; and Dr. Leonard Tananis, a certified physiatrist. All agree that plaintiff's condition has deteriorated, and that her present condition is very different than her condition initially was following her compensable injury. Since her initial injury, plaintiff has participated at different times in vocational rehabilitation activities, physical therapy including aquatic therapy, and regular psychological counseling.

On 10 October 2001, plaintiff filed a Form 33 Request that Claim Be Assigned for Hearing, seeking a determination on whether or not she was permanently and totally disabled, and the amount and type of medical treatment to which she was entitled. The parties entered into a pre-trial agreement on 6 March 2002, and the case was heard before Deputy Commissioner Lorrie L. Dollar. In an Opinion and Award filed 22 December 2003, the Deputy Commissioner

found plaintiff was entitled to temporary total disability. The Opinion and Award found that plaintiff was not entitled to have defendants reimburse plaintiff for the costs incurred in having a life care plan prepared, and plaintiff was not entitled to attendant care services or a permanent pool membership for the purpose of aquatic therapy. Plaintiff appealed her case to the Full Commission.

On 24 March 2005, the Full Commission entered its Opinion and Award reversing the Deputy Commissioner's award, and finding plaintiff was permanently and totally disabled. Plaintiff was awarded not only reimbursement of the costs associated with her life care plan, but also reimbursement for past and future attendant care, a permanent pool membership, attorney's fees, and expert witness fees. Defendants now appeal the Opinion and Award of the Full Commission.

Defendants were served with a copy of the Full Commission's Opinion and Award on 28 March 2005 but failed to file their Notice of Appeal within the required thirty days. Defendants' Notice of Appeal was filed with the Commission on 28 April 2005, one day after the required thirty day time requirement. On 24 May 2005, plaintiff filed a motion with the Commission seeking to dismiss defendants' appeal based on the untimely filing of the notice of appeal. The Commission denied plaintiff's motion to dismiss defendants' appeal, citing that the one day late filing of the notice of appeal was due to excusable neglect.

On 17 August 2005, defendants filed a petition for writ of certiorari, asking this Court to hear the merits of defendants' appeal despite a one-day late filing of the notice of appeal with the Industrial Commission. Subsequently, on 4 October 2005, plaintiff filed a motion to dismiss defendants' appeal based on a lack of jurisdiction. In order to address the issues presented in defendants' appeal, we elect, in our discretion, to deny plaintiff's motion to dismiss, and grant

defendants' petition for writ of certiorari. N.C. Gen. Stat. § 7A-32(c) (2005); N.C. R. App. P. 21 (2005).

On appeal, defendants contend the Full Commission committed numerous errors including: 1) a lack of competent evidence to support the Commission's findings and conclusions that plaintiff's current condition is causally related to her compensable injury; 2) an improper determination that plaintiff is permanently and totally disabled; 3) improper awards of medical compensation; 4) failure to consider the hearing officer's assessment of plaintiff's credibility; 5) made erroneous evidentiary rulings; and 6) failure to address all of the issues that were before the Commission.

"The [F]ull Commission, upon reviewing an award by the hearing commissioner, is not bound by findings of fact supported by the evidence, but may reconsider evidence and adopt or reject findings and conclusions of the hearing commissioner." *Robinson v. J. P. Stevens*, 57 N.C. App. 619, 627, 292 S.E.2d 144, 149 (1982) (citing *Watkins v. City of Wilmington*, 290 N.C. 276, 280, 225 S.E.2d 577, 580 (1976)). In reviewing a decision of the Full Commission, this Court is limited to a consideration of whether there is any competent evidence to support the Commission's findings of fact and whether the findings of fact support the Commission's conclusions of law. *Deese v. Champion Int'l Corp.*, 352 N.C. 109, 116, 530 S.E.2d 549, 553 (2000). The Commission's findings of fact are deemed conclusive on appeal when they are supported by competent evidence, even when there is evidence which would support contrary findings. *Pittman v. International Paper Co.*, 132 N.C. App. 151, 156, 510 S.E.2d 705, 709 (1999). "[T]he [F]ull Commission is the sole judge of the weight and credibility of the evidence." *Deese*, 352 N.C. at 116, 530 S.E.2d at 553 (citing *Adams v. AVX Corp.*, 349 N.C. 676, 509 S.E.2d 411 (1998)). On appeal, this Court "does not have the right to weigh the evidence and

