

# Alaska Workers' Compensation Appeals Commission

Terry J. Mahlberg,  
Appellant,

vs.

Municipality of Anchorage,  
Appellee.

## Final Decision

Decision No. 290

July 7, 2021

AWCAC Appeal No. 20-014  
AWCB Decision No. 20-0070  
AWCB Case No. 201916420

Final decision on appeal from Alaska Workers' Compensation Board Final Decision and Order No. 20-0070, issued at Anchorage, Alaska, on August 6, 2020, by southcentral panel members Jung M. Yeo, Chair, Bronson Frye, Member for Labor, and Robert Weel, Member for Industry.

Appearances: Charles W. Coe, Law Office of Charles W. Coe, for appellant, Terry J. Mahlberg; Adam R. Sadoski, Meshke Paddock & Budzinski, PC, for appellee, Municipality of Anchorage.

Commission proceedings: Appeal filed September 4, 2020; briefing completed March 4, 2021; oral argument held on April 8, 2021.

Commissioners: Michael J. Notar, S. T. Hagedorn, Deirdre D. Ford, Chair.

By: Deirdre D. Ford, Chair.

### *1. Introduction.*

Terry J. Mahlberg sustained hearing loss while working for the Municipality of Anchorage (MOA). He filed a claim for benefits on December 18, 2019, and retained the services of attorney Charles W. Coe. MOA paid the bill from audiologist Thomas McCarty on February 20, 2020. MOA asserted it timely paid the invoice upon receipt and that Mr. Coe did nothing to advance the payment and, therefore, Mr. Coe was not entitled to attorney fees. The Alaska Workers' Compensation Board (Board) heard the matter on

July 9, 2020, and denied attorney fees to Mr. Mahlberg.<sup>1</sup> Mr. Mahlberg timely appealed to the Alaska Workers' Compensation Appeals Commission (Commission) and the Commission heard oral argument on April 8, 2021. The Commission now affirms the Board's decision.

*2. Factual background and proceedings.*<sup>2</sup>

From 1975 to 2014, Mr. Mahlberg had worked as an engineer for MOA driving a firetruck or operating equipment on it and was exposed to loud noises.<sup>3</sup> Several audiograms taken from 2008 through 2012 showed a pattern of high frequency neurosensory hearing loss.<sup>4</sup>

Thomas A. McCarty, Au.D., performed audiograms on Mr. Mahlberg on September 18, 2019, and fitted him with hearing aids.<sup>5</sup> The report of the tests contains the notation "Bilateral workplace noise induced hearing loss."<sup>6</sup> Dr. McCarty recommended Mr. Mahlberg seek workers' compensation benefits since his hearing loss was work-related.<sup>7</sup> It does not appear from the record that Dr. McCarty sent a bill to MOA at that time.<sup>8</sup> It further appears from the record that Mr. Mahlberg paid for the hearing aids himself.<sup>9</sup> Mr. Mahlberg testified that Dr. McCarty required him to sign an agreement to

---

<sup>1</sup> *Mahlberg v. Municipality of Anchorage*, Alaska Workers' Comp. Bd. Dec. No. 20-0070 (Aug. 6, 2020) (*Mahlberg*).

<sup>2</sup> We make no factual findings. We state the facts as found by the Board, adding context by citation to the record with respect to matters that do not appear to be in dispute.

<sup>3</sup> Appellant's Exc. 002.

<sup>4</sup> R. 180-207.

<sup>5</sup> Appellant's Exc. 001. Although the Board spelled his name as McCarthy, according to the medical records, the correct spelling is McCarty. This is the spelling used in this decision.

<sup>6</sup> *Id.*

<sup>7</sup> Hr'g Tr. at 20:24 – 21:12, July 9, 2020.

<sup>8</sup> Appellee's Exc. 018.

