

**STATE OF VERMONT
DEPARTMENT OF LABOR**

James Hardy

Opinion No. 06F-26WC

v.

By: Stephen W. Brown
Administrative Law Judge

Autumn Harp, Inc.

For: Kendal M. Smith
Commissioner

State File No. BB-1561

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

APPEARANCES:

Heidi Groff, Esq., for Claimant
William J. Blake, Esq., for Defendant

Background

Claimant has timely moved for an award of costs and attorneys' fees, as well as statutory interest, after prevailing on his claim for compensation for spousal care services at a formal hearing. *See Hardy v. Autumn Harp, Inc.*, Opinion No. 12-25WC (September 4, 2025).

Claimant's attorney has invoiced costs relating to this claim in the amount of \$13,417.89, most of which is attributable to fees for expert witnesses. His attorney has also tabulated 178.8 hours of attorney time and 26.4 hours of paralegal time attributable to Claimant's claim for spousal services compensation, billed at the maximum allowable hourly rates published by the Department for each year from 2021 through the date of the decision, amounting to a combined total of \$46,745.50. I find Claimant's tabulations of costs and hourly fees reasonable, well-documented, and necessary for the pursuit of this claim.

Claimant's counsel leaves to the Commissioner's discretion whether to award attorneys' fees on an hourly basis or in the form of a contingency fee based on twenty percent of the benefits awarded, but does not provide a specific tabulation of the amount of benefits received as a result of the favorable decision. That said, the decision giving rise to the current petition awarded compensation beginning August 18, 2016, which was six years before the notice and request for hearing that ultimately led to that award. It computed the total amount of services from that date through the date of that decision, based upon the applicable minimum wages between 2016 and 2025, as \$283,417.44. It also provided for formulaic computation for services after the decision based on a per diem rate. I take judicial notice of the fact that twenty percent of

the amounts ordered solely through the date of the decision giving rise to this petition amounts to \$56,683.49. If an award of attorneys' fees were computed on a contingency basis in this case, that figure would continue to grow based upon how many days Claimant's wife continued or continues to provide the services contemplated in the underlying decision.

Legal Standards

When a workers' compensation claimant prevails at a formal hearing, Vermont law provides for the award of attorneys' fees and costs as follows:

Necessary costs of proceedings under this chapter, including deposition expenses, subpoena fees, and expert witness fees, shall be assessed by the Commissioner against the employer or its workers' compensation carrier when the claimant prevails. The Commissioner may allow the claimant to recover reasonable attorney's fees when the claimant prevails. Costs shall not be taxed or allowed either party except as provided in this section.

21 V.S.A. § 678(a).

Additionally, 21 V.S.A. §664 provides that when the Commissioner awards benefits to an injured worker following a formal hearing, the worker shall also receive interest at the statutory rate, currently twelve percent per annum, *see* 9 V.S.A. § 41a(a), from the date on which the employer's obligation to pay compensation began.

The determination of "reasonable attorney fees" lies "within the commissioner's discretion, and counsel has the burden of providing evidence to justify an award." *Hodgeman v. Jard Co.*, 157 Vt. 461, 466 (1991). Attorneys' fees may be based on either an hourly or contingency basis, and the selection of which computation method lies "[a]t the Commissioner's discretion." *See* Workers' Compensation Rule 20.1300. If based on an hourly fee, the award shall not exceed a charge of \$200.00 per hour for attorney time, and \$75.00 per paralegal time, subject to annual increases based on inflationary indices beginning in 2017, reflected in a table published by the Department. *See* Workers' Compensation Rules 20.1310 and 20.1340. If based on a contingent fee, the award may not exceed 20 percent of the compensation or benefits awarded. Workers' Compensation Rule 20.1320.

The Department "typically exercises the discretion granted by the statute to award only those attorney fees that are commensurate with the extent of the claimant's success." *Kibbie v. Killington, Ltd.*, Opinion No. 05A-16WC (May 24, 2016). Other factors deserve consideration as well, "such as whether the attorney's efforts were integral to establishing the claimant's right to compensation and whether the claim for fees is proportional to the attorney's efforts in light of the difficulty of the issues raised and the skill and time expended." *Id.*, p. 2.

Discussion

In this case, Defendant denied any liability for the services Claimant's wife provided and also took issue with the rate of compensation Claimant was seeking, which was up to \$38.00 per hour based on rates charged by licensed professionals providing similar care. Claimant prevailed on the issue concerning entitlement to compensation for the care his wife provides, but I reduced the hourly rate of compensation to the minimum wage, which ranged from \$9.60 to \$14.01 during the period covered by the decision. The vast majority of the attorney time and labor that Claimant's counsel expended would have been necessary even if Claimant had only sought the minimum wage from the beginning; the evidence concerning the appropriate hourly rate was limited to only a few minutes of questioning of expert witnesses. That said, the resulting benefits awarded were significantly less than the maximum Claimant sought. Given the effort required to obtain the favorable result in this case, and accounting for the difference between Claimant's request and the amount awarded, I find that awarding Claimant ninety percent of the amounts invoiced based upon an hourly rate is appropriate in this case. Basing the fee award on an hourly basis rather than a contingency basis in this case is appropriate in part because the amount of attorney time expended in pursuit of the benefits in question was temporally finite while the duration of Claimant's wife's services are indefinite and have no knowable endpoint, and also because the extent of Claimant's success is more proportionate to this resulting monetary figure than the greater (and still uncertain) amount that would result from awarding based on a twenty percent contingency basis. Accordingly, I conclude that Claimant is entitled to \$42,070.95¹ in attorneys' fees.

As to statutory interest, Defendant contends that Claimant waived his claim to interest by failing to specifically request it in his Proposed Findings of Fact and Conclusions of Law. I am unpersuaded by this contention. As Claimant accurately notes, Section 644 entitles him to an award of interest at the statutory rate as a matter of right; like an award of costs, this relief is mandatory, not discretionary. The beginning date of the entitlement to benefits at issue is August 18, 2016, and the amounts of benefits for each year from that date through the date of the decision are computed in the decision, with a formulaic computation provided for benefits payable after the decision. While the specific dollar amount of interest due depends upon the date that Defendant actually made payments pursuant to the decision awarding benefits, the amount of interest payable is mathematically ascertainable based upon that date.

ORDER:

Defendant is hereby **ORDERED** to pay costs of \$13,417.89, attorney fees of \$42,070.95, and interest on benefits payable pursuant to the Commissioner's Opinion No. 12-25WC computed at the rate of twelve percent per annum from August 18, 2016. Payment of the costs

¹ 90 percent of \$46,745.50 is \$42,070.95.

and attorney fees shall be made to Claimant's counsel in a lump sum as provided in Workers' Compensation Rule 20.1700.

DATED at Montpelier, Vermont this 23rd day of April 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.