decide the issue on the basis of its weight." *Anderson v. Construction Co.*, 265 N.C. 431, 434, 144 S.E.2d 272, 274 (1965). Our duty "goes no further than to determine whether the record contains any evidence tending to support the finding." *Id*.

Defendants first contend there is no competent evidence in the record to support the Commission's finding that plaintiff's incomplete thoracic paraplegia is causally related to her original compensable injury. In plaintiff's original workers' compensation case, she was determined to have sustained a back injury during the course of her employment, which resulted in her suffering from Brown-Sequard Syndrome. Defendants contend that the Commission erred in basing its determinations on plaintiff's condition which is now labeled as incomplete thoracic paraplegia. Specifically defendants argue the Commission erred in relying on the doctrine of *res judicata*, when it found that "[f]rom the outset, plaintiff's injury has been difficult for the doctors to label. However, the fact that she has a spinal cord injury variously described as Brown[-]Sequard Syndrome or incomplete thoracic paraplegia, and the fact that her spinal cord injury is compensable are *res judicata*."

The evidence contained in the record clearly indicates that plaintiff initially suffered an injury to her spinal cord, in the mid-thoracic region. This diagnosis is documented not only by the physicians who initially treated plaintiff, but also by the numerous doctors plaintiff has seen over the past fourteen years. There is no indication or evidence that she has suffered any additional injury, or that her incomplete thoracic paraplegia is the result of a new injury. In fact, her initial injury, as found by the Commission in 1994, was found to have resulted in her suffering from Brown-Sequard Syndrome.

Upon a thorough review of the record, exhibits, and depositions in the instant case, we hold there is competent evidence in the record to support the Commission's finding that plaintiff

suffers from incomplete thoracic paraplegia. At the time of plaintiff's initial injury in 1992, she was diagnosed with Brown-Sequard Syndrome, which is one specific type of incomplete thoracic paraplegia. Dr. Andrea Stutesman, along with Drs. James Hoski and Del Curling, stated that plaintiff does not have a classic case of Brown-Sequard Syndrome, but that this diagnosis came closest to her actual condition at the time of her original injury. Doctors Leonard Tananis, Stutesman, Hoski, and Curling all agree that plaintiff's present condition is more properly labeled as incomplete thoracic paraplegia, rather than the specific diagnosis of Brown-Sequard Syndrome. Dr. Curling stated that no named syndrome perfectly fits plaintiff's current condition.

Based on the extensive exhibits and the deposition testimony of the various physicians who have treated and evaluated plaintiff, we hold there is competent evidence to support the Commission's determination that plaintiff's incomplete thoracic paraplegia is causally related to her original compensable injury. Defendants' assignment of error is overruled.

Defendants next argue the Commission erred in finding plaintiff to be permanently and totally disabled, such that she would not benefit from a course of vocational rehabilitation. Specifically defendants contend the Commission erred in finding that plaintiff is permanently and totally disabled from any competitive employment. Defendants argue that there is not competent evidence in the record to support a finding that plaintiff is not capable of returning to work in a sedentary-type position. As noted previously, this Court may not weigh the evidence in the record. Our duty is to determine if there is any competent evidence in the record to support the Commission's findings of fact, and in turn that the findings of fact support the conclusions of law. *Deese*, 352 N.C. at 116, 530 S.E.2d at 553.

