

D Group CaseSite

Righter v. WCAB (Righter Parking) – Topic: Counsel Fees on Medical Expense

In the matter of [Patricia Righter v. WCAB \(Righter Parking\), 1356 C.D. 2015, filed June 14, 2016](#), the Pennsylvania Commonwealth Court addressed the issue of whether the WCJ erred in that case in concluding that Claimant's counsel's 20% fee agreement with their client did not entitle Claimant's counsel to a 20% of medical bills paid in conjunction with the awarded Claim Petition. In that case Claimant submitted fee agreement that indicated that if Claimant was awarded any benefits Claimant's counsel is entitled to 20% of the benefits as an attorney fee and that Claimant would receive 20% of all compensation payable to Claimant as long as Claimant receives workers' compensation benefits. Claimant appealed from the disallowance with respect to Claimant appealed disallowance of 20% medical expense.

The Commonwealth Court in affirming the disallowance noted that it is permissible for Claimant's counsel to receive 20% chargeable to Claimant's medical bills awarded. The Court in reviewing the fee agreement looked to assess whether Claimant and counsel intended for counsel to receive a percentage of the medical bill payment and whether the fee is reasonable. Upon receipt of evidence the Judge would conduct a quantum meruit analysis to determine the reasonableness of any fee in excess of 20% of Claimant's indemnity benefits and look to the time and effort expended by counsel to represent the medical expense interest. The Court suggests to the WCJ's findings should contain the indication whether the legal work performed by Claimant's counsel is sufficient to warrant a 20% fee against the medical expense. In addition, the Court would look as to whether the WCJ's fact finding shows that Claimant is cognizant of the potential ramification of the healthcare provider receiving only 80% of their outstanding bill where Claimant may be potentially directly liable for payment of 20% short fall of the medical expense at issue.

The implications of this Decision suggest that Claimant's attorneys may potentially be more precise in their fee agreements to include 20% of medical expense awarded as well as create a record as to the extraordinary work performed by them such that they should be allowed an award of 20% of medical expenses at issue. Claimant's counsel may be more likely to secure a fee agreement with the healthcare providers providing for 20% to protect the Claimant from potential shortfall for which Claimant may be liable.

For carriers, an administrative issue is that if the WCJ awards payment of medical expense, carrier would then need to re-price and then pay 80% to the provider and 20% to Claimant's counsel if indeed a WCJ should grant same.

A more thorny issue is whether a WCJ in granting an award of 20% counsel fee against Claimant's compensation in the context of Claim Petition grants 20% on ongoing medical awarded. Carrier may wish to scrutinize the exact language of any given Order.

In the matter of Chrzan v. Allied Signal (WCAB Allied Corporation), no. 268 C.D. 1993 (Pa. Cmwlth.) in the context of a Section 440 unreasonable contest award of counsel fees where the Judge's Order indicated with respect to indemnity where the Judge's Order stated "assessed at 20% of all compensation due and payable" raised interpretation issue. Claimant argued that the unreasonable contest counsel fee of an ongoing nature as opposed to defense argument that the Order was limited to 20% of past compensation awarded consistent with the ultimate Commonwealth Court's holding in that matter.

Therefore, in the context of any future WCJ Order awarding 20% on medical expense, the Judge's Order should be scrutinized as to whether it applies only for back medical incurred up to date of the award consistent with concepts of quantum meruit or instead provides for an ongoing award of future medical expense.