

**ORDER**

Injury No.: 08-118526

Employee: Elvira Redzic  
Employer: Allied Healthcare Products, Inc.  
Insurer: Hartford Underwriters Insurance Co.

**Introduction**

On November 7, 2014, an administrative law judge issued an order in this workers' compensation case awarding compensation to employee referable to a lumbar spine injury. The award included future medical treatment that is reasonably necessary to cure and relieve employee from the effects of the injury.

On September 12, 2018, employer/insurer and employee submitted a Joint Application to Approve the Compromise Settlement to Allow Funding of CMS Approved MSA (Motion) to the Labor and Industrial Relations Commission (Commission). Attached to the Motion is a "Stipulation for Compromise Settlement (Modifying Future Medical Care Portion of November 7, 2014 Award Only)" (Settlement). In the Settlement, language is crossed out regarding employee's rights regarding reactivation pursuant to § 287.140.8, RSMo.

On September 17, 2008, the Commission sent a letter asking for more information and documentation.

On October 12, 2018, employer/insurer provided more information, including a letter from the Centers for Medicare and Medicaid Services (CMS) indicating the amount needed for a Workers' Compensation Medicare Set-Aside Arrangement (WCMSA) as \$159,955.00, in the form of an annuity with a Medicare Set-Aside Account (MSA) seed of \$13,432.00 and subsequent equal payments of \$4,884.00 for 30 years. As per the terms of the Settlement, employee would administer the MSA and employer/insurer would not require employee to treat with a physician of employer/insurer's selection.

Employer/insurer alleges that there are disputes pertaining to the "compensability of treatment not directed by" employer/insurer, but did not specify further.

**Discussion**

After reviewing the Motion and Settlement, we deny the Motion because the Commission does not have authority to grant the Motion or approve the Settlement.

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Section 287.390.1, RSMo, provides:

1. Parties to claims hereunder may enter into voluntary agreements in settlement thereof, but no agreement by an employee or his or her dependents to waive his or her rights under this chapter shall be valid, nor shall any agreement of settlement or compromise of any dispute or claim for compensation under this chapter be valid until approved by an administrative law judge or the commission, nor shall an administrative law judge or the commission approve any settlement which is not in accordance with the rights of the parties as given in this chapter. No such agreement shall be valid unless made after seven days from the date of the injury or death. An administrative law judge, or the commission, shall approve a settlement agreement as valid and enforceable as long as the settlement is not the result of undue influence or fraud, the employee fully understands his or her rights and benefits, and voluntarily agrees to accept the terms of the agreement.

Because the issue of future medical benefits was left open in the November 7, 2014 Final Award, the Commission has jurisdiction to approve settlements regarding future medical. See *State ex rel. ISP Minerals, Inc. v. Labor & Indus. Rels. Comm'n*, 465 S.W.3d 471 (Mo. banc 2015). In *State ex rel. ISP Minerals*, the court held that the Commission retains jurisdiction "to determine the extent of [an employee's] entitlement to workers' compensation benefits pursuant to a settlement [or award] that expressly leaves the issue of future medical care 'open' and indeterminate." *State ex rel. ISP Minerals, Inc.*, 465 S.W.3d 471 at 474.

However, according to the Missouri Supreme Court, this Commission only has authority to approve a settlement pursuant to § 287.390.1, RSMo, when there is "an authoritative 'request,' 'claim,' or 'demand' for compensation under the workers' compensation law." *Dickemann v. Costco Wholesale Corp.*, 550 S.W.3d 65, 69 (Mo. 2018). Therefore, there must be an actual dispute or claim regarding what future medical benefits employee reasonably needs to cure and relieve employee from the effects of the primary injury.

Here, parties do not clearly describe any actual dispute or specific claim for future medical benefits in their Motion. In the supplemental information, employer/insurer provided the following statement:

The disputes that exist between the parties pertain to compensability of treatment not directed by the employer. Also, the parties cannot anticipate with certainty the cost of future medical treatment.

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Employer/insurer does not specify what treatment is allegedly in dispute regarding what future medical benefits employee reasonably needs to cure and relieve employee from the effects of the primary injury that would be the subject of the settlement pursuant to § 287.390.1, RSMo.