In the instant case, much of the evidence in the record which indicates that plaintiff may be able to return to work, albeit in a sedentary-type position, is taken from records and

evaluations done in the years immediately following plaintiff's original injury in 1992. However, all parties and doctors agree that plaintiff's physical and psychological condition has deteriorated drastically since her initial injury. The evidence contained in the record also documents plaintiff's prior unsuccessful attempts to participate in vocational rehabilitation, along with the fact that plaintiff is fifty-nine years old, with limited education and work experience. She has not worked since her injury in 1992. Multiple doctors testified in detail about plaintiff's severe physical limitations, her neurogenic bowel and bladder problems, and her psychological issues. Dr. Terence Fitzgerald, a clinical health psychologist, whom defendants required plaintiff to see in 2001, noted that he found "clear psychologic barriers to [plaintiff's] participation in vocational rehabilitation." In his opinion, he determined that plaintiff had reached "maximum psychologic improvement for her work-related injury." Plaintiff's long-time psychologist also testified that plaintiff's depression and other psychological problems are permanently and totally disabling, and that she is not psychologically able to tolerate vocational activities. Randy Adams, an expert in vocational evaluation and rehabilitation, evaluated plaintiff, and stated that based on her limited physical functioning and numerous psychological impairments, she is not functioning on a day-to-day basis at a level that would be indicative of competitive employment. He went on to state that based on plaintiff's limited education, and Dr. Fitzgerald's report, she should not be considered for employment in a clerical or sales position, and that cashier work also would be inappropriate.

We find this evidence not only is competent, but also supports the Commission's finding that plaintiff is permanently and totally disabled from any competitive employment. These findings in turn support the Commission's conclusion that plaintiff is permanently and totally

disabled, and that plaintiff is not psychologically capable of participating in vocational rehabilitation as defendants desire. Therefore defendants' assignment of error is overruled.

Defendants next contend the Commission erred in making several of the awards of medical compensation. Specifically defendants contend the following awards are not supported by competent evidence: 1) reimbursement for the preparation of a life care plan; 2) permanent pool membership for plaintiff; 3) reimbursement for past attendant care; 4) reimbursement for six hours per week of future attendant care; and 5) an order that defendants are responsible for providing plaintiff with appropriate handicapped accessible housing.

The Commission ordered defendants to reimburse plaintiff's attorney for the cost associated with having Ms. Barbara Armstrong prepare a life care plan for plaintiff. Defendants contend that the preparation of the life care plan was not a necessary rehabilitative service, and therefore defendants should not be required to reimburse plaintiff or her attorney for the cost of the life care plan.

Our Supreme Court previously has held that the preparation of a life care plan may be considered to be a necessary service in a workers' compensation action, particularly when it is deemed "necessary as a result of the injuries suffered by plaintiff." *Timmons v. N.C. Dep't of Transp.*, 351 N.C. 177, 182, 522 S.E.2d 62, 64 (1999). In *Timmons*, the plaintiff had been rendered paraplegic as a result of a compensable spinal cord injury sustained in the course and scope of his employment. Twelve years after the plaintiff's initial injury, he sought additional care and rehabilitation services, including the preparation of a life care plan. *Id*. at 178, 522 S.E.2d at 63. In her deposition, a rehabilitation expert testified that she strongly recommended that a life care plan be developed to evaluate and assess the plaintiff's present and future needs, and that spinal cord injuries need monitoring due to the many complications that may result. *Id*.

at 182, 522 S.E.2d at 64-65. The Supreme Court held "that preparation of a life care plan was a rehabilitative service necessary to give relief to the paraplegic claimant within the meaning of [N.C. Gen. Stat.] § 97-25." *Id*. at 182, 522 S.E.2d at 65.

In the instant case, plaintiff met with Barbara Armstrong, a registered nurse, certified case manager, certified disability management specialist, and certified life care planner, in 1995 for the purposes of thoroughly evaluating plaintiff's condition and her living environment. As a certified life care planner, Ms. Armstrong specifically is trained to assess plaintiff's needs, and to develop a life care plan to address plaintiff's present and future needs, including medical care, attendant care, housing and assistive device needs, and therapy. Ms. Armstrong created a life care plan for plaintiff in 1995, and reevaluated plaintiff and updated the plan in 2002. The comprehensive life care plan developed for plaintiff addressed not only her medical needs, but also her need for handicapped accessible housing and attendant care to assist with custodial tasks such as shopping and cleaning, and future attendant care to assist with daily living activities. The life care plan also detailed medical supplies and assistive devices which plaintiff currently needs, as well as those she would need in the future as she ages.

