

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

JAYMIE FARRAR,	)	
	)	
Claimant,	)	
	)	
v.	)	<b>IC 2006-013181</b>
	)	
ADECCO, INC.,	)	<b>ORDER REGARDING</b>
	)	<b>ATTORNEY FEES</b>
Employer,	)	
	)	
and	)	October 2, 2008
	)	
AMERICAN HOME ASSURANCE CO.,	)	
	)	
Surety,	)	
Defendants.	)	
_____	)	

**BACKGROUND**

This matter comes before the Commission on Claimant’s request for attorney fees and costs, and her attorney’s supporting affidavit. The Commission previously determined in its order dated August 12, 2008, that Claimant was entitled to attorney fees from Defendants pursuant to Idaho Code § 72-804 for their unreasonable denial of benefits, excluding disability benefits. Rick Kallas (Attorney) represented Claimant. Eric S, Bailey represented Defendants. Claimant filed the aforementioned request on September 2, 2008. Defendants’ response was timely filed on September 9, 2008. Claimant filed her reply on September 10, 2008.

Claimant asserts \$21,148.75 is a reasonable measure of attorney fees in this case. This is consistent with the Claimant’s 30% contingency fee agreement which was supplied with Attorney’s affidavit. The \$21,148.75 figure is based upon the following calculations:

Past Paid Medicals	\$29,226.60 x 30% =	\$ 8,767.998
Past Unpaid Medicals	\$553.60 x 30% =	106.38
Past TTD's	\$2,071.85 x 30% =	621.56
25% PPI Rating	\$38,843.75 x 30% =	<u>11,653.13</u>
<b>TOTAL</b>		<b>\$ 21,148.75</b>

Defendants agree with Claimant's calculations. However, based on their allegation that Attorney has "already taken a one-third fee from past medical benefits as previously paid by these Defendants through Mr. Kallas' office", Defendants' request the Commission take one of two measures regarding the attorney fee award of \$8,767.98 for past paid medical benefits. First, the Commission can order Defendants "to pay Mr. Kallas the fee of \$8,767.98 directly with a written acknowledgement from the Industrial Commission by way of order that this fee amount is to be reimbursed to the physicians from whom an attorney fee had already been collected." Alternatively, the Defendants could be ordered to "pay directly to the healthcare providers the \$8,767.98." Defendants assert such measures are necessary to protect Surety from any possible claims of the healthcare providers.

Claimant replied by offering case law and exhibits in support of the contention that there is no risk that the medical providers will demand payment from Defendants for payment of more than 100% of their invoiced amount. Under Anderson, Idaho Indus. Comm'n, 98-500445, 98-503467 and 02-504327, April 22, 2005, the Claimant is obligated to reimburse each medical provider the full 25% discount previously granted. Claimant produced several letters as proof that Attorney took 25% of the past medical providers' charges rather than 33 and 1/3% as alleged by Defendants. On reply, Claimant also agreed with Defendants' arguments against an

award of costs and withdrew her request for them.

### **DISCUSSION**

Idaho Code § 72-804 grants the Commission discretion to fix the amount of a reasonable attorney fee awarded. Swett v. Seineger, 136 Idaho 74, 78, 29 P.3d 385, 389 (2001). Based on Claimant's undisputed calculations, and taking into consideration the factors set forth in Hogaboom, 107 Idaho 13, 684 P.2d 900 (1984), the Commission finds an attorney fee at the rate of 30% of the benefits awarded to be reasonable. Costs were appropriately withdrawn from Claimant's request as Idaho Code § 72-804 does not authorize such an award.

Defendants' request that the Commission control how part of this award is distributed is not persuasive. In a denied claim situation, providers are not entitled to direct payment from the employer/surety under the workers' compensation system. *See* St. Alphonsus Regional Medical Center v. Edmondson, 130 Idaho 108, 937 P.2d 420 (1997). Claimant is contractually responsible to her medical providers for their services, as well as to her attorney for his services in the case. How and in what manner those obligations are satisfied is for Claimant and her attorney to resolve. Since Defendants neither contracted for nor became obligated by an award of this Commission, the medical care previously contracted by Claimant cannot be transferred to Defendants due to a lack of contractual privity.

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**ORDER**

Based upon the foregoing reasons, IT IS HEREBY ORDERED That Claimant's request for attorney fees should be, and is hereby GRANTED. Defendants shall remit to Claimant and her attorney the sum of \$21,148.75.

Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

IT IS SO ORDERED.

DATED this \_\_2nd\_\_ day of October, 2008.

INDUSTRIAL COMMISSION

\_\_\_\_\_  
/s/ James F. Kile, Chairman

\_\_\_\_\_  
/s/ R.D. Maynard, Commissioner

\_\_\_\_\_  
/s/ Thomas E. Limbaugh, Commissioner

ATTEST:

\_\_\_\_\_  
/s/ Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the 2<sup>nd</sup> of October, a true and correct copy of the foregoing **Order Regarding Attorney Fees** was served by regular United States Mail upon each of the following persons:

RICK D KALLAS  
1031 E PARK BLVD  
BOISE ID 83712-7722

ERIC S BAILEY  
PO BOX 1007  
BOISE ID 83701-1007

sdn/cjh

\_\_\_\_\_/s/\_\_\_\_\_