

March 2016 Case Law Update

Edwards v. WCAB (Epicure Home Care, Inc.), _ A.3d _ (2016 WL 913098) (Pa. Cmwlth March 10, 2016).

Issues: Whether a personal caretaker for a client of an agency can be an independent contractor.

Answer: Yes (it depends on the circumstance and facts).

Analysis: Given the specific facts of the case the Commonwealth Court opined that the claimant was an independent contractor. The claimant was a personal caretaker for Company and the claimant would care to the needs of clients. Claimant testified she sustained an injury when she fell down a flight of stairs at a client's home.

The Company registers caretakers and matches caretakers to clients in need of in-home care. The Company controlled and handed out the assignments. The Company set Claimant's hourly wages. Company controlled and dictated several elements of Claimant's work, including what she wore for assignments (scrubs). Company stayed in constant contact with Claimant, advising her of the client's condition, setting her hours, and requiring her to check in and out when working on an assignment.

Company billed clients; the clients sent separate checks to Company and Claimant. Claimant received payment directly from her clients, not Company. Claimant deducted her own taxes from the payments. In her tax returns, she identified herself as self-employed.

Company did not inform Claimant it would not provide workers' compensation insurance for her. Prior to receiving the assignment from Company, Claimant had no contact with Client. Claimant never refused an assignment from Company, and she was unsure whether she had the right to refuse assignments. Company established her hours and place of work. Company maintains workers' compensation insurance only for President and two other employees who work in the office. Company requires caretakers to sign an agreement, which provides: caretakers are not employees of Company; they are paid directly by the client; and, they are responsible for deducting their own taxes. Company sent Client a document asking her to provide workers' compensation to Claimant, but it was never signed or returned.

Company established a suggested rate of pay, which it mailed to clients, and the caretaker's hours based on the client's needs. The caretaker and client could change the rate of pay. Company also mailed invoices to clients reflecting the amount owed to it and the caretaker. Company did not provide its caretakers with any sick time, vacation or holiday pay.

Conclusion and Practical Advice: The Commonwealth Court provided additional facts to assert what may or may not constitute an independent contractor. It should be noted that the Commonwealth Court overturned the determination of the WCJ. As such, based upon the current case law, if there are potential facts to suggest that a claimant may be an independent contractor this may justify a denial based upon an Employer/Employee relationship.

Church v. WCAB (Cook) _ A.3d _ (2016 WL 1078336) (Pa. Cmwlth March 18, 2016)

Issues: 1). Whether both original and amended TNCP need to be revoked and a Notice of Denial issued for both.

2). Whether a Denial acknowledging Medical is subject to a reinstatement or a claim petition.

3). Whether a court can deny costs when claimant prevailed in part when no costs are allocated for the aspect of the case where claimant prevailed.

Answers: 1). No.
2). Yes.
3). Yes.

Analysis: The claimant sustained a work related injury in 2004. The claim was originally acknowledged via a TNCP. Two days later an Amended TNCP was issued to amend the AWW and CompRate. Within 90 days, the second TNCP was revoked and a Medical Only denial was issued when the claimant returned to work. Six years later the claimant filed a Reinstatement Petition and the Employer followed up with a Termination Petition. The WCJ denied the Employer's motion to dismiss the Reinstatement Petition based upon a theory that the statute of limitations ran on the disability as it should have been a Claim Petition. After litigating the medical in the case, the WCJ ultimately denied the Reinstatement Petition on the merits. The claimant did prevail on the denial of the Termination Petition. The WCJ denied costs asserting that the litigation expenses arose due to the Reinstatement Petition (which defendant prevailed) and not the Termination Petition and therefore no costs were awarded.

Conclusion and Practical Advice: Obviously it is not best practices but if there is a situation where a TNCP needs to be amended, this supports that the revocation of the TNCP only needs to be done to the amended TNCP. However, practically, it may be best to file the additional document. Relative to the Reinstatement Petition v. Claim Petition argument following a Medical Only NCP, this case actually differs from recent case law that supports the complete opposite conclusion. The court also concluded that the Judge is justified in denying the costs to aspects of the case where the claimant did not appeal. This is consistent with prior case law. Please note, in reality Judges typically award full costs and will rarely want to break them down. How assertive counsel should be on requesting that the Judge break down the costs depends on the case. Namely, if the division of costs is going to make it less likely that the Judge will rule in Defendant's favor then maybe it is not advantageous to raise this issue before the Judge deciding the case.

Peter Schatzberg, DC v. WCAB (Bemis Company) _ A.3d _ (2016 WL 1232675) (Pa. Cmwlth March 30, 2016)

Issue: Whether the Provider has the right to seek payment of medical bills from the Employer following execution of a C & R Agreement that maintained a denial of the claim.

Answer: No.

Analysis: The claimant in the case asserted a work related injury following receipt of a Notice of Denial. The claim was in litigation for approximately 9 months at the time that the parties executed a full and final C & R Agreement. The Agreement maintained the denial of the claim and there was no agreement to issue payment of medical bills.

Following the execution of the Agreement, the Providers who had treated the claimant filed a Penalty Petition asserting that the Employer violated the WC Act by resolving the case through a C & R Agreement without giving notice and providing an opportunity to intervene.

Conclusion and Practical Advice: The Commonwealth concluded that the C & R Agreement did not acknowledge liability and therefore there was no obligation to issue payment for past medical treatment and there was no penalty warranted.