

Patricia Jacobs v. Metz and Associates Ltd dba Valley Vista (May 14, 2012)

**STATE OF VERMONT  
DEPARTMENT OF LABOR**

Patricia Jacobs

Opinion No. 02A-12WC

v.

By: Jane Woodruff, Esq.  
Hearing Officer

Metz and Associates, Ltd.  
d/b/a Valley Vista

For: Anne M. Noonan  
Commissioner

State File No. Z-01481

**RULING ON CLAIMANT'S PETITION FOR COSTS AND ATTORNEY FEES**

The Commissioner previously decided this claim on January 11, 2012. The disputed issues were first, whether Claimant suffered from chronic regional pain syndrome causally related to her accepted work injury; and second, whether a spinal cord stimulator trial constituted reasonable and necessary medical treatment for her accepted work injury. Claimant prevailed on both issues.

In accordance with 21 V.S.A. §678(e), Claimant now has submitted her petition for costs totaling \$17,571.56 and attorney and paralegal fees totaling \$19,637.00.<sup>1</sup>

According to 21 V.S.A. §678(a), when a claimant prevails after formal hearing necessary litigation costs "shall be assessed" against the employer. The commissioner has discretion to award attorney fees to a prevailing claimant as well.

**Objections to Costs**

Defendant objects to the fees for various expert witnesses' testimony on the grounds that they were billed at a rate in excess of \$300.00 per hour, the maximum allowed by Workers' Compensation Rule 40.110(A). The parties agreed that the billing rate for Dr. Lake's deposition testimony could exceed that amount, and therefore Claimant is entitled to recover the total billed for that deposition. In order to conform to the requirements of Rule 40.110(A), however, the bill for Dr. Lake's formal hearing testimony, however, is reduced to \$825.00.

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<sup>1</sup> Claimant seeks reimbursement for a total of 116.6 hours of attorney time and 36.6 hours of paralegal time. The reimbursement rate is \$145.00 per hour for the attorney fees and \$75.00 per hour for the paralegal fees, which yields a total fee request of \$19,637.00.

To conform to the requirements of Rule 40.110(A), the fees charged for the testimony of Claimant's other expert witnesses must be reduced as well. Claimant is entitled to reimbursement as follows:

- For Dr. Ericson's January 11, 2012 billing, \$750.00;
- For Dr. Bucksbaum's March 24, 2011 billing, \$750.00;
- For Dr. Benoit's June 6, 2011 billing, \$300.00;
- For Dr. Bucksbaum's September 2011 billings, \$1,200.00; and
- For Dr. Zweiber's September 22, 2011 billing, \$600.00.

The total reduction in costs from those requested, therefore, is \$3,250.00.

*Objections to Attorney and Paralegal Fees*

Out of a 42-page fee request submission, Defendant objects to twelve attorney fee entries and two paralegal fee entries. Its objections as to attorney fees center on billing entries relating to prescription drug and/or occupational therapy issues. These issues were a necessary component of Claimant's claim to a spinal cord stimulator trial. To establish that claim, she needed to show that she had exhausted all other conservative treatment measures, including both prescription drug treatment and occupational therapy. Therefore, I conclude that the attorney fees relating to these issues are recoverable.

The two paralegal entries to which Defendant objects involved correspondence relevant to this case with Defendant's paralegal. I conclude that they are recoverable.

**ORDER:**

Based on the foregoing, Defendant is hereby **ORDERED** to pay:

1. Costs totaling \$14,321.56; and
2. Attorney and paralegal fees totaling \$19,637.00.

**DATED** at Montpelier, Vermont this 14<sup>th</sup> day of May 2012.

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Anne M. Noonan  
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.