

M. M. v. State of Vermont, Department of Corrections (June 12, 2008)

**STATE OF VERMONT  
DEPARTMENT OF LABOR**

M. M.

Opinion No. 20C-08WC

v.

By: George K. Belcher  
Hearing Officer

State of Vermont  
Department of Corrections

For: Patricia Moulton Powden  
Commissioner

State File No. U-11445

**RULING ON MOTION FOR ATTORNEYS FEES**

In conjunction with the Commissioner's decision in the above claim, which allowed the Claimant's claim in part and denied the Claimant's claim in part, the Claimant has submitted an itemized billing of attorney time and tasks completed. That itemization shows that the Claimant's attorney expended 69.4 hours in pursuing the Claimant's claim. In addition, the Claimant submitted a contingent fee agreement calling for a 25% contingent fee based upon the gross award. (See Finding 37 in the original decision.)

In the discretion of the Commissioner, the prevailing party may be awarded "reasonable" attorney fees. 21 VSA Sec. 678 (a). Rule 10.1000 Vermont Workers' Compensation and Occupational Health Rules. The Commissioner has discretion as to whether to base an award of attorney fees on either an hourly or contingency basis. Rule 10.1200 Vermont Workers' Compensation and Occupational Health Rules. The Claimant prevailed in this formal proceeding on four of the seven issues presented (lumbar spine impairment, cervical spine impairment, permanency rating recovery, and chiropractic care). It is not necessary for a claimant to prevail on all claims in order to be a "prevailing party" as those words are used in 21 V.S.A. Sec. 678(a). *Hodgeman v. Jard*, 157 Vt. 461 (1991); *Heath v. State of Vermont*, Opinion No. 14R-08 WC. The Commissioner has considerable discretion in the award of such fees.

After a review of the itemized billing, the contingent fee agreement, the Department file and the results achieved, the Claimant is awarded attorney fees for the entire hourly billing of 69.4 hours at the hourly rate of \$90.00 per hour as set forth in Rule 10.1210. The Claimant substantially prevailed. It is likely that a significant amount of the time spent in the preparation and pursuit of the entire claim would have been incurred even if the Claimant had only pursued those issues upon which he did prevail. An hourly calculation of fees (rather than contingency) is more reasonable in this case based upon the factors which the Commissioner has considered in previous cases. See *Estate of Lyons v. American Flatbread*, Opinion No. 36A-03 WC.

Dated at Montpelier, Vermont this 12<sup>th</sup> day of June 2008.

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Patricia Moulton Powden  
Commissioner