

VIRGINIA:  
IN THE WORKERS' COMPENSATION COMMISSION

Opinion by NEWMAN  
Commissioner

**Aug. 17, 2020**

RAYMOND T. WINKLER v. SPARTANNASH  
BON SECOURS/DEPAUL MEDICAL CENTER, Medical Provider  
XL INSURANCE AMERICA INC, Insurance Carrier  
COTTINGHAM AND BUTLER CLAIMS SERVICES, Claim Administrator  
Jurisdiction Claim No. VA00001219191  
Claim Administrator File No. SPN16117853  
Date of Injury: June 30, 2016

Philip Geib, Esquire  
For the Claimant.

Nirav Patel, Esquire  
For the Defendants.

Patrick F. Heinen, Esquire  
For the Medical Provider.

REVIEW on the record by Commissioner Marshall, Commissioner Newman, and Commissioner Rapaport at Richmond, Virginia.

The claimant requests review of the Deputy Commissioner's May 5, 2020 Order dismissing his claim for the payment of medical bills pursuant to Virginia Code § 65.2-714(A). We AFFIRM.

**I. Material Proceedings**

On November 12, 2018, counsel for the claimant filed a claim seeking full payment of medical bills for services provided by Bon Secours DePaul Medical Center ("Bon Secours") on July 15, 2016. Counsel averred that partial payment had been made in the sum of \$48,947.90 leaving a balance of \$25,485.50.

On March 5, 2020, the defendants filed a Motion to Dismiss contending that Bon Secours was not claiming entitlement to payment of the balance of its bills. Attached to the Motion was an Affidavit signed by Patrick F. Heinen, counsel for Bon Secours, representing that no additional payment was expected or sought for the services at issue.<sup>1</sup> The defendants' Motion averred that the claimant had settled his workers' compensation claim by Petition and Order and, as a condition of settlement, had waived any entitlement to the payment of medical expenses by the defendants. Consequently, the defendants contended the claimant lacked standing to pursue the balance of the bills.

On May 5, 2020, the Deputy Commissioner issued an Order granting the defendants' Motion to Dismiss. He noted that Virginia Code § 65.2-714(A) "provides the claimant with standing to pursue a medical provider's claims for payment," but that "[t]here is no indication in Section 714 that the General Assembly intended to create a new and separate right that would allow claimants to continue pursuing payment of medical bills on behalf of the medical providers even after the medical providers determine their rights had been satisfied." Because the provider represented that its bills had been satisfied, the Deputy found that the claimant no longer had a justiciable claim for enforcing payment.

Claimant's counsel requests review of this Order.

## **II. Findings of Fact and Rulings of Law**

We are confronted with an anomalous circumstance: The claimant seeks to compel the defendants to pay medical expenses to Bon Secours that Bon Secours represents are not owed. We

---

<sup>1</sup> Attached to the affidavit was an agreement dated April 17, 2017 regarding the resolution of charges stating that the provider would accept \$48,947.90 in full satisfaction of all billed charges and an itemized bill for services demonstrating payment had been made.

are satisfied, as was the Deputy Commissioner, that no debt exists. Left to our consideration is whether any justiciable case or controversy remains that merits attention.

The claimant's right to pursue the unpaid balance of medical expenses is established by statute. Virginia Code §65.2-714(A) allows the Commission to:

[R]etain jurisdiction for employees to pursue payment of charges for medical services notwithstanding that bills or parts of bills for health care services notwithstanding that bills or parts of bills for health care services may have been paid by a source other than an employer, workers' compensation carrier, guaranty fund, or uninsured employer's fund.

We addressed the question of the claimant's right to prosecute a claim for the balance of medical charges due a provider in *Hansen v. TMA Trucking, Inc.*, JCN VA00001001203 (May 28, 2019). We recognized that there is good reason to afford claimants the right to pursue the payment of medical bills because "[A]n injured worker's access to treatment can too easily be relegated to the status of pawn when disputes arise between insurers, employers and the claimant's medical providers." *Id.* However, it is fundamental that the necessary precondition to the claimant's right to pursue payment of unpaid medical charges is the existence of such unpaid charges. When, such as here, the medical provider confirms its bills are paid in full, there is no debt nor corresponding cause of action for the claimant to pursue. We further find that the justification for allowing a claimant to pursue the balance of the medical bills as articulated in *Hansen* does not exist in this case. No risk exists that the claimant's access to medical treatment will be negatively impacted as he relinquished his right to medical treatment by settlement of his workers' compensation claim.

In order for a claim to be heard by the Commission, there must exist a justiciable controversy. "We do not decide cases where no justiciable controversy is pending or remains to

be determined.” *Lynchburg Foundry v. Cyrus*, No. 2816-96-3 (Va. Ct. App. June 3, 1997). “[W]hen it appears . . . that ‘there is no actual controversy between the litigants, or that, if it once existed it has ceased to do so, it is the duty of every judicial tribunal not to proceed to the formal determination of the apparent controversy . . . .’” *Va. Dep’t of State Police v. Elliott*, 48 Va. App. 551, 554 (2006) (quoting *Hankins v. Town of Va. Beach*, 182 Va. 642, 643-44 (1944)). In order for a party “to maintain an action in court it must be shown that he has a justiciable interest in the subject matter in litigation . . . .” *Lynchburg Traffic Bureau v. Norfolk & W.R. Co.*, 207 Va. 107, 108 (1966) (quoting 67 C.J.S., *Parties*, § 6 at p. 899).

In the present matter, any case or controversy between the provider and defendants was resolved by the April 17, 2017 agreement where the provider accepted a reduced payment in full satisfaction of all billed charges. The claimant has no right to medical treatment at risk. We agree with the Deputy Commissioner that no case or controversy exists.

### **III. Conclusion**

The Deputy Commissioner’s May 5, 2020 Order is AFFIRMED.

This matter is hereby removed from the review docket.

#### MARSHALL, COMMISSIONER, Concurring:

I join the majority as to the result. I agree there is no justiciable controversy. On the facts in this record, the claimant has no interest at stake. Because it is unnecessary to decide the question, I do not join the conclusion that there is no debt, particularly by relying on the April 17, 2017 agreement between the medical provider and the employer. The claimant was not a party to that agreement.

We must exercise caution in deciding matters of waiver and accord and satisfaction, which are fact driven and legally nuanced. *See Bell v. Newport News Shipbuilding & Dry Dock Co.*, JCN 1804531 (June 17, 2016). We also must acknowledge that injured workers seeking payment of medical expenses have interests at stake in addition to the limited issue of access to continuing medical care. Because we must honor the humane and beneficent purposes of the Workers' Compensation Act, *Bradshaw v. Aronovitch*, 170 Va. 329, 336 (1938), we must recognize that seeking payment of medical expenses plainly affects economic bargaining power. We should carefully scrutinize efforts between medical providers, third party agents, and employers to collaborate on payments in a manner which may undermine and effectively reduce the bargaining power of injured workers.

#### APPEAL

You may appeal this decision to the Court of Appeals of Virginia by filing a Notice of Appeal with the Commission and a copy of the Notice of Appeal with the Court of Appeals of Virginia within 30 days of the date of this Opinion. You may obtain additional information concerning appeal requirements from the Clerks' Offices of the Commission and the Court of Appeals of Virginia.