Furthermore, parties' Settlement runs afoul the provisions of § 287.390.1, RSMo, requiring that settlements do not waive employee's rights. Section 287.390.1, RSMo, requires that "no agreement by an employee or his or her dependents to waive his or her rights under this chapter shall be valid . . . nor shall an administrative law judge or the commission approve any settlement which is not in accordance with the rights of the parties as given in this chapter." Parties' Settlement crosses out language that states that employee has a right to reactivation under § 287.140.8, RSMo. By crossing out that language, parties appear to be waiving that right.

For these reasons, the Commission cannot approve the proposed Settlement pursuant to § 287.390.1, RSMo.<sup>1</sup>

**Order**

For the reasons set forth above, we deny parties' Motion.

Given at Jefferson City, State of Missouri, and this 10<sup>th</sup> day of January 2019.

LABOR AND INDUSTRIAL RELATIONS COMMISSION



*[Handwritten signature of Robert W. Cornejo]*

Robert W. Cornejo, Chairman

*[Handwritten signature of Reid K. Forrester]*

Reid K. Forrester, Member

DISSENTING OPINION FILED

Curtis E. Chick, Jr., Member

Attest:

*[Handwritten signature of Pamela M. Hoffman]*  
Secretary

<sup>1</sup> This order does not bar the parties from filing a new motion after addressing the issues raised in this order.

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### DISSENTING OPINION

I agree that the parties' Joint Application to Approve the Compromise Settlement to Allow Funding of CMS Approved MSA (Motion) should be denied when considered in the context of a settlement pursuant to § 287.390.1, RSMo.

However, the Commission may grant the Motion as a motion to commute pursuant to § 287.530.1, RSMo. This section provides:

1. The compensation provided in this chapter may be commuted by the division or the commission and redeemed by the payment in whole or in part, by the employer, of a lump sum which shall be fixed by the division or the commission, which sum shall be equal to the commutable value of the future installments which may be due under this chapter, taking account of life contingencies, the payment to be commuted at its present value upon application of either party, with due notice to the other, if it appears that the commutation will be for the best interests of the employee or the dependents of the deceased employee, or that it will avoid undue expense or undue hardship to either party, or that the employee or dependent has removed or is about to remove from the United States or that the employer has sold or otherwise disposed of the greater part of his business or assets.

2. In determining whether the commutation asked for will be for the best interest of the employee or the dependents of the deceased employee, or so that it will avoid undue expense or undue hardship to either party, the division or the commission will constantly bear in mind that it is the intention of this chapter that the compensation payments are in lieu of wages and are to be received by the injured employee or his dependents in the same manner in which wages are ordinarily paid. Therefore, commutation is a departure from the normal method of payment and is to be allowed only when it clearly appears that some unusual circumstances warrant such a departure.

This section allows the Commission to commute compensation of future benefit installments to a lump sum when, 1) the lump sum is "equal to the commutable value of the future installments;" and 2) "it appears that the commutation will be for the best interests of the employee;" or 3) "it will avoid undue expense or undue hardship to either party."

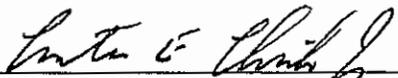
The amount in the proposed "Stipulation for Compromise Settlement (Modifying Future Medical Care Portion of November 7, 2014 Award Only)" (Settlement) demonstrates the present value of the award of future medical compensation because it represents the amount the Centers for Medicare and Medicaid Services (CMS) determined as sufficient to protect Medicare's interest in avoiding any payments for the effects of the injury. The Settlement is in the best interests of employee because employee will be able to select her own medical providers.

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Parties have also met the requirement pursuant to § 287.530.2, RSMo, to show "unusual circumstances" because the future medical benefits to be commuted are not "in lieu of wages." Section 287.530.2, RSMo, specifies the intention "that the compensation payments are in lieu of wages and are to be received by the injured employee or his dependents in the same manner in which wages are ordinarily paid." Such would be the case with partial or total disability benefits that are paid on a weekly basis. However, future medical benefits are not normally paid in lieu of wages, but are paid according to employee's need for treatment, such as when an employee sees a medical provider or obtains a prescription. Therefore, there are unusual circumstances that would allow the Commission to grant a commutation of future medical benefits pursuant to § 287.530, RSMo.

Therefore, I respectfully dissent.



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Curtis E. Chick, Jr., Member