

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Dylan Guerin

Opinion No. 02F-26WC

v.

By: Beth A. DeBernardi
Administrative Law Judge

State of Vermont

For: Kendal M. Smith
Commissioner

State File No. YY-61590

RULING ON CLAIMANT'S PETITION FOR COSTS AND ATTORNEY FEES

APPEARANCES:

James M. Diaz, Esq., for Claimant
William J. Blake, Esq., for Defendant

EXHIBITS:

Claimant's Exhibit 1:	Itemized invoice of costs and attorney fees
Claimant's Exhibit 2:	Medical records from Massachusetts
Claimant's Exhibit 3:	Claimant's August 8, 2025 submission of dependency benefits and travel reimbursement claims
Claimant's Exhibit 4:	November 13, 2025 continued denial of hotel expense
Claimant's Exhibit 5:	Claimant's counsel's calculation of amounts due
Claimant's Exhibit 6:	November 18, 2025 agreement on amounts due
Claimant's Exhibit 7:	August 8, 2025 claim for dependency benefits
Claimant's Exhibit 8:	August 11, 2025 response from Defendant concerning dependency benefits
Claimant's Exhibit 9:	August 11, 2025 denial from Defendant of travel reimbursement
Defendant's Exhibit A:	Certificates of Dependency (Form 10) and Claimant's Affidavit
Defendant's Exhibit B:	Email correspondence between the parties' representatives
Defendant's Exhibit C:	<i>Tipper v. Green Mountain Transportation, Inc.</i> , Unpublished Departmental Attorney Fee Ruling dated January 7, 2026

FEE PETITION:

On December 17, 2025, Claimant's counsel filed a petition for costs and attorney fees for successfully obtaining certain benefits for Claimant, including dependency benefits and travel reimbursements. Defendant filed a response to the petition on January 15, 2026, and Claimant's counsel replied on January 23, 2026.

BACKGROUND:

Claimant is a resident of Morrisonville, New York. In 2024, he was working for Defendant as a correctional officer.

Claimant sustained a compensable shoulder injury on May 3, 2024, when he broke up a fight among inmates. After a period of conservative medical treatment, Claimant's treating physician referred him to Massachusetts General Hospital for specialized surgery with Bassem Elhassan, MD. Dr. Elhassan performed the surgery on June 25, 2025; Claimant made additional trips to Massachusetts for follow-up visits in the summer and fall of 2025. *See Claimant's Exhibit 2.*

Two disputes arose concerning the benefits Claimant was seeking. First, Defendant disputed portions of his claim for travel reimbursement related to his medical treatment. Workers' Compensation Rule 4.1300 provides for reimbursement of properly documented travel expenses, including mileage, meals, overnight accommodations, and other transportation expenses, within 21 days. *See Workers' Compensation Rule 4.1340.*

Second, Defendant failed to act on Claimant's claim for an allowance for his dependent children. Such an allowance is added to an injured worker's temporary disability benefits on a weekly basis, in the amount of \$20 per dependent child. *See Workers' Compensation Rule 8.1630.*

Travel Reimbursement Claim

Claimant was scheduled to arrive at Massachusetts General Hospital for his surgery very early on the morning of June 25, 2025. The hospital is 250 miles from his home. Accordingly, he stayed in a hotel near the hospital the night before his surgery.

A few weeks later, on July 10, 2025, Claimant hired an attorney to assist him with the process of filing his claim for travel reimbursement.

After his surgery, Claimant returned to Massachusetts for multiple follow-up appointments with Dr. Elhassan through the fall of 2025, incurring costs for mileage, tolls and meals on each trip. Claimant's post-surgery recovery also included aqua therapy prescribed by his surgeon. The closest aqua therapy provider to Claimant's home is located in Essex Junction, Vermont, 35 miles from his home by the Lake Champlain ferry or 82 miles from home taking the non-ferry route. Claimant attended aqua therapy twice weekly from August 25 through October 27, incurring additional travel expenses for each trip.

