

MEDICAL TREATMENT: PAST, PRESENT AND FUTURE  
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June 6, 2016

R.S.Mo. Sec 287.140 provides that “in addition to all other compensation paid to the employee, the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or disability, to cure and relieve the effects of the injury.”

A. PAST MEDICAL EXPENSES

1. Employee Must Prove that Request for Treatment Was Made

If an employer refuses to provide medical treatment, then the employer loses control over medical and the employee may seek reimbursement for related expenses at the hearing. *Martin v. Town & Country Supermarkets*, 220 S.W.3d 836, 844 (Mo. App. 2007).

2. Employee May Testify As to Work Relatedness of Treatment

Once the employee has admitted evidence of the medical bills and records and presents proof that the treatment was for the work-related injury, then the burden shifts to the employer and insurer to prove that the medical bills were unreasonable and unfair. *Esquivel v. Day's Inn of Branson and Cox Medical Center*, 959 S.W.2d 486, 489 (Mo. App. 1998).

3. Credits, Offsets & Collateral Source Rule: Burden of Proving a Credit on the Employer

*Ellis v. Missouri State Treasurer*, 302 S.W.3d 217 (Mo. App., 2009) dealt with whether the SIF was entitled to a credit for write offs and adjustments made by health care providers. *Ellis* at 245:

\*“*Shaffer v. St. John's Reg. Health Ctr.*, 943 S.W.2d 803 (Mo.App. S.D.2008), also supports the proposition that the burden of proving the existence of a credit is not on the employee: "The cases have held that the burden of substantiating a credit is on the employer." Id. at 808 (citing *Ellis*, 664 S.W.2d at 643; *Point v. Westinghouse Elec. Corp.*, 382 S.W.2d 436, 439 (Mo.App. E.D.1964)). See also *Porter v. Toys 'R' Us-Del, Inc.*, 152 S.W.3d 310, 321 (Mo.App. W.D.2004) ("Nonetheless, the burden of proof clearly rests with the employer").”

\*“Although the SIF argues it should be treated differently than an employer in these circumstances, the plain language of section 287.220.5 grants the SIF the

same defenses an employer would have. As a result, the SIF had the burden of proving that Claimant had no liability to pay her medical bills or reimburse her insurance carriers before the Commission would have been required to consider whether any sort of credit was necessary to prevent Claimant from receiving a windfall. If the Commission had been presented with evidence it deemed credible that indicated Claimant was no longer liable for some portion of her medical bills, then, and only then, would it have had to take the next step and determine whether the collateral source rule would bar the SIF from seeking a credit based on that extinguished liability.”

\*“We agree with Claimant that once she testified to the best of her knowledge that she remained liable on all of her bills, the SIF then had the burden to prove that any such reimbursement obligation did not exist or had been extinguished. As earlier indicated, no such evidence was presented. Although we acknowledge that Claimant's testimony regarding her continuing liability for her medical bills might not have been entitled to receive much weight, especially if evidence to the contrary had been presented, “[t]he Commission is authorized to base its findings and award solely on the testimony of a claimant.” *Davies*, 429 S.W.2d at 748.”

\*“In arguing for a contrary result, the SIF again relies on *Mann*, supra. *Mann* is factually distinguishable as the “Commission found and the parties agree[d] the total amount submitted to Medicaid will never be sought from Claimant. Claimant will only ever be responsible for the [dollar amount] paid by Medicaid.” *Mann*, 23 S.W.3d at 233. Here, Claimant testified, and the Commission found, that she remained actually liable for the full amount of her medical bills, and the SIF presented no evidence that challenged Claimant's testimony. In the absence of any evidence to contradict Claimant's testimony about her continuing liability, we cannot say that the Commission's decision on the matter was unsupported by substantial evidence or was against the overwhelming weight of the evidence. If the Commission believed Claimant's testimony that she remained legally liable for the full amount of her medical bills, its award in this case was not a windfall; it was simply the compensation the General Assembly has seen fit to allow. See *Wiedower v. ACF Indus., Inc.*, 657 S.W.2d 71, 75 (Mo.App. E.D.1983) (“Although making an award of such costs to the employee may result in a windfall, the insurance company may be entitled to reimbursement from the employee.” (emphasis added)).”

