MURIEL CHAPMAN
(Appellee)

v.

V.I.P., INC.
(Appellant)

and

SENTRY INSURANCE
(Insurer)

and

LIBERTY MUTUAL INSURANCE
(Insurer)

Conference held: September 4, 2013
Decided: March 10, 2014

PANEL MEMBERS: Hearing Officers Pelletier, Jerome, and Greene
BY: Hearing Officer Pelletier

[¶1] V.I.P., Inc., appeals a Workers' Compensation Board hearing officer (*Goodnough, H.O.*) decision ordering V.I.P. to pay the portion of Muriel Chapman's rent attributable to her need for handicapped-accessible housing, pursuant to 39-A M.R.S.A. § 206(8) (Supp. 2013).[1] V.I.P. contends that Ms.

[1] Title 39-A M.R.S.A. § 206 provides in pertinent part:

Duties and rights of the parties as to medical and other services; cost

An employee sustaining a personal injury arising out of and in the course of employment or disabled by occupational disease is entitled to reasonable and proper

Chapman did not meet her burden of proof to establish that she paid a premium for handicapped-accessible housing.[2] *See* 39-A M.R.S.A. § 318 (Supp. 2013). We agree, and vacate the hearing officer's decision in part.

[¶2] Ms. Chapman suffered two work-related injuries to her right foot in 2006 and 2009 while working in shipping and receiving at V.I.P.'s warehouse in Lewiston. She ultimately underwent an amputation of her right leg below the knee. She now wears a prosthetic leg but also uses a wheelchair. She filed a Petition for Award related to the 2009 date of injury, and Petitions for Payment of Medical and Related Services regarding both dates of injury. The hearing officer granted the petitions and awarded her ongoing total incapacity benefits based on the average weekly wage applicable to the 2009 date of injury as a result of the combined effects of the two compensable injuries.

> medical, surgical and hospital services, nursing, medicines, and *mechanical*, surgical aids, as needed, paid for by the employer.
> . . .
>
> **8. Physical aids.** The employer shall furnish artificial limbs, eyes, teeth, eyeglasses, hearing aids, orthopedic devices *and other physical aids made necessary by the injury* and shall replace or renew them when necessary from wear and tear or physical change of the employee.

(Emphasis added).

[2] V.I.P. also contends that a rent differential attributable to adaptations for handicapped individuals does not constitute a mechanical, physical, or any other type of "aid" enumerated within section 206(8). Because we find that Ms. Chapman did not establish an adequate factual predicate to support the hearing officer's finding that she is paying a premium for accessible housing, we do not reach this issue.

[¶3] Ms. Chapman also sought payment of the rent premium she asserts she is paying because of her need to reside in handicapped-accessible housing. The hearing officer found that Ms. Chapman's rental of a handicapped-accessible apartment was made necessary by her work injuries, and concluded that an accessible apartment falls within the definition of a "physical aid" pursuant to section 206(8) and *Brawn v. Gloria's Country Inn*, 1997 ME 191, 698 A.2d 1067 (determining that cost associated with an adapted van was compensable as a reasonable and necessary mechanical or physical aid pursuant to section 206). He reasoned that Ms. Chapman should receive "at least some reimbursement for handicap housing, as a form of 'physical aid,' to the extent that she can demonstrate the existence of some sort of 'rent premium,' relative to [the cost of] regular, non-handicap housing."

[¶4] The hearing officer determined Ms. Chapman demonstrated that she pays a rent premium by establishing a difference between the amount of rent she was paying for her last non-accessible apartment and the rent she has paid since that time. She was awarded $75 per month for the time she was living in her first accessible apartment, and $253 a month ongoing for her current apartment.

[¶5] However, upon review of the record, we conclude that Ms. Chapman did not meet her burden of proof that she is paying a premium for handicapped-accessible housing. She attempted to establish that she is paying a rent premium

based solely on the difference between the rent for her previous non-accessible residence and her subsequent accessible residences. The rent for her last, non-accessible two-bedroom apartment was $650 per month when she lived alone, which increased to $700 per month after a roommate moved in, with a cost to her of $350 per month. The rent for the first accessible apartment she rented after the amputation was $425; and the rent for her current, accessible two-bedroom apartment is $603 per month. The main difference in cost appears not to be that she is now living in an accessible apartment, but that she no longer has a roommate to share that cost. The rents on both the former and current accessible apartments are actually less than the rent on her last, unsubsidized apartment.

[¶6] Moreover, Ms. Chapman testified that both her current apartment and her first accessible apartment are in federally subsidized housing complexes, and that the rent at those apartments is calculated based on income, not on market rates. Comparing unsubsidized with subsidized rents does not establish a true differential between the cost of accessible versus non-accessible housing. Because no other evidence was adduced to establish, for example, that her current apartment costs any more than a similar non-accessible apartment in the same complex or area, or that any portion of her current rent is specifically attributable to the adaptations, we cannot conclude that she met her burden of proof.

[¶7] Although we do not reach the issue whether a rent premium could be deemed payable by an employer under section 206, we do conclude as a fundamental matter that reimbursement cannot be awarded absent some evidence of the portion of the rent that is attributable to a unit's accessibility. Because the employee failed to adduce any such evidence, we vacate the hearing officer's decision.

The entry is:

> That portion of the hearing officer's decision ordering payment of a rent premium is vacated. In all other respects, the hearing officer's decision is affirmed.

Any party in interest may request an appeal to the Maine Law Court by filing a copy of this decision with the clerk of the Law Court within twenty days of receipt of this decision and by filing a petition seeking appellate review within twenty days thereafter. 39-A M.R.S.A. § 322 (Supp. 2013).

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