On August 8, 2025, Claimant's counsel submitted receipts and a request for reimbursement of Claimant's travel expenses, including the June 24, 2025 pre-surgery hotel stay. *See Claimant's Exhibit 3.* In response, on August 11, 2025, Defendant's adjuster explicitly refused reimbursements for meals and overnight accommodations. The adjuster took the position that only mileage and tolls are reimbursable, not meals or other out-of-pocket travel expenses. Further, she denied reimbursement for the hotel because that expense was not pre-approved. *See Claimant's Exhibit 9.*

Dependency Benefits Claim

Claimant also sought retroactive and ongoing dependency benefits for two children. When he initially completed the Certificate of Dependency (Form 10) on May 14, 2024, he did not include his two children because they did not live with him most days. *See Defendant's Exhibit A.* Later, on August 8, 2025, Claimant made a claim for dependency benefits for his two children, supported by a revised Form 10 and an Affidavit. *See Claimant's Exhibit 7.*

Defendant's adjuster communicated with Claimant's counsel about the revised Form 10 on August 11, 2025. Counsel explained that Claimant was entitled to the benefit based on his payment of child support and the other factors set forth in the Affidavit. However, the adjuster did not agree to pay the dependency benefits, nor did she explain the basis for her continuing denial of this claim.

The Informal Process and the Parties' Emails

Defendant's Exhibit B is a set of emails between Claimant's counsel, Defendant's adjuster, and Defendant's counsel.¹ The emails reveal the following chronology:

On August 8, 2025, Claimant's counsel emailed Defendant's adjuster, submitting the revised Form 10 with Affidavit and seeking payment of dependency benefits. On August 11, the adjuster responded by asking when Claimant's children began to live with him, as he had previously reported no dependent children. *See Claimant's Exhibit 8.* Claimant's counsel replied that the Affidavit established Claimant's entitlement to dependency benefits based on his payment of child support and the other factors set forth in the Affidavit.

Also on August 8, 2025, Claimant's counsel emailed Defendant's adjuster about the travel reimbursement claim. On August 11, the adjuster responded that certain travel claims were denied. Hotel reimbursement was denied because that expense was not "pre-approved," and the claim for meals and incidentals was denied because "we do not reimburse out-of-pocket expenses incurred while attending medical appointments." *See Claimant's Exhibit 9.* Claimant's counsel explained to the adjuster that the Workers' Compensation Rules do not require pre-approval for hotel stays during medical treatment. Further, he explained that the Rules do in fact provide for reimbursement of meals and other incidental travel expenses related to medical treatment. Counsel cited the applicable Rules to the adjuster.

On August 12, 2025, Claimant's counsel brought these claims to the attention of Defendant's counsel. On August 26, Claimant's counsel followed up with Defendant's counsel on both claims.

On September 5, 2025, Claimant's counsel memorialized a September 2 telephone conversation with Defendant's counsel in an email. The email requested action on the dependency claim and summarized the status of various travel reimbursements (some paid, some not paid).

¹ Some emails were sent by paralegals on behalf of the attorneys at their offices. I have referred to such emails as being from counsel, for the sake of simplicity.

On September 8, 2025, Defendant's counsel contacted Claimant's counsel for more information concerning the starting address for Claimant's medical trips.

On September 19, 2025, Claimant's counsel emailed Defendant's counsel again to follow up on the outstanding payment requests.

On September 29, 2025, Claimant's counsel submitted a reminder to Defendant about the outstanding dependency and mileage claims.

On October 1, 2025, Defendant's counsel's office sent a spreadsheet to Claimant's counsel, to identify and sort out the travel reimbursement claims. This communication reiterated that the hotel cost was denied because it was not pre-approved.

On October 6, 2025, Claimant's counsel responded to the spreadsheet, providing additional information and corrections.

On October 8, 2025, Claimant's counsel followed up with Defendant's counsel on the status of the unpaid claims.

On October 13, 2025, Claimant's counsel emailed Defendant about the outstanding claims again, asking for payment by a date certain, to avoid litigation.

Receiving no approval of the pending claims, Claimant's counsel filed a Hearing Request (Form 6) on October 20, 2025.

