

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E901941/E911438/E911439

JIMMY THOMPSON	CLAIMANT
CITY OF BENTONVILLE	NO. 1 RESPONDENT
ARKANSAS MUNICIPAL LEAGUE INSURANCE CARRIER	NO. 1 RESPONDENT
WAL-MART, INC.	NO. 2 RESPONDENT

OPINION FILED NOVEMBER 15, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

Claimant represented by JAY TOLLEY, Attorney, Fayetteville, Arkansas.

Respondents No. 1 represented by CHRIS BRADLEY, Attorney, North Little Rock, Arkansas.

Respondent No. 2 represented by CURTIS NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was held on September 7, 2004, in Springdale, Arkansas to determine if Respondent No. 2, Wal-Mart, has any subrogation interest in any settlement between the claimant and Respondent No. 1. All parties were notified and Respondents No. 1 and Respondent No. 2 were present and represented by counsel. The claimant nor his counsel appeared at the scheduled hearing.

The issue to be determined at this hearing is what, if any, subrogation interest Respondent No. 2 has in any settlement agreement between the claimant and Respondents No. 1.

The documentary evidence submitted in this matter consists of an affidavit marked Commission's Exhibit No. 1. Respondent No. 2 submitted medical records marked Respondent No. 2's Exhibit No. 1, a letter marked Exhibit No. 2, a brochure marked Exhibit No. 3,

additional documents marked Exhibit No. 4 and medical records marked Exhibit No. 5.

Respondents No. 1 and Respondent No. 2 submitted post hearing briefs.

DISCUSSION

Christy Herbaugh was called to testify on behalf of Respondent No. 2. Ms. Herbaugh testified that she works for the Wal-Mart Medical Claims office in Rogers and has been there for twelve years. This witness stated that she was a reimbursement specialist supervisor and had been in that position for over nine years. Ms. Herbaugh testified that she is the primary person who handles the reimbursement claims on behalf of Wal-Mart. Ms. Herbaugh testified that she is acquainted with the claimant, Jimmy Thompson, and has had conversations with the claimant concerning his claim and reimbursements. Ms. Herbaugh testified that the claimant is an eligible dependent under a group health benefit package provided to their associates. This witness testified that the claimant became eligible for benefits in July 1999. Ms. Herbaugh testified that according to their hand book and benefit book, it is the position of the plan that the language in effect at the time of a settlement is the ruling language because the case has not become ripe for settlement until the settlement funds are available. Ms. Herbaugh agreed that the 2004 plan would be affective in this particular case. Ms. Herbaugh testified that Respondent No. 2, pursuant to the plan, is seeking to recover medical benefits paid on behalf of the claimant as they relate to his compensable back injury. Ms.

Herbaugh testified that the printout setting forth an amount of \$2,473.27 is the total amount which has been paid by Respondent No. 2 for the claimant's back claims. Ms. Herbaugh explained that the maximum the 2004 plan would require would be either the lesser of 65 percent of the total gross settlement or 100 percent of the amount paid if the settlement agreement was greater than the amount Respondent No. 2 is claiming as reimbursement. Ms. Herbaugh testified that in this case the amount Respondent No. 2 is seeking in reimbursement according to their plan would be \$2,275.00 which is 65 percent of a \$3,500.00 gross settlement amount.

Ms. Herbaugh testified that they began receiving medical bills on the claimant submitted by medical providers and it was not until June 2000 that the claimant actually contacted the respondents about his benefits. Ms. Herbaugh agreed that many of the claimant's medical bills are from a chiropractor. This witness explained that chiropractic benefits are a limited benefit under their group health plan and that there is a maximum of \$25.00 per visit as well as a maximum overall for a single year in the amount of \$700.00 for chiropractic treatment. Ms. Herbaugh explained that due to chiropractic treatment being a limited benefit no investigation as related to cause is required. Ms. Herbaugh testified that some medical providers, such as Dr. Raben, are PPO providers, therefore, Respondent No. 2 is able to obtain discounts for their services. This witness testified that Respondent No. 2 then pays 80 percent of the allowable charge after discount on an eligible dependant's bill. Ms. Herbaugh testified that the claimant had several medical charges