Ms. Armstrong testified that it was appropriate for plaintiff to obtain a life care plan in 1995, not only for plaintiff and her family, but also for her service providers, to have a thorough understanding of plaintiff's comprehensive needs. The original life care plan was prepared three years after plaintiff's initial injury, and as Ms. Armstrong testified, it was appropriate to update the life care plan seven years later to assess her current needs. Ms. Armstrong stated that in evaluating plaintiff's needs, she thoroughly reviewed all of plaintiff's medical records, and received input from plaintiff's various service providers. She not only reviewed the information

provided by service providers, but also visited plaintiff in her homes and observed plaintiff's ability to maneuver in her homes and to conduct daily living activities.

Plaintiff's various doctors, including Doctors Stutesman, Curling, and Tananis stated that while they would not automatically accept the recommendations of a life care planner, they all felt that a life care planner, who had evaluated plaintiff's needs and her home environment, would be in a better position to assess plaintiff's needs. They all stated that they would give deference to the life care planner's recommendations and assessments.

There is sufficient evidence to support the Commission's finding that due to the severity of plaintiff's injury and the complexity of her incomplete thoracic paraplegia, the life care plan was medically necessary to assist in the understanding of plaintiff's needs. As was the case in *Timmons*, we hold there is sufficient evidence to find that the preparation of a life care plan for plaintiff was a necessary rehabilitative service, and therefore the Commission's award of reimbursement of the expense of preparing the life care plan was proper. Defendants' assignment of error is overruled.

In the Opinion and Award, the Commission ordered defendants' to "pay for a permanent pool membership for aquatic therapy, as this affords the most beneficial pain relief for plaintiff from pain." On appeal, defendants contend the following conclusion of law, and the above mentioned award, are not supported by the evidence contained in the record:

> 11. Plaintiff is entitled to have all of her medical expenses incurred or to be incurred as a result of her injuries by accident, including aquatic therapy, . . . which are causally related to plaintiff's injury by accident on February 8, 1992, paid for by defendants for so long as these treatments effect a cure, give relief, or lessen the period of disability.

As stated previously, all of the Commission's conclusions of law and awards must be supported by findings of fact contained in the opinion and award. *See Deese*, 352 N.C. at 116,

530 S.E.2d at 553. In the case before us, there is not one finding of fact in the Commission's opinion and award referencing plaintiff's past, present, or future participation in aquatic therapy, or the therapy's success in offering relief to plaintiff. The sole statement, aside from the conclusion of law and award, mentioning aquatic therapy is found in the section labeling the issues the Commission was to determine. The sole statement reads, "Would a permanent membership at the pool for aquatic therapy afford plaintiff relief from her pain resulting from her compensable injury by accident[.]" This alone does not constitute a finding made by the Commission.

Evidence was presented offering contradicting opinions on whether or not plaintiff has benefitted, and would benefit in the future, from aquatic therapy. In her life care plan, Ms. Armstrong recommended that plaintiff be provided with a membership to a local YMCA or health club where she would have access to a heated swimming pool for exercise. However, in her deposition, Ms. Armstrong testified that if the aquatic therapy was no longer recommended by plaintiff's physicians, then she would remove the membership from plaintiff's life care plan. Dr. Tananis testified in his deposition that when he saw plaintiff in February of 2002, she expressed an interest in returning to aquatic therapy, and he felt as though it may improve her overall situation. When plaintiff testified before the hearing officer in March of 2002, she stated that she had just begun going back to aquatic therapy, and that the therapy did not seem to be helping her pain. She testified that her pain was actually worse following the therapy sessions. After almost two months of aquatic therapy, Dr. Tananis and the physical therapists working with plaintiff stated that plaintiff did not appear to be benefitting from the aquatic therapy, and that her lack of compliance with the therapy may be an explanation for the lack of progress. The physical therapist's notes stated that plaintiff "does not appear to be demonstrating tangible

improvement with lower extremity strength, ambulation, or general functionality." Dr. Tananis subsequently discharged plaintiff from the aquatic therapy on 8 April 2002.