On October 27, 2025, the Department's Specialist scheduled an informal conference for November 18, 2025 on the Claimant's request for (1) reimbursement of mileage, ferry, tolls, parking, meals and overnight accommodations related to his medical care, and (2) retroactive and ongoing dependency benefits for two minor children. *See Specialist's Scheduling Notice dated October 27, 2025.*

On November 13, 2025, Defendant's counsel sent Claimant's counsel an updated spreadsheet showing his calculation of the amount due for travel reimbursement as \$2,525.55. Defendant agreed to pay \$2,525.55, which did not include the cost of the hotel. *See Claimant's Exhibit 4.*

On November 14, 2025, Claimant's counsel followed up by email on the hotel reimbursement² and the dependency benefits. His email also addressed the various routes Claimant could have taken to obtain medical treatment, one involving the expense of a ferry ride and the other skipping the ferry but requiring more miles to drive around the lake.

On November 17, 2025, Defendant agreed to pay Claimant's retroactive and ongoing dependency benefits, more than three months after the claim was submitted. *See Claimant's Exhibit 5.* Claimant's counsel then emailed Defendant with confirmation of the amount owed for the retroactive dependency benefits, with interest and penalties, in the amount of \$2,863.51. *Id.*

² The communication from Claimant's counsel included a medical record documenting that Claimant checked in for his surgery at Massachusetts General Hospital prior to 7:00 AM on June 25, 2025, confirming the necessity of his hotel stay the night before.

As to the unpaid travel reimbursements, on November 17, 2025, Claimant's counsel emailed Defendant a request to confirm the amount as \$3,436.26. This figure included Defendant's recent calculation of \$2,525.55, plus additional travel expenses of \$910.71, which included the hotel reimbursement. *See Claimant's Exhibit 5.* Claimant's counsel also asked whether Defendant would like to discuss Claimant's attorney fees for the work performed to date. *Id.*

The Department's Specialist held the informal conference on November 18, 2025. Shortly after the conference, Defendant's counsel confirmed that payments were forthcoming for the travel reimbursement, including the hotel, and the dependency benefits. *See Claimant's Exhibit 6.*

Having successfully obtained payment of the disputed benefits for his client, Claimant's counsel filed this timely petition for costs and attorney fees on December 17, 2025.

DISCUSSION:

Award of Costs

The Vermont Workers' Compensation Act provides that when a claimant prevails at either the formal or the informal level, the Commissioner *shall* award the claimant the necessary costs of the proceeding. 21 V.S.A. § 678(b)(1).

Claimant's counsel has submitted an itemized statement showing \$89.67 as the cost of obtaining medical records. I find this cost to be necessary to the proceeding, and I award this amount to Claimant's counsel.

Statutory Requirements for an Award of Attorney Fees

The Vermont Workers' Compensation Act provides that a claimant is eligible for consideration of an attorney fee award when he or she prevails at either the formal or the informal level. 21 V.S.A. § 678(b)(2). Section 678(b)(3) of the statute further provides:

In cases for which a formal hearing is requested and the case is resolved prior to a formal hearing:

- (A) the Commissioner may award reasonable attorney's fees if the claimant retained an attorney in response to an actual or effective denial of a claim and payments were made to the claimant as a result of the attorney's efforts;

The first statutory requirement for consideration of an attorney fee award is thus requesting a formal hearing. Claimant filed a hearing request (Form 6) on October 20, 2025. Accordingly, he has satisfied the first requirement.

The second statutory requirement is retaining an attorney in response to an actual or effective denial of a claim. Claimant retained an attorney on July 10, 2025, before Defendant denied his

claim for dependency and travel benefits. The first documented claim denial came on August 11, 2025.

Retaining an attorney prior to claim denial does not disqualify a claimant from consideration of a fee award, however. Under such circumstances, the Department limits any fee award to time spent by the attorney *after* the claim denial date. *See Williams v. State of Vermont*, Opinion No. 03-19WC (February 25, 2019), citing *Combs v. Broe's Masonry*, Opinion No. 27-15WC (November 20, 2015) (“The statutory trigger for an award of fees at the informal level is that the attorney’s involvement occurs ‘in response to an actual or effective denial of a claim.’ I thus must exclude from consideration the fees incurred prior to . . . the date when Defendant first denied Claimant’s claim.”) Claimant here is therefore eligible for consideration of a fee award for time spent on and after August 11, 2025.

The third statutory requirement for consideration of a fee award is that payments must have been made to the injured worker as a result of his or her attorney’s efforts. Here, Defendant made payments to Claimant of travel expenses and dependency benefits as a result of his attorney’s efforts. Accordingly, Claimant has met all three statutory requirements for consideration of an attorney fee award.