\*“In summation, *it was Claimant's burden to detail her past medical expenses and testify "to the relationship of such expenses to her compensable workplace injury." See Farmer-Cummings, 110 S.W.3d at 822. Once that was accomplished, if the SIF wished to challenge the amount being sought by Claimant, it had the burden to establish by a preponderance of the evidence that she "was not required to pay the billed amounts." Id. at 823. Unlike the claimant in Farmer-Cummings,*

Claimant did testify as to her continuing liability for the full amount of her medical bills, as well as her continuing liability to repay her insurance carriers for amounts they paid on her behalf out of any award she might receive. See *id.* at 823.”

An employer is not entitled to an offset for a *collateral source*, which is not debt forgiveness. See *Farmer-Cummings v. Personnel Pool*, 110 S.W.3d 818 (Mo., 2003). R.S.Mo. Sec. 287.270 (1998) reads “*No savings or insurance of the injured employee, nor benefits derived from any other source than the employer or the employer’s insurer for liability under this chapter, shall be considered in determining the compensation due hereunder.*”

B. AWARD FOR FUTURE MEDICAL CARE LEFT OPEN

*Tillotson v. St. Joseph Med. Ctr.*, 347 S.W.3d 511 (Mo. App. 2011):

1. Commission Cannot Substitute Personal Opinion for That of Uncontradicted Medical Expert

“Dr. Koprivica's testimony that Tillotson's compensable injury (and related required medical care) will require the need for future medical care was an *uncontroverted medical causation opinion*. The *Commission was not free to substitute its personal opinion* on the subject of future medical care. Angus, 328 S.W.3d at 300. The Commission did not reject Dr. Koprivica's opinion that Tillotson would require future medical care as not credible. 11 Rather, the Commission denied Tillotson compensation for future medical care “[because] ... Ms. Tillotson's accident was not the prevailing factor in causing her [total knee replacement].” As we have discussed, the legal foundation for the Commission's determination was erroneous. “*Tillotson* at 525.

2. Standard of Proof: Reasonable Probability

“To receive an award of future medical benefits, a claimant need not show ‘conclusive evidence’ of a need for future medical treatment.” *Stevens v. Citizens Memorial Healthcare Foundation*, 244 S.W.3d at 237 (quoting *ABB Power T & D Co. v. Kempker*, 236 S.W.3d 43, 52 (Mo.App. W.D.2007)). “Instead, a claimant need only show a ‘reasonable probability’ that, because of her work-related injury, future medical treatment will be necessary. A claimant need not show evidence of the specific nature of the treatment required.” *Id.* Tillotson met her burden to establish that future medical care would be necessary based on our review of the record as a whole. The Commission did not improvidently offer its own opinion on this subject in the face of uncontested medical causation evidence that future medical care would be required. Neither did the Commission reject the uncontested medical causation evidence on the subject of future

medical care as not credible. We conclude, therefore, that Tillotson is entitled to an award for future medical expenses.” *Tillotson* at 525.

3. *After Injury Has Been Proven: Medical Care and Treatment Reasonably Required to Cure and Relieve the Compensable Injury, “Prevailing Factor” Does Not Apply*

“In summary, we conclude that once the Commission found that Tillotson suffered a compensable injury, the Commission was required to award her compensation for medical care and treatment reasonably required to cure and relieve her compensable injury, and for the disabilities and *future medical care naturally flowing from the reasonably required medical treatment*. Because the uncontested medical evidence established that a total knee replacement was reasonably required to treat Tillotson's torn lateral meniscus, Tillotson is entitled to recover the cost of the total knee replacement surgery, for total disability during the recuperative period following the total knee replacement, for permanent partial disability resulting from the total knee replacement, and for future medical expenses necessitated by the total knee replacement.” *Tillotson* at 525-526. *Tillotson* at 525.