While the evidence contained in the record tends to suggest a conclusion of law and award contrary to that which the Commission found, the fact that there are no findings pertaining to aquatic therapy or a pool membership for plaintiff ultimately is what causes the Commission's conclusion of law and award to fail. Therefore, we hold the Commission's conclusion of law number eleven, with regards only to the issue of aquatic therapy, and the award of a permanent pool membership is not supported by the findings of fact, and thus is reversed.

Defendants next argue the Commission erred in ordering defendants to provide plaintiff with handicapped accessible housing. Defendants contend the issue of housing and housing modifications was not properly before the Commission for a determination on the issue, and that defendants did not have an opportunity to be heard on the matter. As correctly noted by defendants, the issue of housing or housing modifications was not included in either plaintiff's request for a hearing or the parties' pre-trial agreement. Defendants are incorrect however, in arguing that they have been ordered to provide handicapped accessible housing for plaintiff. The Commission's award does not include any award for handicapped accessible housing or modifications to plaintiff's existing homes.

The Commission made the following findings of fact with respect to plaintiff's housing needs and issues:

> 57. Plaintiff owns two houses. One is a small home in Hickory where she resided with her parents at the time of this injury. Since plaintiff was injured on the job on February 8, 1992, and rendered a partial paraplegic, her mother has died and her father has gone to a nursing home.
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> 58. The second house that plaintiff owns is located in the Conley Springs area of Burke County just west of Hickory.

> This house is very old and is not habitable and is used for storage. Plaintiff's daughter, Angie, and her two sons, with whom plaintiff stays most of the time, has a two bedroom trailer located next to the old house used for storage.
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> 59. As indicated by Plaintiff's Exhibit 2, the daughter's trailer where plaintiff resides most of the time lacks guardrails. She would benefit from the installation of appropriate guardrails.
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> . . . .
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> 65. Because of plaintiff's incomplete thoracic paraplegia and the resulting numbness, chronic and severe leg pain, and her loss of balance, plaintiff requires handicapped accessible housing to reduce the risk of further injury due to falling.
>
> 66. It is not feasible to modify the two homes that plaintiff owns so that they can safely accommodate plaintiff's handicaps. Defendants have a responsibility to provide her safe living accommodations.

Based on the evidence before the Commission, we find that there is sufficient competent evidence to support findings of fact numbers 57-59, and 65. We do not find that there is competent evidence in the record to support finding of fact 66.

Plaintiff's life care planner went into great detail in her deposition testimony and life care plan describing plaintiff's two homes, and their need for repairs and modifications in order for them to be both habitable and handicapped accessible. Ms. Armstrong's life care plan went so far as to state that plaintiff's home in Hickory needs significant structural repairs, and renovation of this home may be cost-prohibitive, and that modular housing that is handicapped accessible should be considered, as plaintiff owns several acres of land. Ms. Armstrong admitted that she is not a contractor, but stated that both of plaintiff's homes were in need of major renovations before they would be both handicapped and wheelchair accessible. Aside from Ms. Armstrong's deposition testimony and her life care plan, there was no additional evidence presented

concerning the condition of plaintiff's homes. There also was no evidence of the costs associated, or feasibility or lack there of, with renovating or modifying either of plaintiff's homes, or that of her daughter.

Therefore, we find that there is sufficient evidence supporting the Commission's findings that plaintiff is in need of handicapped accessible housing, and that plaintiff's homes are in need of repair or modification in order for them to be accessible. However we do not find there to be sufficient evidence to support a finding that neither of plaintiff's homes are capable of being modified to accommodate plaintiff's needs. Similarly, we find the Commission's conclusion of law, "Neither of the homes that plaintiff owns is feasible to modify so that they can safely accommodate plaintiff's handicaps. Thus, defendants are responsible to provide plaintiff with appropriate handicapped accessible housing[,]" to be overly broad and unsupported by the Commission's findings. We therefore remand this issue to the Commission in order for both parties to have an opportunity to be properly heard on this issue, and for the Commission to clarify its findings and conclusions on the matter.