Finally, although the Department’s Specialist did not issue an Interim Order on these disputed claims, she nevertheless held an informal conference, the timing of which suggests that her scheduling of the conference for a date certain was a key factor in the resolution of Claimant’s long-pending claims. Further, given that Claimant received the benefits he was seeking, I conclude that he has prevailed for purposes of the statute, even in the absence of an interim order. *See Williams v. State of Vermont*, Opinion No. 03-19WC (February 25, 2019), at 2.

Exercise of Discretion to Award Attorney Fees

Workers’ Compensation Rule 20.1500 provides that, when considering a fee request in cases resolved short of formal hearing, “the Commissioner shall also consider whether an award of fees will further the goals of (a) maintaining appropriate standards of employer and adjuster conduct; (b) discouraging excessive delay or unnecessarily adversarial conduct; and/or (c) encouraging the parties to make effective use of the informal dispute resolution process.” Notably, the Rule does not require the Commissioner to make a specific finding with regard to any of these goals, nor does the Rule restrict consideration of any other relevant factors. *See, e.g., Williams, supra*, at 4.

Defendant here rightly notes that its attorney’s office worked cooperatively with Claimant’s attorney to assemble the documentation required to support the claim for travel reimbursement. Nevertheless, even in the absence of any unnecessarily adversarial conduct, Defendant’s handling of these claims involved substantial delay. Workers’ Compensation Rule 4.1340 provides for payment of reasonably documented travel claims within 21 days. Here, some of the travel claims were not paid for three and a half months.

A further consideration favoring an attorney fee award is Defendant’s adjuster’s position that meals taken during travel for medical treatment are not reimbursable and that a hotel stay requires pre-approval. Claimant’s counsel disputed both positions in an email to Defendant on

August 11, 2025, citing the applicable provisions of the Workers' Compensation Rules. Despite this, Defendant continued to maintain its denials. Maintaining these untenable positions falls below the appropriate standard for adjuster conduct.

The claim for dependency benefits similarly involved excessive delay. Claimant's attorney submitted a revised Form 10 and Affidavit to support this claim on August 8, 2025. Defendant nevertheless maintained its denial for another three and a half months before agreeing that such benefits were owed.

Having considered the matter, I conclude that an award of attorney fees would further the goals set forth in Workers' Compensation Rule 20.1500. In particular, a fee award would help ensure that adjusters know the applicable Workers' Compensation Rules and take timely action to pay claims.

Further, and equally important, I find that Claimant's counsel's efforts were instrumental in obtaining Claimant's travel reimbursement and dependency benefits. Although Claimant should not have had to retain counsel for these claims, had he not done so, it is unlikely that he would have received these benefits.

For all these reasons, I conclude that an award of attorney fees is warranted in this case.

Adjustment for Time Spent Prior to Claim Denial

As discussed above, the second statutory requirement for an attorney fee award is that the claimant must have retained an attorney *in response to* a claim denial. 21 V.S.A. § 678(b)(3)(A). Defendant denied Claimant's claims for travel reimbursement and dependency benefits on August 11, 2025. Accordingly, the attorney and paralegal time spent on this claim prior to that date must be excluded. Calculation of the attorney fee award will begin with Claimant's counsel's August 11, 2025 time entries.

Calculation of the Attorney Fee

Under Workers' Compensation Rule 20.1340, the applicable maximum rate for attorney work performed between July 1, 2025 and June 30, 2026 is \$260 per hour. The maximum rate for paralegal work during the same period is \$100 per hour.

With the exclusion of the time expended prior to August 11, 2025, the total attorney time included in the fee award is 23.2 hours and the total paralegal time is 8.5 hours.

Accordingly, I calculate the fee award as follows:

Attorney time:	23.2 hours x \$260.00 = \$6,032.00
Paralegal time:	8.5 hours x \$100.00 = \$ 850.00

TOTAL: \$ 6,882.00

ORDER:

Defendant is hereby **ORDERED** to pay costs of \$89.67 and attorney fees of \$6,882.00, for a total of \$6,971.67. Payment shall be made to Claimant's counsel in a lump sum as provided in Workers' Compensation Rule 20.1700.

DATED at Montpelier, Vermont this 27 day of March 2026.

Chris Winters
Deputy 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.