

STATE OF MICHIGAN
WORKER'S COMPENSATION APPELLATE COMMISSION

JOYCE D. BROWN,
PLAINTIFF,

V

DOCKET #03-0453

DAIMLERCHRYSLER CORPORATION,
SELF INSURED,
DEFENDANTS.

APPEAL FROM MAGISTRATE RABAUT

RONALD J. GRICIUS FOR PLAINTIFF,
BRIAN S. GALIN FOR DEFENDANT.

OPINION

GLASER, COMMISSIONER

This case was initiated by plaintiff filing an Application for Mediation or Hearing seeking payment of medical benefits pursuant to an open award issued by Magistrate John M. Wierzbicki, dated March 12, 1999.

A trial was held on October 29, 2002, before Magistrate John J. Rabaut.¹ Plaintiff appeared at trial and testified to the medical treatment she has received since March 12, 1999, and why she felt it was necessary. Dr. Pollina testified by deposition in support of plaintiff's need for the medical treatment and appliance, for which defendant had refused to pay. Dr. Arbit testified by deposition in support of defendant's position that the treatment and appliances were unnecessary.

Several exhibits were admitted which included various medical records, outstanding medical bills and out of pocket receipts.

In a decision, mailed October 24, 2003, the magistrate found that all requested reimbursement or payment was for medical treatment that was necessary and reasonable. The magistrate assessed penalties for each medical bill submitted, in the amount of \$1500.00. Defendant appealed, disputing only the penalty portion of the decision.

Defendant raised two arguments against the magistrate's imposition of penalties in this case:

¹ Magistrate Wierzbicki had since been transferred to another venue.

Did Magistrate Rabaut commit reversible error in awarding penalties in this case by virtue of the fact that the Plaintiff never sent the unpaid medical bills to the Defendant's insurance carrier via certified mail?

Did Magistrate Rabaut commit reversible error in awarding penalties in this case due to the fact that the Plaintiff never made a request for these penalties in her petition or at trial?

The arguments in this appeal are governed by MCL 418.801(3):

(3) If medical bills or travel allowance are not paid within 30 days after the carrier has received notice of nonpayment by certified mail, in cases where there is no ongoing dispute, \$50.00 or the amount of the bill due, whichever is less, shall be added and paid to the worker for each day over 30 days in which the medical bills or travel allowance are not paid. Not more than \$1,500.00 in total may be added pursuant to this subsection.

Defendant argues, that because there is no evidence presented that plaintiff sent her medical bills or out of pocket expenses **certified mail** to defendant, she is barred from claiming and the magistrate is barred from awarding any penalty. It cites *Custard v Magnum Welding*, 1989 ACO #102 and *Towne v Wal-Mart Stores Inc.*, 2001 ACO #226, in support of its position.

Plaintiff responds that the appropriate case law to consider is *Baker v Pemco Die Casting Corp*, 2000 ACO #449. In that case the Commission held that evidence of hand delivery of bills to the employer's human resources director and a previous agreement on the record to pay specific bills, was sufficient in the absence of actual certified mailing. The Commission stated that the mailing requirement was passed to establish certainty that the bills have been received and that the party obligated to pay is aware that payment is due and owing. We acknowledge that there may be factual circumstances such as those occurring in *Baker*, where the goal of the certified mailing requirement will have been met, without strict compliance. However, this is not one of those cases. There is no evidence we could find, that the bills were even submitted to defendant. Although one could infer the fact, that is not sufficient. An Application for Mediation or Hearing is not a proper substitute for the certified mailing.

We find that plaintiff's failure to send her billings certified mail is fatal to her receipt of penalties on these medical billings. Having so found, defendant's second argument is moot.

We reverse the magistrate's award of all penalties, as they are improper under the circumstances. We affirm the magistrate in all other respects.

Commissioners Leslie and Kent concur.

Martha M. Glaser

Richard B. Leslie

James J. Kent

Commissioners

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This cause came before the Appellate Commission on defendant's appeal from Magistrate John J. Rabaut's decision, mailed October 24, 2003, granting plaintiff an award of penalties. The Commission has considered the record and counsel's briefs, and believes that the magistrate's decision should be reversed in part and affirm in part. Therefore,

IT IS ORDERED that the magistrate's decision is reversed as to the award of all penalties and affirmed in all other respects.

Martha M. Glaser

Richard B. Leslie

James J. Kent

Commissioners