The final awards of medical compensation defendants' contest are:

> 4. Defendants shall reimburse plaintiff for past attendant care necessary to accommodate the needs of plaintiff for daily function and maintenance of her home and personal care.
>
> 5. Defendants shall reimburse plaintiff for 6 hours per week of future attendant care necessary to accommodate the needs of plaintiff for daily function and maintenance of her home and personal care in the amount of $7.00 per hour, or an otherwise reasonable standard rate based upon plaintiff's geographic location.

Defendants argue that the Commission's award of attendant care is erroneous in that any care plaintiff needs is not considered "medical compensation" as defined by North Carolina General Statutes, section 97-2(19). Defendants also contend the Commission erred in failing to limit the

reimbursement of past care provided to plaintiff to care provided by plaintiff's daughter, and that the amount of future care per week ordered by the Commission is not supported by the evidence.

Our courts repeatedly have upheld awards of attendant care by the Industrial Commission, when the awards are supported by competent evidence. *See Godwin v. Swift & Co.*, 270 N.C. 690, 155 S.E.2d 157 (1967); *Palmer v. Jackson*, 161 N.C. App. 642, 590 S.E.2d 275 (2003); *Levens v. Guilford Cty. Schools*, 152 N.C. App. 390, 567 S.E.2d 767 (2002); *Ruiz v. Belk Masonry Co.*, 148 N.C. App. 675, 559 S.E.2d 249 (2002); *London v. Snak Time Catering, Inc.*, 136 N.C. App. 473, 525 S.E.2d 203 (2000). In *Godwin*, *Levens*, and *London*, our courts not only upheld an award of attendant care, but also upheld an award of payment to family members for attendant care which they provide to injured family members. *Godwin*, 270 N.C. at695, 155 S.E.2d at 160-61; *Levens*, 152 N.C. App. at 399, 567 S.E.2d at 773; *London*, 136 N.C. App. at 479-80, 525 S.E.2d at 207-08.

The evidence contained in the record of the case before us shows that as a result of her injuries and physical limitations, plaintiff no longer is able to perform many of the activities of daily living. She no longer is capable of cleaning her own home, doing yard work such as mowing the grass, cooking full meals, and shopping on her own. Due to plaintiff's physical limitations, she is unable to stand for prolonged periods of time, and she is prone to falling when her legs give way. Ms. Armstrong, plaintiff's life care planner, testified that plaintiff currently is able to care for herself and perform many of the activities of daily living, such as bathing and dressing, however she is in need of assistance with tasks such as heavy housecleaning and home maintenance, shopping, and yard work. According to Ms. Armstrong, there are three types of attendant care: 1) skilled care, which is care done by a licensed or certified individual; 2) unskilled care; and 3) custodial care, which is limited to housecleaning, home maintenance,

shopping, yard work, etc. Ms. Armstrong testified that plaintiff currently is in need of approximately four hours per week of custodial care, but that some weeks she may require more than four hours of assistance, and some weeks she may require less. Ms. Armstrong's assessment of the number of hours of attendant care plaintiff needed was based on plaintiff living in her own home, and not with her daughter.

Plaintiff's daughter, Angela Jo Phillips Rice, testified that plaintiff stays at her daughter's home five or six days per week. Rice stated that she cleans plaintiff's own home on a weekly basis, while also doing all of the cleaning, shopping, and meal preparation in her own home for her family. She stated that she spends about an hour per week cleaning plaintiff's home, and that since plaintiff's injury, she has done some of the yard maintenance at plaintiff's home that plaintiff has been unable to do. Plaintiff testified that prior to her injury, she regularly did all of the cleaning, grocery shopping, and yard maintenance at her home, and that since her injury she has been unable to perform any of the tasks. Dr. Stutesman, plaintiff's former primary physician, testified that since plaintiff's injury, she has been incapable of performing activities such as these, and that she does not believe plaintiff will ever again be capable of performing these tasks. Dr. Stutesman continued that she believes that in the future, plaintiff may require full-time attendant care. Plaintiff's need for assistance with certain activities of daily living also was supported by Dr. Hoski, who added that at the present time he does not believe plaintiff is in need of assistance with bathing or hygiene.

