

**STATE OF VERMONT  
DEPARTMENT OF LABOR AND INDUSTRY**

Gary Gintof

Opinion No. 21-04WC

v.

By: Margaret A. Mangan  
Hearing Officer

Husky Injection Molding/  
Travelers Insurance

For: Michael S. Bertrand  
Commissioner

State File No. M-21094

**APPEARANCES:**

Frank E. Talbott, Esq., for the Claimant  
Glen L. Yates, Esq., for the Defendant

**ISSUE:**

*Does the Vermont Workers' Compensation Act provide for a stipend or household maintenance award as part of a vocational rehabilitation plan, for a claimant who has reached medical end result and is now enrolled in an education program within commuting distance from home?*

**STIPULATED FACTS:**

- 1. At the time of injury, the claimant was an "employee" of Husky Injection Molding and Husky Injection Molding was his "employer" within the Workers' Compensation Act.*
- 2. The purpose of Vocational Rehabilitation Services is to return an injured employee to gainful employment in a job that is as close as is reasonably possible to 100 percent of his pre-injury average weekly wage ("AWW").*
- 3. The parties have not signed the Individual Written Rehabilitation Plan ("IWRP"). Jay Spiegel, the vocational counselor hired by claimant, recommended an "incremental approach," yet at claimant's urging wrote a plan calling for an immediate two-year training program to return claimant to 80 percent of his pre-*

*injury AWW. Spiegel recommended a two-year degree program at Vermont Technical College ("VTC") in Randolph, VT.*

- 4. Claimant says he cannot afford to commute to the recommended program unless the employer supports him, his family, and his household for the duration.*

#### **CONCLUSIONS OF LAW:**

- 1. Vt. Const., ch. II., § 70 expressly authorizes the legislature to establish workers' compensation laws. The award of benefits is governed by: 1) statute, and 2) the regulations duly promulgated by the commissioner. See 21 V.S.A. § 602.*
- 2. Workers' compensation statutes must be interpreted to effect the purpose expressed by the legislature, which enacted them. Herbert v. Layman, 125 Vt. 481 (1966).*
- 3. Title 21 V.S.A. § 641(a) provides a benefit of lodging and board when the claimant must live away from his customary residence: "When vocational rehabilitation requires residence at or near a facility or institution, away from the employee's customary residence, the reasonable cost of board, lodging or travel or both shall be paid for by the employer."*
- 4. The language in this statute clearly states that a claimant must reside away from his customary residence to qualify for the board and lodging benefit. Although the statute does not limit attendance to vocational rehabilitation programs away from the employee's customary residence, on its face, the statute clearly does not authorize payment of board, lodging, or travel expenses if the claimant commutes from his customary residence to the facility or institution where vocational rehabilitation is provided. The clear intent of the statute is to prevent a claimant from having to maintain two residences to pursue vocational rehabilitation. The legislature had the power to enact a maintenance payments benefit, as proposed by claimant. Instead, it legislated a specific benefit available under limited and delineated circumstances.*
- 5. Rule 33.7300 allows either party to an IWRP to propose amendments (Form VR 2) "[w]hen the vocational objective is no longer a reasonable goal because of economic changes." This rule provides the basis for revisiting claimant's vocational rehabilitation benefit and amending his IWRP to include*

6. *Section 641(c) allows the commissioner to promulgate rules necessary to carry out the purpose of § 641. However, until the commissioner promulgates a rule to provide maintenance payments, neither the statute nor the rules cover this situation.*
7. *In essence, claimant is requesting a continuation of his temporary total disability (TTD) benefits, but calling these payments "maintenance." In *Wroten v. Lamphere*, 147 Vt. 606 (1987), the claimant requested continued TTD during his vocational rehabilitation to cover the same expenses outlined by claimant. In rejecting the request, the court stated: "Accordingly, we hold that a claimant participating in a vocational rehabilitation program is not entitled to temporary total disability benefits if he has reached a medical end to treatment for his work-related injuries." *Id.* at 611. It is undisputed that claimant has reached medical end result and is no longer eligible for TTD benefits. To allow the requested maintenance payments would be to ignore the clear directive of *Wroten*.*
8. *In fashioning a workers' compensation system in which a claimant need not prove fault and the employer has limited liability, the legislature necessarily chose to cover some, but not all, potential services for an injured worker. For that reason, the Vermont Supreme Court affirmed this Department's decision to award payment for spousal nursing services that went beyond housekeeping (*Close v. Superior Excavating Co.*, 166 Vt. 318, 321 (1997)), but denied compensation for household help, concluding that "without a statutory provision specifying that housekeeping services with no element of nursing care are compensable, a clear precedent dictates that they are not." *Hanson v. Goldsmith*, Op. No. 11-03WC (Feb. 28, 2003), *aff'd*, 834 A.2d 50 (Vt. 2003) (by a three-justice panel). Likewise, the legislature chose to cover board, lodging, and travel expenses for vocational training only when a claimant was required to reside at or near the training facility, ostensibly to prevent a claimant from having to maintain two residences. Without a statutory provision specifying that maintenance expenses are compensable, this Department cannot support claimant's claim.*

**ORDER:**

*The maintenance benefit claimant seeks is beyond the statutory mandate. Therefore, his claim must be denied.*

*Dated at Montpelier, Vermont this 9<sup>th</sup> day of June 2004.*

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*Michael S. Bertrand  
Commissioner*

**Appeal:**

*Within 30 days after copies of this opinion have been mailed, either party may appeal questions of fact or mixed questions of law and fact to a superior court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§ 670, 672.*