



**TENNESSEE BUREAU OF WORKERS' COMPENSATION
IN THE COURT OF WORKERS' COMPENSATION CLAIMS
AT JACKSON**

ROBERT BRAGG,) Docket No. 2020-07-0020
Employee,)
v.)
PREMIUM SERVICES, LLC,) State File No. 10723-2018
Employer,)
And)
TRAVELERS PROPERTY CAS. CO.) Judge Allen Phillips
OF AMERICA,)
Carrier.)

ORDER DENYING MOTION TO ALTER OR AMEND

Mr. Bragg filed a Motion to Alter or Amend the Judgment, or Alternatively to correct a Clerical Mistake. He asks that the Court “explain the mechanism” of the Compensation Order regarding payment of medical expenses and attorney’s fees. For the following reasons, the Court denies the motion and holds that the parties must comply with the Compensation Order in accord with Tennessee law subject to the appeal.

Facts

On March 14, 2023, the Court entered a Compensation Order awarding Mr. Bragg permanent partial disability and medical benefits. The Court also awarded Mr. Bragg’s counsel an attorney fee on both awards not to exceed twenty percent. Regarding medical benefits, the Court wrote:

Premium shall also pay the medical bills for treatment of Mr. Bragg’s neck injury pursuant to the fee schedule. . . . Tennessee allows attorney’s fees on medical expenses recovered or awarded to an employee, and Mr. Bragg’s counsel is so entitled. *Bowlin v. Servall, LLC*, 2020 TN Wrk. Comp. App. Bd. LEXIS 70, at *16 (Nov. 25, 2020). Under Tennessee Code Annotated section 50-6-226(a)(1), the fee is paid by Mr. Bragg as a percentage of his recovery, as he was the party who employed the attorney. *Id.* at *16-17.

In his motion, Mr. Bragg says he reads the Court's order to mean that the Court is awarding him "*the total amount of charges*" that his health insurance carrier paid on his behalf and that *he* is responsible for reimbursing the carrier after deducting a fee of no more than twenty percent. He says his argument "conforms" to the holding in *Bowlin*.

Premium counters that the order is "clear" that *it* is to pay Mr. Bragg's medical bills "*pursuant to the fee schedule*" and that counsel is entitled to a twenty percent fee out of that recovery. Thus, Premium says the Court's order needs no alteration: it is to pay the health insurance carrier under the fee schedule and Mr. Bragg, under *Bowlin*, is to pay a twenty percent fee out of his recovery.

Analysis

Premium filed a Notice of Appeal of Compensation Order, but this Court retains jurisdiction to resolve a timely-filed motion to alter or amend. *Watson v. Labor Smart, Inc.*, 2017 TN Wrk. Comp. App. Bd. LEXIS 13, at *13 (Feb. 3, 2017). Further, because this is a non-dispositive motion, the Court decides it on the written materials unless the Court determines a hearing is appropriate. Tenn. Comp. R. & Regs. 0800-02-21-.18(2) (February, 2022). The Court does not require a hearing.

Turning to the merits, Mr. Bragg says the Court ordered Premium to pay the total charges paid by his insurance carrier. That statement is incorrect. Instead, the Court ordered that: "Premium shall also pay the medical bills for treatment of Mr. Bragg's neck injury *pursuant to the fee schedule.*" (Emphasis added). Thus, Premium shall directly pay the providers the amounts allowable under the fee schedule for their services.

As to attorney's fees, both parties cite *Bowlin*. In that case, the Appeals Board addressed only one issue: whether an employer must pay attorney's fees on contested medical expenses. *Bowlin*, at *11. It answered in the negative, holding instead that the employee, as the party employing the attorney, is responsible for the attorney's fee. Based on that authority, the Court ordered Mr. Bragg to pay his own attorney's fees, not to exceed twenty percent of his recovery.

The Board went on to say in *Bowlin* that if it had found an employer responsible for attorney's fees, then it would have had to address "*whether the attorney's fees are based on the amount of the expenses charged by the providers or the amounts paid by Employer under the fee schedule.*" *Bowlin*, at n.3. (Emphasis added). This Court finds no on-point case law answering those questions.

Instead, the Court bases its order on Tennessee Code Annotated section 50-6-204(a)(3)(A)(iii), which states that "[t]he liability of the employer for the services provided to the employee shall be limited to the maximum allowable fees" under the fee schedule.

Likewise, Tennessee Compilation Rules and Regulations 0800-02-18-.15(1) (September, 2021) states “providers shall not accept and employers shall not pay” any bill for medical services that exceeds the maximum allowable payment under the fee schedule.

As to attorney’s fees, where the Order states that “the fee is paid by Mr. Bragg *as a percentage of his recovery*,” it means twenty percent of the amount Premium must pay under the fee schedule. In *Langford v. Liberty Mutual Insurance Company*, 854 S.W.2d 100, 102 (Tenn. 1993), the Tennessee Supreme Court held that “attorneys’ fees in the amount of 20 percent shall be awarded *out of the medical expenses recovered[.]*” (Emphasis added). If an employer must pay under the fee schedule, then attorney’s fees must be a percentage of the fee schedule amount, as that equals “the medical expenses recovered.”

Mr. Bragg’s receipt of less than the full amount of the medical benefits after payment of the fee does not change the result. In *Wilkes v. The Resource Authority of Sumner County*, 932 S.W.2d 458, 464 (Tenn. 1996) the Tennessee Supreme Court noted that “the practical impact of [paying attorney’s fees] is that the employee will not receive one hundred percent of [his medical bills].” The Court stated that “[a]lthough this result is not attractive, we are not at liberty to rewrite Tennessee Code Annotated Section 50-6-226(a) to provide for attorney’s fees in addition to the ‘amount of the recovery or award.’ Such a change would require legislative action.” *Id.*

In summary, the Court holds it need not amend the Compensation Order but instead the parties must follow its terms: Premium will pay Mr. Bragg’s medical bills under the fee schedule, and Mr. Bragg will pay his attorney a fee not to exceed twenty percent out of his “total recovery.” *See Cravens v. Cummins Filtration, Inc.*, 2022 TN Wrk. Comp. App. Bd. LEXIS 26, at *7 (June 23, 2022).

IT IS ORDERED.

ENTERED April 18, 2023.


JUDGE ALLEN PHILLIPS
Court of Workers’ Compensation Claims

CERTIFICATE OF SERVICE

I certify that a copy of this Order was sent as indicated on April 18, 2023.

Name	Email	Service sent to:
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