Based upon the evidence contained in the record, we find there is sufficient evidence to support the Commission's finding that plaintiff is in need of attendant care to assist with many daily chores and activities. However, we do not find there is sufficient evidence to support an award of six hours per week of attendant care. Dr. Armstrong's testimony and life care plan

spoke in terms of plaintiff requiring four hours per week of care only. Further, there was no evidence presented of any expenses plaintiff has incurred for past attendant care provided to her either by her daughter or anyone else. We find the Commission's conclusion and award that plaintiff is entitled to reimbursement for expenses incurred for past attendant care is unsupported by the evidence and findings of fact, and thus the award of reimbursement for past attendant care is reversed. Therefore, although the award of attendant care generally is supported by the evidence and the Commission's findings, we reverse the Commission's award of reimbursement for past attendant care and remand for further findings and an award consistent with the evidence with respect to the amount of future attendant care to which plaintiff is entitled.

Defendants next argue that the Full Commission should have taken into account the hearing officer's assessment of plaintiff's credibility in reaching its decision. In doing so, defendants are asking this court to carve out an exception to our Supreme Court's holding in *Adams v. AVX Corp.*, 349 N.C. 676, 509 S.E.2d 411 (1998). In *Adams*, our Supreme Court held the when "the [F]ull Commission conducts a hearing or reviews a cold record, [N.C. Gen. Stat.] § 97-85 places the ultimate fact-finding function with the Commission _ not the hearing officer. It is the Commission that ultimately determines credibility, whether from a cold record or from live testimony." 349 N.C. at 681, 509 S.E.2d at 413. Although the hearing officer in the instant case found plaintiff's testimony wasn't credible, the Full Commission, upon reviewing plaintiff's case on appeal, had the authority to accept, reject, or modify any of the hearing officer's findings of fact and conclusions of law. *See Robinson*, 57 N.C. App. at 627, 292 S.E.2d at 149. Therefore, when the Full Commission conducted a review of the case based on the cold record, and chose not to hear testimony from either plaintiff or other witnesses, the Commission had the authority to make its own determinations regarding plaintiff's credibility.

As our Supreme Court has not overturned or reversed its decision in *Adams*, we therefore are bound by its precedent. *See Dunn v.* Pate, 334 N.C. 115, 118, 431 S.E.2d 178, 180 (1993) (The Court of Appeals "has 'no authority to overrule decisions of [the] Supreme Court and [has] the responsibility to follow those decisions "until otherwise ordered by the Supreme Court."'") (citation omitted). Defendants' assignment of error is without merit and is thus overruled.

Defendants next contend the Commission erred in reversing the deputy commissioner's rulings excluding the use of the transcript from plaintiff's original 1993 hearing and sustaining defendants' objection to the issue of compensation under North Carolina General Statutes, section 97-31. We do not reach the merits of this assignment of error, as defendants arguments are deemed abandoned. Although defendants have properly preserved these issues for appeal through their assignments of error, the argument presented by defendants fails to contain citations to any statutory or case law upon which their argument relies. *See* N.C. R. App. P. 28(b)(6)(2005). Defendants' assignments of error on these issues are therefore dismissed as they are deemed to have been abandoned.

Finally, defendants contend the full Commission erred in failing to acknowledge or address all of the issues that were before it. We find this assignment of error to be without merit, therefore we decline to address it.

Affirmed in part, reversed in part and remanded.

Chief Judge MARTIN and Judge LEVINSON concur.

Report per Rule 30(e).