

PENNSYLVANIA SUPREME COURT HOLDS THAT SUBROGATION OF FUTURE BENEFITS UNDER SECTION 319 OF THE ACT DOES NOT INCLUDE MEDICAL BENEFITS

PA Workers' Compensation • June 21, 2018

Craig M. Whitmoyer v. WCAB (Mountain Country Meats); 52 MAP 2017; decided June 19, 2018; Justice Donohue

Following the claimant's 1993 work injury, he reached a settlement with third parties, which exceeded the total amount of the workers' compensation lien. He then entered into a Third Party Settlement Agreement, which calculated the insurance company's net subrogation lien and a reimbursement rate on future compensation. In a letter to the insurance company, the claimant's attorney made it clear that payment of the net lien would be made, but that the insurance company would remain responsible for the claimant's future medical expenses and that no credit could be applied to future medical bills. As claimant's counsel stated, under § 319 of the Act, the credit only applies to future "instalments of compensation," which does not include medical expenses. The insurance company cashed the check, and the Third Party Settlement Agreement was signed by the insurance company's representative. The insurance company continued paying the claimant's medical bills in full, without a credit, for about 13 years. The insurance company then filed a petition requesting an adjustment to the Settlement Agreement to reflect the medical expenses incurred since the parties entered the agreement.

A Workers' Compensation Judge granted the petition and concluded that the reimbursement rate/future credit calculated on the Settlement Agreement applied to future medical expenses. The judge also ordered a percentage credit for payment of future expenses.

The claimant appealed to the Workers' Compensation Appeal Board, arguing that § 319 of the Act only allows for a credit on future "instalments of compensation," meaning, indemnity benefits. The Appeal Board affirmed the decision of the Workers' Compensation Judge. The claimant appealed to the Commonwealth Court. In a divided opinion, the Commonwealth Court affirmed.

The Supreme Court has reversed, holding that for purposes of subrogation, the future credit/reimbursement rate percentage applies to future indemnity benefits, not to future medical expenses. According to the court, the inclusion of the words "instalments of compensation" at the end of § 319 of the Act contemplates payment of disability benefits only, since only disability benefits and not medical expenses can be paid in installments. The court observed that a third party recovery in excess of the lien is considered an advance payment of benefits under § 319 of the Act. In the court's view, after satisfying an employer's accrued subrogation lien, which includes both disability benefits and medical expenses paid prior to a third party settlement, the General Assembly intended the excess recovery to be paid to the injured employee and to be treated as an advance payment only on account of any future disability benefits. In other words, an employer is not permitted to seek reimbursement for future medical expenses. ||



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