

ORDER

Injury No.: 10-028702

Employee: Cathy Van Vleck
Employer: Big Lots Stores, Inc.
Insurer: Arch Insurance Company c/o Sedgwick CMS

On May 10, 2016, an administrative law judge approved a Stipulation of Compromise Settlement (Settlement) between the parties in this workers' compensation claim. Among other things, the Settlement provides that future medical is left open upon proper application and with medical providers approved by the employer/insurer.

On May 21, 2018, the Labor and Industrial Relations Commission (Commission) received employee's Application for Costs and Commutation of Future Medical Benefits Pursuant to RSMo Secs. 287.510, 287.530 & 287.560 (Application). Therein, employee alleges employer/insurer has authorized virtually no prescriptions or medical evaluations required by employee; that employee requested same on August 1, 2016, June 14, 2017, and September 6 and 12, 2017; that employer/insurer has not authorized the requested medical treatment or reimbursed employee for same; that employer/insurer's refusal to authorize treatment is without reasonable ground and intended to harass and intimidate employee while imposing undue hardship, expense, and burden upon her while placing her health at risk; and that these circumstances are unusual and thus warrant commutation of the future medical expenses pursuant to § 287.530 RSMo.

Employee's Application requests that the Commission order an evidentiary hearing to establish the present value of a commutation of future medical expenses, and costs including attorney fees. Employee's Application includes a number of exhibits alleged to constitute copies of written and electronic correspondence between the parties, medical and pharmacy records, and related items.

On May 25, 2018, the Commission received employer/insurer's Reply to Application for Costs and Commutation of Future Medical Benefits (Reply). Therein, employer/insurer disputes employee's allegations set forth in her Application. Specifically, employer/insurer alleges employee has failed to make proper application to employer/insurer for medical treatment, in that she has made only vague and ambiguous requests for unspecified medical treatment; that the exhibits attached to employee's Application constitute an incomplete record of the correspondence between the parties; that employee has failed to submit documentation supporting medical necessity of the various prescriptions she asks employer/insurer to authorize; that commutation of medical benefits is not contemplated in § 287.530 RSMo; that employee and her attorney have made false or fraudulent statements for the purpose of obtaining a benefit, as prohibited by § 287.128.3(6) RSMo, and should thus be subject to penalties pursuant to that provision; and that employee's Application is made without reasonable ground, such that the costs of this proceeding should be assessed against employee pursuant to § 287.560 RSMo.

Employer/insurer request that employee's Application be denied in its entirety, and that the Commission enter an order assessing attorney fees and costs against employee and her attorney. Employer/insurer's Reply includes a number of exhibits alleged to constitute copies of written and electronic correspondence between the parties, records of payments for authorized medical care, medical records, and related materials.

Employee: Cathy Van Vleck

The Supreme Court of Missouri has declared that this Commission has jurisdiction over disputes arising from awards or settlements where the issue of future medical treatment is left "open" or otherwise indeterminate. See *State ex rel. ISP Minerals, Inc. v. Labor & Indus. Rels. Comm'n*, 465 S.W.3d 471 (Mo. 2015). We conclude that the appropriate action is to remand this matter to the Division of Workers' Compensation (Division) to permit the parties an opportunity to present their evidence regarding disputed medical treatment.

Order

This matter is remanded to the Division for a hearing before an administrative law judge to take evidence as to the facts alleged in employee's Application and employer/insurer's Reply, including evidence sufficient to establish the whole cost of these proceedings pursuant to § 287.560 RSMo, in the event the record demonstrates that same have been brought, prosecuted, or defended by either party without reasonable ground.

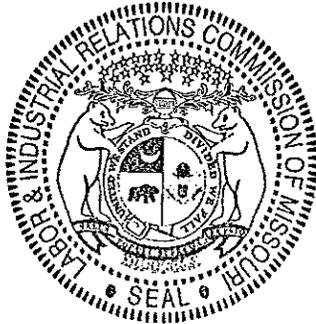
Mediation may be pursued at the discretion of the administrative law judge assigned to the matter. Should the parties resolve their dispute, the parties are directed to advise the Commission that further proceedings are unnecessary. Any formal settlement agreement reached by the parties should be forwarded to the Commission for approval pursuant to § 287.390 RSMo.

The parties shall be afforded a reasonable time to conduct necessary discovery in advance of the hearing. Any discovery dispute should be brought to the Commission's attention for a ruling.

At the hearing, the administrative law judge shall rule on all evidentiary objections, while allowing the proponent to make an offer of proof for any evidence ruled inadmissible.

At the close of the hearing, the file shall be returned to the Commission for a determination.

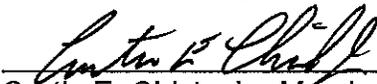
Given at Jefferson City, State of Missouri, this 22nd day of August 2018.

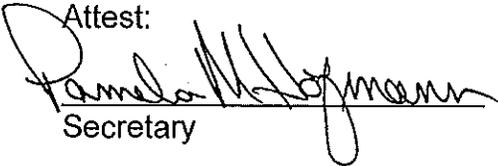


LABOR AND INDUSTRIAL RELATIONS COMMISSION


John J. Larsen, Jr., Chairman


Reid K. Forrester, Member


Curtis E. Chick, Jr., Member

Attest:

Secretary