The Court in *Hornbeck v. Spectra Painting, Inc.* 370 S.W.3d 624, 633-634 (Mo. 2012) reaffirmed the principle that *there is no prevailing factor test* for proving that treatment is compensable.

\*See *Malam v. Missouri Department of Corrections*, Mo. Spr. Ct. (2016 pending)

C. POST-AWARD COLLECTION OF MEDICAL

LIRC Retains Jurisdiction Over Open Future Medical Disputes

*State ex rel. ISP Minerals, Inc. v. Labor & Indus. Relations Comm'n*, 465 S.W.3d 471 (Mo. banc 2015):

\*“Unlike the claimants in *Mosier* and *Shockley*, Employee is not seeking relief from the settlement or to amend the settlement to obtain additional compensation above that to which was agreed. Instead, Employee is seeking to determine whether he is entitled to benefits pursuant to the settlement which expressly left “future related pulmonary med[ical] care open.” Employee's claim is essentially a claim for a determination of the workers' compensation benefits for future medical care to which Employee is entitled pursuant to section 287.140.1.2 The determination of a claimant's benefits for future medical care pursuant to section 287.140.1 is generally considered to be an issue that is “within the exclusive province of the Division of Workers' Compensation.” *State ex rel. Rival Co. v. Gant*, 945 S.W.2d 475, 477 (Mo.App. 1997) (quoting *State ex rel. Standard Register Co. v. Mummert*, 880 S.W.2d 925, 926 (Mo.App. 1994)). Adopting Employer's argument and holding that the commission has no jurisdiction to determine the nature and extent of Employee's future workers' compensation medical benefits would amount to

requiring the circuit court to determine the amount of Employee's workers' compensation benefit.<sup>3</sup> This result is not compelled by the plain language of section 287.390.1, is inconsistent with the commission's exclusive role in determining the amount of workers' compensation benefits, and is contrary to the goal of providing a simple and nontechnical method of compensation for workplace injuries.” *State ex rel. ISP Minerals, Inc. v. Labor & Indus. Relations Comm'n*, 465 S.W.3d 471, 475-476 (Mo. banc 2015).

\*“There is nothing in the plain language of section 287.390.1 providing that the commission is divested of jurisdiction to determine the extent of a claimant's entitlement to workers' compensation benefits pursuant to a settlement that expressly leaves the issue of future medical care “open” and indeterminate. Nor is there any language in section 287.390.1 barring the parties from entering into what is, in effect, a partial settlement leaving the issue of future medical care open for future determination according to the claimant's medical condition.” *State ex rel. Isp Minerals, Inc.* at 474.

#### D. FUTURE MEDICAL CAN BE CLOSED OUT OR COMPROMISED

*Mosier v. St. Joseph Lead Co.*, 205 S.W.2d 227 (Mo.App. 1947), and *Shockley v. Laclede Elec. Co-Op.*, 825 S.W.2d 44 (Mo.App. 1992), holds that an approved workers' compensation settlement disposes of the claim for workers' compensation benefits and, therefore, divests the commission of jurisdiction.

“In *Mosier*, the claimant settled his workers' compensation claim for a lump sum with no provision for future medical care. 205 S.W.2d at 229. The claimant acknowledged that “the employer would be released from any obligation to provide [future medical care], and the matter of securing and paying for any such medical aid would be his own personal responsibility.” *Id.* After the settlement was finalized and approved, the claimant “filed a motion with the Commission asking for an order setting aside the compromise settlement and granting him additional medical, surgical, and hospital treatment” to treat the injuries that were the subject of the settlement agreement. *Id.* at 230. The commission determined that it lacked jurisdiction because the claimant had not timely filed an application for review with the commission. *Id.* The court of appeals affirmed the circuit court's judgment affirming the order of the commission. *The court's conclusion that the commission lacked jurisdiction was not based on the fact that the employee did not timely file an application for review. Instead, the court held that, when a workers' compensation claim is settled, “the whole of the parties' respective rights and liabilities were disposed of once and for all, and the commission could thereafter acquire no jurisdiction to act under the provisions of” the Workers' Compensation Law.* *Id.* at 233.” *State ex rel. Isp Minerals, Inc.* at 474.

“Similarly, in *Shockley v. Laclede Elec. Co-Op.*, 825 S.W.2d 44 (Mo.App. 1992), the claimant settled his workers' compensation claim pursuant to section 287.390 for a lump sum. *Id.* at 45. The claimant further agreed that “he understands that by agreeing to this

settlement, he is forever closing out his claim under the Missouri Workers' Compensation Law, and that he will receive no further compensation or medical aid by reason of this alleged accident....” Id. at 46. The claimant then filed an amended claim for workers' compensation benefits. The commission determined that it lacked jurisdiction. The court of appeals affirmed because, “[w]hen a settlement is approved, ‘the jurisdiction of the Commission is exhausted, and the and the matter is at an end so far as the Commission is concerned.’” *State ex rel. Isp Minerals, Inc.* at 47 (quoting *Mosier*, 205 S.W.2d at 232).

When Future Medical May Be Closed Out:

- I. LIRC loses jurisdiction of *any and all settlements*, once approved, where *no mention of “future medical” in the settlement, but rather purport to close out “all issues” forever.*
- II. When *specific and predetermined medical care expenses are to be reimbursed*, where there is no issue of whether the care is “necessary to cure and relieve the effects of the injury”.
- III. In limited instances where future medical was left open for a *predetermined time period that had subsequently passed. Shockley v. Laclede Electric*, 825 S.W.2d 44, 48-49 (Mo. App. S.D. 1992) (settlement agreement did not reference future medical for prosthetic and therefore closed out claim); *Mosier v. St. Joseph Lead Co.*, 205 S.W.2d 228, 233 (Mo. App. E.D. 1947) (final settlement off all issues, once approved, is irrevocable and no ongoing jurisdiction “unless, perchance, the settlement was for some reason void on its face so as to have left the matter pending before the Commission on the employee’s claim which theretofore filed”); *Derby v. Jackson County Circuit Court*, 141 S.W.3d 413, 416 (Mo. App. W.D. 2004) (settlement leaving open medical for future surgery for period of two years was not reviewable *after two year period had expired*); *Meinczinger v. Harrah’s Casino*, 367 S.W.3d 666, 669 (Mo. App. E.D. 2012)(filing a new claim with new date of injury could not serve to revive jurisdiction for an injury claim that had previously been settled in its entirety).
- IV. Commutation of Compensation Under R.S.Mo. Sec. 287.530, when in “best interests of employee” or to “avoid undue expense or undue hardship”; or when employee has moved from U.S. or employer has sold/disposed of the greater part of his business assets.

E. FUTURE MEDICAL & R.S.MO. SEC. 287.500

“Although section 287.500 authorizes a circuit court to enter a judgment on a final workers' compensation award as if it were an original judgment of the court, the statute affords no discretion to the court in entering a judgment. *Roller v. Steelman*, 297 S.W.3d 128, 134 (Mo.App. 2009) (citing *Cochran v. Travelers Insurance Co.*, 284 S.W.3d 666, 667 (Mo.App. 2009)). A section 287.500 action is purely ministerial as it does not involve the merits of the award and the court does not determine any outstanding factual issues. *Id.* Limiting Employee to a section 287.500 action would leave the issue of Employee's future medical care unresolved.” *State ex rel. Isp Minerals, Inc.* at 476.

If future medical damages are liquidated, then the door remains open for filing the Award and receiving a judgment under R.S.Mo. Sec. 287.500.