<sup>9</sup> Hr'g Tr. at 28:17 – 29:9.

pay \$276.00 per month for the hearing aids.<sup>10</sup> At hearing he also testified that he had not yet received reimbursement from Dr. McCarty.<sup>11</sup>

Mr. Mahlberg filed a Report of Occupational Injury with the Board dated September 20, 2019, and date stamped by the Board on September 26, 2019.<sup>12</sup> There is no record of this being served by the Board on MOA until December 5, 2019.<sup>13</sup> However, MOA, through Samuel Ward, adjuster, testified that it had received notice via email from the Board of the report of injury from Mr. Mahlberg on November 27, 2019.<sup>14</sup> Mr. Ward then stated that MOA scheduled an employer's medical evaluation (EME) and hired a nurse case manager to obtain Mr. Mahlberg's medical records.<sup>15</sup>

He also testified that a claim was received on November 26 (sic), seeking permanent partial impairment (PPI) benefits, transportation costs, and attorney fees and costs.<sup>16</sup> Since the first Workers' Compensation Claim (WCC) filed by Mr. Mahlberg is dated December 18, 2019, Mr. Ward presumably meant this claim because Mr. Ward then testified MOA received it December 26, 2019.<sup>17</sup> In this claim Mr. Mahlberg asked for PPI benefits, transportation costs, and attorney fees and costs.<sup>18</sup> Mr. Mahlberg did not ask for medical benefits or for reimbursement for the cost of the hearing aids. He listed Charles Coe as his attorney.<sup>19</sup> This claim put MOA on notice that Mr. Mahlberg had sought counsel.

---

<sup>10</sup> Hr'g Tr. at 29:15-23.

<sup>11</sup> Hr'g Tr. at 29:24 – 30:7.

<sup>12</sup> R. 004.

<sup>13</sup> R. 005.

<sup>14</sup> Hr'g Tr. at 58:25 – 59:5.

<sup>15</sup> Hr'g Tr. at 66:24 – 67:3; 68:10-15.

<sup>16</sup> Hr'g Tr. at 59:6-15.

<sup>17</sup> Hr'g Tr. at 59:20-22.

<sup>18</sup> Appellant's Exc. 002.

<sup>19</sup> *Id.*

On December 31, 2019, MOA answered, “no PPI has been attributed to this injury as of this date. If a rating is given, it will be paid accordingly. Reasonable transportation costs have been offered to attend the EME[.]” It denied attorney fees and costs.<sup>20</sup> At the prehearing on January 14, 2020, Mr. Mahlberg stated that Charles Coe was his attorney.<sup>21</sup> This was the second notice to MOA that Mr. Mahlberg had sought legal advice.

On January 20, 2020, Jerome O. List, M.D., saw Mr. Mahlberg for an EME and diagnosed bilateral high frequency neurosensory hearing loss due to his employment with MOA. Dr. List opined Mr. Mahlberg reached medical stability on May 1, 2014, did not have a ratable PPI, and did not need further treatment except for hearing aids.<sup>22</sup> MOA arranged for the travel to see Dr. List sometime prior to December 31, 2019, when Alaska Travel Source billed for the travel arrangements.<sup>23</sup>

On January 22, 2020, Mr. Coe entered his appearance as Mr. Mahlberg’s attorney.<sup>24</sup> Mr. Mahlberg filed another WCC on January 22, 2020, seeking the same benefits he had claimed on December 13, 2019.<sup>25</sup>

On January 24, 2020, MOA received a bill for Dr. McCarty’s September 18, 2019, services,<sup>26</sup> which it paid on February 20, 2020.<sup>27</sup>

On February 24, 2020, MOA denied Mr. Mahlberg’s December 13, 2019, claim because (1) he did not have a ratable PPI, (2) he did not submit a transportation log, and (3) there was no relationship between benefits it paid and his attorney’s work.<sup>28</sup>

---

<sup>20</sup> Appellant’s Exc. 003-5.

<sup>21</sup> Appellant’s Exc. 006.

<sup>22</sup> Appellee’s Exc. 027-33.

<sup>23</sup> R. 062.

<sup>24</sup> Appellant’s Exc. 009.

<sup>25</sup> Appellee’s Exc. 036.

<sup>26</sup> Hr’g Tr. at 62:16-22.

<sup>27</sup> Hr’g Tr. at 62:5-9.

<sup>28</sup> R. 006.

At the prehearing on February 25, 2020, the parties agreed PPI was not an issue at that time. Mr. Coe said he would discuss transportation costs with Mr. Mahlberg.<sup>29</sup> According to Mr. Mahlberg, Dr. McCarty had opined he currently did not have “enough hearing loss” for a PPI rating.<sup>30</sup>

Mr. Mahlberg testified he did not think MOA denied any of his benefits. MOA had assured him it would pay his medical benefits; it did not resist or deny any payment. Yet, Mr. Mahlberg filed a claim because he was told by his friends that it must be filed in any workers’ compensation case.<sup>31</sup> He also testified at hearing that he had not yet received full reimbursement from Dr. McCarty for the monies he had paid towards his hearing aids.<sup>32</sup>

Mr. Coe, on behalf of Mr. Mahlberg, filed a log for transportation costs associated with his appointments with Dr. McCarty and a log of his expenses for attending the EME on June 10, 2020. These logs were filed with the Board and MOA on June 10, 2020, one day post-hearing.<sup>33</sup> The Board made a finding that neither Mr. Mahlberg nor Mr. Coe had submitted a transportation log to MOA prior to hearing, but did not discuss the post-hearing filing.<sup>34</sup> The Board held the record open until the close of business on July 17, 2020.<sup>35</sup> The Board did not order MOA to pay the transportation costs, presumably because MOA agreed it owed the costs to Mr. Mahlberg.

The Board found there was no outstanding balance for any treatment Mr. Mahlberg received, in part because no one testified at hearing that Dr. McCarty had not been paid in full.<sup>36</sup> The Board did not discuss the lack of reimbursement to Mr. Mahlberg for the

---

<sup>29</sup> Appellee’s Exc. 040-42.

<sup>30</sup> Hr’g Tr. at 33:18 – 34:3.

<sup>31</sup> Hr’g Tr. at 32:20 – 33:2.

<sup>32</sup> Hr’g Tr. at 29:24 – 30:7.

<sup>33</sup> R. 164-67.

<sup>34</sup> *Mahlberg* at 3, No. 15.

<sup>35</sup> Hr’g Tr. at 83:4-8.

<sup>36</sup> *Mahlberg* at 3, No. 16.

costs of the hearing aids. Medical costs had not been sought in any claim Mr. Mahlberg filed. Claims were not verbally amended to include medical costs.<sup>37</sup>

The issues before the Board were whether Mr. Coe's assistance to Mr. Mahlberg advanced the payment of his medical bills and, as a consequence, Mr. Mahlberg should be awarded attorney fees and costs.<sup>38</sup> The Board reached the conclusion Mr. Coe's assistance had not advanced the payment of the medical costs and, therefore, Mr. Mahlberg was not entitled to an award of attorney fees. Mr. Mahlberg timely appealed that decision to the Commission.

### *3. Standard of review.*

The Board's findings of fact shall be upheld by the Commission on review if the Board's findings are supported by substantial evidence in the light of the record as a whole.<sup>39</sup> Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.<sup>40</sup> "The question of whether the quantum of evidence is substantial enough to support a conclusion in the contemplation of a reasonable mind is a question of law."<sup>41</sup> The weight given to witnesses' testimony, including medical testimony and reports, is the Board's decision to make and is, thus, conclusive. This is true even if the evidence is conflicting or susceptible to contrary conclusions.<sup>42</sup> On questions of law and procedure, the Commission does not defer to the Board's conclusions, but rather exercises its independent judgment.<sup>43</sup> However, the

---

<sup>37</sup> Appellant's Exc. 002; Appellee's Exc. 036.

<sup>38</sup> Appellant's Exc. 021-23; Appellee's Exc. 045-47.

<sup>39</sup> AS 23.30.128(b).

<sup>40</sup> *See, e.g., Norcon, Inc. v. Alaska Workers' Comp. Bd.*, 880 P.2d 1051, 1054 (Alaska 1994).

<sup>41</sup> *McGahuey v. Whitestone Logging, Inc.*, Alaska Workers' Comp. App. Comm'n Dec. No. 054 at 6 (Aug. 28, 2007) (citing *Land & Marine Rental Co. v. Rawls*, 686 P. 2d 1187, 1188-1189 (Alaska 1984)).

<sup>42</sup> AS 23.30.128(b); AS 23.30.122.

<sup>43</sup> AS 23.30.128(b).

Board's conclusions with regard to credibility are binding on the Commission, since the Board has the sole power to determine credibility of witnesses.<sup>44</sup>

Attorney fees disputes are reviewed for abuse of discretion.<sup>45</sup> An award of fees "should be upheld unless it is 'manifestly unreasonable.'"<sup>46</sup> Abuse of discretion occurs when a decision is arbitrary, capricious, manifestly unreasonable, or stems from an improper motive.<sup>47</sup>

#### 4. Discussion.

Mr. Mahlberg appealed from the Board's denial of his request for attorney fees. The real issue here is when and why did MOA agree to pay for the medical bills associated with his hearing loss. Mr. Mahlberg never specifically requested medical benefits when he filed his WCCs. MOA did not explicitly agree to pay or deny payment of his medical bills in any prehearing or answer because Mr. Mahlberg did not ask for medical benefits. However, that was the real issue. Mr. Mahlberg saw Dr. McCarty on September 19, 2019, and Dr. McCarty indicated his hearing loss was work-related and had Mr. Mahlberg sign a contract covering the cost of the hearing aids.<sup>48</sup> Dr. McCarty did not send a copy of his medical records along with a bill for his services to MOA even though it appears he knew with whom Mr. Mahlberg had worked, since he advised Mr. Mahlberg to file a claim. Mr. Mahlberg filed a Report of Occupational Injury with the Board on September 26, 2019 (dated September 20, 2019).<sup>49</sup> He identified Dr. McCarty as his attending physician. The Board, for some reason, did not establish a file until December 5, 2019, when it sent Mr. Mahlberg a letter identifying his AWCB case number and serving MOA with a copy of

---

<sup>44</sup> AS 23.30.122; AS 23.30.128(b); *Sosa de Rosario v. Chenega Lodging*, 297 P. 3d 139 (Alaska 2013).

<sup>45</sup> *Tobeluk v. Lind*, 589 P.2d 873, 878 (Alaska 1979) (*Tobeluk*); *Bouse v. Fireman's Fund Ins. Co.*, 932 P.2d 222, 241 (Alaska 1997) (*Bouse*).

<sup>46</sup> *Bailey v. Litwin Corp.*, 780 P.2d 1007, 1011 (Alaska 1989) (*Bailey*); *Bouse*, 932 P.2d at 241.

<sup>47</sup> *Sheehan v. Univ. of Alaska*, 700 P.2d 1295 (Alaska 1985) (*Sheehan*).

<sup>48</sup> Hr'g Tr. at 29:15-23.

<sup>49</sup> R. 004.

the letter.<sup>50</sup> Mr. Ward, MOA’s adjuster, at hearing testified MOA received an email from the Board on November 27, 2019, advising it of Mr. Mahlberg’s report of injury.<sup>51</sup>

Mr. Mahlberg filed a WCC dated December 13, 2019, and received by the Board on December 18, 2019.<sup>52</sup> This claim identified Charles Coe as his attorney.<sup>53</sup> The claim sought PPI benefits, transportation costs, and attorney fees and costs. The claim did not ask for medical benefits. MOA answered denying PPI and transportation benefits were owed and provided information for Mr. Mahlberg to attend an EME in Anchorage on January 20, 2020, even though MOA did not have any medical records from Dr. McCarty. A prehearing was held on January 14, 2020, which Mr. Mahlberg attended by telephone and identified Mr. Coe as his attorney. The EME process was explained to Mr. Mahlberg. He was not asked if he had unpaid medical expenses.<sup>54</sup> MOA expressly did not deny or accept liability for the medical costs associated with Mr. Mahlberg’s hearing loss.

Mr. Coe entered his appearance on January 22, 2020, and the next day filed another WCC.<sup>55</sup> MOA answered this claim on February 24, 2020, and admitted it owed Mr. Mahlberg medical benefits “that are reasonable and necessary to treat a work injury. . . .”<sup>56</sup> At the next prehearing on February 25, 2020, MOA reaffirmed its consent to pay reasonable and necessary medical benefits.<sup>57</sup> Mr. Coe asked for a copy of the EME report which he had not yet received. On May 11, 2020, MOA submitted the “adjuster bill ledger as of 05/07/20” which showed that a bill from Audiology Associates was received on February 19, 2020, and paid on February 20, 2020.<sup>58</sup>

---

<sup>50</sup> R. 005.

<sup>51</sup> Hr’g Tr. at 58:25 – 59:5.

<sup>52</sup> R. 007.

<sup>53</sup> *Id.*

<sup>54</sup> Appellant’s Exc. 006-8.

<sup>55</sup> Appellant’s Exc. 009; R. 026.

<sup>56</sup> R. 032-34.

<sup>57</sup> R. 000122-24.

<sup>58</sup> R. 060-62.



*a. Did the Board err in denying attorney fees to Mr. Mahlberg?*

An award of attorney fees is provided in the Alaska Workers' Compensation Act (Act) under certain circumstances. The statute provides:

(a) Fees for legal services rendered in respect to a claim are not valid unless approved by the board, and the fees may not be less than 25 percent on the first \$1,000 of compensation or part of the first \$1,000 of compensation, and 10 percent of all sums in excess of \$1,000 of compensation. When the board advises that a claim has been controverted, in whole or in part, the board may direct that the fees for legal services be paid by the employer or carrier in addition to compensation awarded; the fees may be allowed only on the amount of compensation controverted and awarded. When the board advises that a claim has not been controverted, but further advises that bona fide legal services have been rendered in respect to the claim, then the board shall direct the payment of the fees out of the compensation awarded. In determining the amount of fees the board shall take into consideration the nature, length, and complexity of the services performed, transportation charges, and the benefits resulting from the services to the compensation beneficiaries.

(b) If an employer fails to file timely notice of controversy or fails to pay compensation or medical and related benefits within 15 days after it becomes due or otherwise resists the payment of compensation or medical and related benefits and if the claimant has employed an attorney in the successful prosecution of the claim, the board shall make an award to reimburse the claimant for the costs in the proceedings, including reasonable attorney fees. The award is in addition to the compensation or medical and related benefits ordered.

The Board found that Mr. Mahlberg was not entitled to attorney fees because he did not succeed on his claim for PPI or transportation costs at hearing. Mr. Mahlberg admitted he had not received a PPI rating and did not submit a transportation log until after the hearing. The Board found that Mr. Mahlberg was not entitled to fees under either AS 23.30.145(a) or (b), because he had not prevailed at hearing on the benefits sought. The Board further found that MOA had not resisted payment of Mr. Mahlberg's medical costs, because it paid those costs the day after receiving the bills from Dr. McCarty.

The Alaska Supreme Court (Court) has addressed the award of attorney fees pursuant to AS 23.30.145(b) in several decisions. In *Adamson v. University of Alaska*, the issue was whether the Board properly denied an award of attorney fees under

AS 23.03.145(b).<sup>59</sup> The court reiterated that the language in (b) stating “if the claimant has employed an attorney in the successful prosecution of the claim” means that “the employee must be successful on the claim itself, not on a collateral issue.”<sup>60</sup> Ms. Adamson sought originally continued payment for chiropractic treatment for her back and foot conditions and for her Marinol prescription. She was ultimately successful in obtaining additional chiropractic care for her foot. The Court remanded the matter for a redetermination of attorney fees since she was successful in part of her claim.

In *Harnish Group, Inc. v. Moore*, the Court stated that a formal entry of appearance was not always the determinant factor of attorney involvement.<sup>61</sup> There the employer was on notice of the attorney’s involvement through a letter a year before the employer accepted the claim. The employer in *Harnish* claimed to have “voluntarily” accepted the benefits sought and the presence of an attorney did not influence its decision to pay benefits. The Court did not accept that explanation. Rather, the Court found that the knowledge of an attorney being involved “played a significant role” in the facilitating of the employee’s receipt of benefits.

The Court, in *D&C Services v. Cavitt*, reminded the parties that an award of fees in workers’ compensation cases is intended to ensure competent counsel is readily available to represent injured workers.<sup>62</sup>

Here, Mr. Mahlberg’s claim was for PPI and transportation costs. The Board found that he had not been provided a PPI rating and, thus, was not entitled to PPI. Mr. Mahlberg admitted he did not have a PPI rating and that Dr. McCarty had told him it was too early for a rating. Dr. List, the EME physician, also found that Mr. Mahlberg did not have a PPI rating at this time. The Board also found that Mr. Mahlberg had not given MOA a transportation log identifying his travel to medical appointments prior to the hearing. Mr. Mahlberg, through his counsel, did provide a list the day after the hearing,

---

<sup>59</sup> *Adamson v. Univ. of Alaska*, 819 P.2d 886, 895 (Alaska 1991).

<sup>60</sup> *Id.*

<sup>61</sup> *Harnish Group, Inc. v. Moore*, 160 P.3d 146, 154 (Alaska 2007).

<sup>62</sup> *D&C Serv. v. Cavitt*, 444 P.3d 165, 170 (Alaska 2019).

but the Board did not consider it. The Board found that because no list of transportation costs had been presented prior to hearing, the Board was unable to award him transportation costs. The Board could have chosen to order payment of appropriate transportation costs upon presentation of a log, but it chose not to do so.

The Board's finding that Mr. Mahlberg did not prevail at hearing due to the lack of a PPI rating and the lack of definitive information about transportation costs are supported by substantial evidence in the record as a whole. There is no PPI rating and no transportation log was filed prior to hearing. Therefore, the Board's finding that it could not award attorney fees because Mr. Mahlberg had not prevailed on his claim is affirmed. This finding is supported by substantial evidence in the record and was not an abuse of discretion.

*b. Did attorney Coe's participation advance acceptance of Mr. Mahlberg's hearing loss claim?*

However, this is not the end of the analysis regarding attorney fees. Mr. Mahlberg seeks attorney fees for the role his attorney played in getting payment for his hearing aids. Although Mr. Mahlberg thought MOA would pay for his medical treatment, MOA apparently did nothing to secure payment until after he identified Mr. Coe as his attorney. While MOA contends it handled the claim timely and that Mr. Coe did nothing to advance the claim, the record is devoid of any evidence MOA asked Mr. Mahlberg for releases of information immediately following the notice of injury in November. Instead, MOA hired a Nurse Case Manager to get the medical records.

An employee has an obligation under the Act to provide medical releases to an employer.<sup>63</sup> MOA never asked Mr. Mahlberg for a medical release, apparently from the record. Instead MOA sent him to an EME and threatened to controvert his claim if he did not attend the EME. At some point between November 29, 2019, and January 20, 2020, MOA obtained the medical records from Dr. McCarty because Dr. List refers to the audiograms in his EME report. MOA, to this point, had not controverted medical benefits, but had resisted payment of the medical benefits. There is no evidence in the record

---

<sup>63</sup> AS 23.30.095.

MOA affirmatively told Mr. Mahlberg his hearing aids would be paid for by MOA until after Mr. Coe entered his appearance. Under *Harnish*, the notice to MOA in December 2019 of the involvement of attorney Coe, even without an entry of appearance, may have induced MOA to accept ultimately the payment of treatment for Mr. Mahlberg's hearing loss.

However, the Board's decision that the evidence did not support an award of attorney fees for Mr. Coe's involvement in procuring medical benefits for Mr. Mahlberg is reviewed under an abuse of discretion standard as attorney fees disputes are reviewed for abuse of discretion.<sup>64</sup> An award of fees "should be upheld unless it is 'manifestly unreasonable.'"<sup>65</sup> Abuse of discretion occurs when a decision is arbitrary, capricious, manifestly unreasonable, or stems from an improper motive.<sup>66</sup>

While the evidence would support an award of attorney fees, the Board's decision not to award fees must be upheld. First, the Commission does not reweigh the evidence the Board used in reaching its decision. The Board found that MOA acted independently of knowledge of Mr. Coe's involvement and found MOA paid the medical bills upon receipt of the medical records and the bills together. The Board's reading of the evidence is plausible. Furthermore, there is no evidence the Board decided against an award of fees due to actions which were arbitrary, capricious, manifestly unreasonable, or stemmed from an improper motive. Since the Board did not abuse its discretion in deciding Mr. Mahlberg was not entitled to an award of attorney fees, the Board's decision is affirmed.

*c. Dr. McCarty's requirement that Mr. Mahlberg pay for his hearing aids is concerning.*

The Commission has concerns about Mr. Mahlberg being required to pay for his hearing aids and the failure of Dr. McCarty to send the bill for treatment to MOA in September 2019 when he prescribed the hearing aids. AS 23.30.097(f) provides "an

---

<sup>64</sup> *Tobeluk*, 589 P.2d 873, 878; *Bouse*, 932 P.2d 222, 241.

<sup>65</sup> *Bailey*, 780 P.2d 1007, 1011; *Bouse*, 932 P.2d at 241.

<sup>66</sup> *Sheehan*, 700 P.2d 1295.

employee may not be required to pay a fee or charge for medical treatment or service provided under this chapter.”<sup>67</sup> Dr. McCarty is in violation of this statute since he required Mr. Mahlberg to pay for his hearing aids. Dr. McCarty knew this was a workers’ compensation claim when he told Mr. Mahlberg his loss of hearing was work-related and helped him to complete the report of injury. Nonetheless, he required Mr. Mahlberg to sign an agreement to pay for the hearing aids and did not send a bill to MOA in September 2019.

This issue was not raised to the Board. The parties did not brief this issue. The Commission does not address the issue, but raises it out of concern for other injured workers. The Board should be alert to this kind of action in the future and consider a remedy to protect injured workers from being required to pay for treatment which should be covered under the Act.

*5. Conclusion.*

The Board’s decision is AFFIRMED.

Date: 7 July 2021

Alaska Workers’ Compensation Appeals Commission



*Signed*

Michael J. Notar, Appeals Commissioner

*Signed*

S. T. Hagedorn, Appeals Commissioner

*Signed*

Deirdre D. Ford, Chair

APPEAL PROCEDURES

This is a final decision. AS 23.30.128(e). It may be appealed to the Alaska Supreme Court. AS 23.30.129(a). If a party seeks review of this decision by the Alaska Supreme Court, a notice of appeal to the Alaska Supreme Court must be filed no later than 30 days after the date shown in the Commission’s notice of distribution (the box below).

If you wish to appeal to the Alaska Supreme Court, you should contact the Alaska Appellate Courts *immediately*.

---

<sup>67</sup> AS 23.30.097(f).

Clerk of the Appellate Courts  
303 K Street  
Anchorage, AK 99501-2084  
Telephone: 907-264-0612

RECONSIDERATION

A party may ask the Commission to reconsider this decision by filing a motion for reconsideration in accordance with AS 23.30.128(f) and 8 AAC 57.230. The motion for reconsideration must be filed with the Commission no later than 30 days after the date shown in the Commission's notice of distribution (the box below). If a request for reconsideration of this final decision is filed on time with the Commission, any proceedings to appeal must be instituted no later than 30 days after the reconsideration decision is distributed to the parties, or, no later than 60 days after the date this final decision was distributed in the absence of any action on the reconsideration request, whichever date is earlier. AS 23.30.128(f).

I certify that, with the exception of changes made in formatting for publication, this is a full and correct copy of Final Decision No. 290 issued in the matter of *Terry J. Mahlberg v. Municipality of Anchorage*, AWCAC Appeal No. 20-014, and distributed by the office of the Alaska Workers' Compensation Appeals Commission in Anchorage, Alaska, on July 7, 2021.

Date: July 13, 2021



*Signed*

K. Morrison, Appeals Commission Clerk