which were not associated with his back problems and that she was able to segregate the back treatment stemming from his work related injury from the non work related medical expenses based on what the claimant told her. Ms. Herbaugh testified that when she refers to the term back, she is referring to the entire spine from the neck down to the pelvic area. Ms. Herbaugh testified that when the claimant came to visit her concerning his benefits, he brought with him numerous documents indicating medical costs he had incurred as a result of his back injury. Ms. Herbaugh testified that the claimant told her at that time that his workers' compensation claim had been denied. This witness stated that if workers' compensation denies a claim as not being compensable, then an eligible dependant is entitled to file these medical costs under the associates group health plan. Ms. Herbaugh agreed that since the claimant was an eligible dependant to their health plan and he had medical expenses which were being disputed by workers' compensation, he was required to sign a reimbursement subrogation form. Ms. Herbaugh testified that this form was sent to the claimant which he signed and returned to her. This document was marked Respondents No. 2's Exhibit No. 4 over Respondent No. 1's objection. Ms. Herbaugh testified that it was not until the current year, 2004, that they were asked to provide what their plan claimed as reimbursement, therefore, they generated the form setting forth what Respondent No. 2 considered to be medical benefits paid for the claimant for his compensable injury. Ms. Herbaugh testified that according to the 2004 plan the amount Respondent No. 2 is seeking for reimbursement for the

claimant's treatment of his compensable injuries is \$2,473.27. (See Respondent No. 2's Exhibit No. 1.) Ms. Herbaugh agreed that the charges that are being claimed for reimbursement by Respondent No. 2 are based upon the representations made to them by the claimant when he reviewed a list of medical charges.

On cross examination, Ms. Herbaugh agreed that Respondent No. 2 paid medical benefits based upon their contract and not in accordance with Arkansas Workers' Compensation Law Discounts. When asked, this witness stated that Respondent No. 2 applies the language in their plan in effect at the time that the settlement is agreed upon. After some discussion about medical bills, Respondent No. 2 offered into evidence medical information marked Respondent No. 2's Exhibit No. 5 over Respondents No. 1's objection. Ms. Herbaugh was asked if the amount that Respondent No. 2 is claiming as a lien in this matter would vary depending on the amount of an agreed upon settlement as well as the year in which that settlement is reached. Ms. Herbaugh testified, "No. The amount will always be the same. It is either 100 percent of the amount paid, or 65 percent of the gross settlement amount, whichever is less." Ms. Herbaugh further explained that the gross settlement amount could be a varying factor but the requirement of Respondent No. 2 remains constant.

After a review of this record as well as the briefs submitted by both parties, I find Respondents No. 2 has proven by a preponderance of the evidence that they have a right of reimbursement for payment of medical benefits for this claimant's

workers' compensation injuries in the amount of \$2,473.27. It is understood that this gross amount is subject to Respondents No. 2's reimbursement plan which currently is 100 percent of the gross amount of the lien or 65 percent of the settlement agreement whichever is less. Under no circumstance would Respondents No. 2's right of reimbursement exceed \$2,473.27.

FINDINGS & CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. Respondents No. 2 have proven by a preponderance of the evidence that they have a right of reimbursement for payment of this claimant's medical expenses for his workers' compensation claims in the amount of \$2,473.27. The actual amount of reimbursement will be subject to Respondents No. 2's plan which has been testified to be 100 percent of the \$2,473.27 or 65 percent of the agreed settlement amount whichever is less.

ORDER

Respondents No. 2 have proven by a preponderance of the evidence that they are entitled to reimbursement in the amount of \$2,473.27 subject to the terms of their plan for reimbursement which allows for 100 percent reimbursement or 65 percent of a settlement amount whichever is less.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE