

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
March 9, 2001 Session

BRUCE HARDIN v. TRAVELERS INDEMNITY CO. OF ILLINOIS

**Direct Appeal from the Chancery Court for Henderson County
No. 13307 Joe C. Morris, Chancellor**

No. W2000-01966 WC-R3-CV - Mailed May 2, 2001; Filed June 8, 2001

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court pursuant to Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The defendant, Travelers Indemnity Co. of Illinois (Travelers) appeals that part of the trial court's judgment which ordered Travelers to pay to the plaintiff, Bruce Hardin (Hardin) and his attorney, \$28,652.23 the total of Hardin's medical expenses and required Hardin's attorney to satisfy Blue Cross and Blue Shield's subrogation lien. For the reasons stated in this opinion, we reverse the judgment of the trial court requiring the payment of the total medical expenses and remand for a determination of the amount of medical expenses paid by Hardin.

**Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Chancery Court
Reversed and Remanded**

W. MICHAEL MALOAN, SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J. and JOE C. LOSER, JR. SP. J., joined.

Mary Peterson, Memphis, Tennessee, for the appellant, Travelers Indemnity Co. of Illinois.

Ricky Boren, Jackson, Tennessee, for the appellee, Bruce Hardin.

MEMORANDUM OPINION

The relevant facts are not in dispute. Hardin filed a claim for workers' compensation benefits for an April 1998 fall at his place of employment, Young Radiator. The employer's insurance carrier, Travelers, provided benefits including medical treatment for some period of time but, after an investigation, denied liability and ceased any benefits. Hardin continued to receive medical treatment which was paid in part by him and by his group health insurance carrier, Blue Cross and Blue Shield.

At trial, the parties stipulated Hardin's total medical expenses of \$28,652.23 were reasonable and necessary. The trial court found Hardin's claim to be compensable and awarded permanent partial disability benefits of forty-three (43) percent to the body as a whole. Further, the trial court ordered Travelers to pay to Hardin and his attorney the total of his medical expenses of \$28,652.23 and for them to satisfy Blue Cross and Blue Shield's subrogation interest. Travelers appeals this part of the trial court's order.

The scope of review of questions of law is *de novo* with no presumption of correctness. *Cunningham v Shelton Sec. Services, Inc.*, 958 S.W.2d 338, 340 (Tenn. 1997). The sole issue of this appeal is the authority of the trial court to order Travelers to pay the total medical expenses to Hardin and his attorney.

This issue was considered in the recent case of *State Auto Mut. Ins. Co. v Hurley*, 31 S.W.3d 562, 565 (Tenn. Sp. Workers' Comp. 2000). The Special Workers' Compensation Panel of the Supreme Court held as follows:

We find this issue is controlled by the language of Tenn. Code Ann. § 50-6-204(a)(1) and by the Tennessee Supreme Court decision of *Staggs v National Health Corp.*, 924 S.W.2d 79, 81 (Tenn. 1996). Tenn. Code Ann. § 50-6-204(a)(1) provides in part:

The employer or employer's agent shall furnish free of charge to the employee such medical and surgical treatment, medicine, medical and surgical supplies, . . . made reasonably necessary by accident, . . . as may be reasonably required; . . .

In *Staggs*, 924 S.W.2d at 81, the Supreme Court held as follows:

An employee is not entitled to personally receive payment for medical expenses unless he or she personally paid the medical expenses and is due reimbursement. Instead, employers must pay the providers of medical care directly for incurred medical expense.

State Auto Mut. Ins. Co., 31 S.W.3d at 565.

Hardin attempts to distinguish the present case from *State Auto* by the fact he paid a portion of the premiums to his group health insurance carrier, Blue Cross and Blue Shield. He relies on the following language in Tenn. Code Ann. § 50-6-114(b):

(b) However, any employer may set off from temporary total, temporary partial, and permanent partial and permanent total disability benefits any payment made to an employee under an employer funded disability plan for the same injury; provided, that the disability plan permits such an offset....

Tenn. Code Ann. § 50-6-114(b) allows an employer to set off benefits to an employee from an employer funded disability plan against temporary or permanent disability benefits under the Workers' Compensation Act if the plan permits. The statute would not allow such an offset if the disability plan is not employer funded. Hardin agrees § 50-6-114(b) concerns disability rather than medical benefits, but he submits the same rationale should be applied to medical benefits in the present case because Hardin paid a portion of his group health insurance premiums.

We find this argument is not persuasive. The employer's obligation to furnish medical benefits is governed by § 50-6-204, not § 50-6-114. Tenn. Code Ann. § 50-6-204 and *Staggs* are clear and unambiguous that the employer is to furnish free of charge to the employee reasonable and necessary medical treatment and to pay the health care provider, not the employee, the cost of medical treatment, unless the employee has personally incurred medical expenses. Therefore, we reverse the judgment of the trial court which orders Travelers to pay the total of Hardin's medical expenses to Hardin and his attorney. On remand, any medical expenses paid by Hardin personally are to be reimbursed by Travelers.

CONCLUSION

The judgment of the trial court is reversed and the cause is remanded to the trial court to determine the amount of reimbursement due the plaintiff, Bruce Hardin, for any medical expenses personally paid by him. The plaintiff is taxed with the costs of this appeal.

W. MICHAEL MALOAN, Special Judge

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JUDGMENT

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs on appeal are taxed to the Appellee, Bruce Hardin, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM