

Award of Attorneys' Fees For Recovered Medical Payments

Once an insurance carrier is compelled to pay a provider's bill, the provider may be required to pay a fee to the claimant's attorney and these fees are expressly provided by statute in the Virginia Workers' Compensation Act. Virginia Code §65.2-714 (B)¹ provides, in relevant part:

[i]f a contested claim is held to be compensable under this title and, after a hearing on the claim on its merits or after abandonment of a defense by the employer or insurance carrier, benefits for medical services are awarded and inure to the benefit of a third party insurance carrier or health care provider, the Commission shall award to the employee's attorney a reasonable fee and other reasonable pro rata costs as are appropriate from the sum which benefits the third party insurance carrier or health care provider. Such fees shall be based on the amount paid by the employer or insurance carrier to the third party insurance carrier or health care provider for medical, surgical and hospital service rendered to the employee through the date on which the contested claim is heard before the Deputy Commissioner. For the purpose of this subsection, a "contested claim" is an initial contested claim for benefits and claims for medical, surgical and hospital services that are subsequently contested and litigated or after abandonment of a defense by the employer or insurance carrier.

The effect of this section is to allow to the claimant's attorney a portion of the recovered² provider bill as a fee. The Virginia Workers' Compensation

¹ All legal authority referred to in this article is available on the Commission's website at www.workcomp.virginia.gov

² The provider may be compelled to pay the fee only after it has received reimbursement from the employer or insurer. *See, e.g., Danville Radiologists v. Perkins*, 22 Va.App. 454, 470 S.E.2d 602 (1996).

Commission is authorized to determine entitlement to and the amount of a 714 fee upon the application of any party to the claim including the healthcare provider. To avoid rejection of a proposed order, any order for attorney's fees pursuant to Virginia Code §65.2-714(B) must include documentation that the monies owed to the provider have been paid by the workers' compensation insurance carrier.

The justification for 714 fees, although perhaps not readily apparent, becomes clearer when we look at the relationships between the parties to the claim and providers in a workers' compensation case. When a claimant sustains an injury or is diagnosed with a disease that is compensable under the Act, the employer must provide all reasonable and necessary medical treatment causally related to the compensable condition. Thus, the provider's right to reimbursement is derivative of the claimant's right to compensation. Therefore, efforts by the claimant's attorney to establish compensability of the claim work also to the provider's benefit because the ultimate outcome may be a Commission order requiring the insurance carrier to pay the provider's bill.

Disagreement between a provider and claimant's attorney as to the appropriate amount of a 714 fee presents a unique opportunity for successful negotiation. The parties are free to work with each other to arrive at a resolution that is mutually satisfactory. Many fee issues are settled by the parties without intervention of the Commission. However, the Commission may adjudicate these issues if the parties are unable to reach an agreement. The parties may also request that these issues be resolved informally through mediation and the Commission's Alternative Dispute Resolution program.

The process the Commission uses for adjudicating these issues is found in the statute and in Commission Rule 6. Where the parties cannot agree on a fee, the claimant's attorney, any provider or party to the claim may initiate adjudication by filing the statement described in Rule 6.2. The purpose of the statement is to ensure that all interested parties are given notice of the issue and are afforded a meaningful opportunity to participate in the hearing process. Ultimately, a deputy commissioner will decide the issue and send the parties a written decision.

The Commission adopts a flexible approach in determining an appropriate 714 fee. It does not apply a fixed fee schedule. Instead, the Commission looks at all the circumstances of the case, including the character and quantity of the work performed by the attorney, in arriving at the appropriate fee amount. The objective of the inquiry is to arrive at a reasonable fee.