



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**SABINO CARBAJAL v. INDUSTRIAL COMMISSION**  
CV-08-0359-PR

**PARTIES AND COUNSEL:**

*Petitioner:* Sabino Carbajal, represented by Aida J. Rico, Law Office of Aida J. Rico, and by David L. Abney, Law Offices of Charles M. Brewer.

*Respondents:* Phelps Dodge and GAB Robbins North America, represented by Scott H. Houston, of Jardine, Baker, Hickman & Houston.

*Amicus:* Southern Arizona Workers' Compensation Claimants' Attorneys' Association, represented by Brian Clymer.

**FACTS:**

Mr. Carbajal sustained severe injuries while working for Phelps Dodge, resulting in cognitive problems and paralysis on one side of his body. He now must use a wheelchair or walker to ambulate. His claim for workers' compensation benefits was accepted. In addition to his monthly loss of earning capacity entitlement, Respondents provided Mr. Carbajal with a wheelchair-accessible van and made modifications to his home, including making the bathroom and shower area handicap-accessible so that Mr. Carbajal could use the facilities independently.

Respondents also provide Mr. Carbajal with attendant care services seven days a week for eight to ten hours each day. Monday through Friday, an attendant arrives at 6 a.m. to bathe, dress, and perform simple physical exercises with Mr. Carbajal. Mrs. Carbajal prepares her husband's breakfast and administers his medication. At 8 a.m., the attendant takes Mr. Carbajal to an adult day care rehabilitation center. In the afternoon, the attendant picks Mr. Carbajal up from the center and drops him off at his home at 3:30 p.m. At 6:30 p.m., another attendant arrives and assists Mr. Carbajal with his needs. After performing range of motion exercises with Mr. Carbajal, the attendant prepares him for bed and leaves at about 9:30 p.m.

On Saturdays, an attendant arrives at Mr. Carbajal's home at 7:00 a.m. and stays for a couple of hours. Afterwards, Mrs. Carbajal usually takes her husband out to visit with family or to eat. An attendant returns at 6:30 p.m. and stays until about 9:30 p.m. On Sundays, an attendant arrives at 7:00 a.m. to take Mr. Carbajal to church, returning him home at 1:00 p.m. An attendant returns at 6:30 p.m. for Mr. Carbajal's normal evening routine. In addition to these daily services, a registered nurse visits Mr. Carbajal weekly and is available for any emergency needs.

Mr. Carbajal requested a hearing before the Industrial Commission, alleging that

Respondents had refused to compensate Mrs. Carbajal for the attendant care she provides during the hours when no third-party attendant is present. He sought retroactive compensation for Mrs. Carbajal's services, arguing that he requires attendant care 24 hours a day, seven days a week.

At the hearing, Mrs. Carbajal testified that on weekdays, when Mr. Carbajal returns from the day care center and before the evening attendant arrives, she sits him in his reclining chair, administers his medication, and feeds him dinner. Occasionally, Mr. Carbajal will defecate or urinate on himself at the center and Mrs. Carbajal will change his clothing and clean him up when he returns home. Then, after the second attendant leaves for the night, she monitors her husband's oxygen while he sleeps and assists him when he has to use the bathroom, which is often two to three times a night and involves getting him from his bed to his wheelchair. She stated that she has had to quit her job and has no life since her husband's injury.

Mr. Carbajal's treating physician, Dr. Porter, testified that, although Mr. Carbajal "cannot live alone" and must be "supervised for the most part," he does not require skilled care at all times. A family member familiar with his needs could help Mr. Carbajal get up and use the bathroom or set up his meals during the hours in which no attendant care is provided. Such assistance does not require a licensed health care provider or skilled caregiver, "just an attendant of sorts."

Nurse Boggs, who developed Mr. Carbajal's attendant care plan with Dr. Porter, testified that she would not change the plan. She opined Mr. Carbajal is capable of doing some things for himself, but he believes the attendants should do these tasks for him because they are being paid. Nurse Boggs testified that Mr. Carbajal has used the bathroom without assistance at home and at the day care center, and that he would not need to get up as much at night if he used a urinal placed by his bed, as he had previously done when Mrs. Carbajal went to Mexico for a couple of weeks. None of Nurse Boggs' other patients who are similarly situated to Mr. Carbajal require "24-hour per day attendant care."

After hearing the evidence, the Administrative Law Judge (ALJ) concluded Mrs. Carbajal was not entitled to compensation for the care she provided and denied Mr. Carbajal's request for investigation. The ALJ reasoned that "the care rendered by [Mrs. Carbajal] is not of the type which necessitates a trained attendant, but rather is more closely akin to the day-to-day duties assumed by a spouse in accord with the marriage commitment." The ALJ summarily affirmed the award on administrative review, and Carbajal sought review in the court of appeals.

## **ISSUES:**

Summarized, the issue is whether A.R.S. § 23-1062(A), which provides for reasonably required medical benefits and "other treatment" for an injured employee, requires compensation for care provided by Mr. Carbajal's wife during the times when no skilled attendant care giver is present in the home.

**RELEVANT STATUTORY PROVISION:**

A.R.S. § 23-1062(A) provides:

Promptly, upon notice to the employer, every injured employee shall receive medical, surgical and hospital benefits or other treatment, nursing, medicine, surgical supplies, crutches and other apparatus, including artificial members, reasonably required at the time of the injury, and during the period of disability.

*This Summary was prepared by the Arizona Supreme Court Staff Attorneys' Office solely for educational purposes. It should not be considered official commentary by the Court or any member thereof or part of any brief, memorandum, or other pleading filed in this case.*