

Case: *Arsenia Morgan vs. Alaska Regional Hospital and Broadspire/Arctic Adjusters*, Alaska Workers' Comp. App. Comm'n Dec. No. 013 (June 15, 2006)

Facts: Morgan, who appealed the board decision, requested the waiver of the transcript cost of her two hearings before the board on the grounds that she was indigent. The employer deferred to the commission's judgment. The board denied Morgan's claim in part based on her lack of credibility testifying before the board.

Applicable law: AS 23.30.127(d) provides that the commission "may require an appellant to pay the costs of the transcript of hearing and the preparation of the record on appeal." AS 23.30.128(c) provides that the commission may receive evidence on applications for "waiver of fees by indigent appellants[.]" The commission's regulations at 8 AAC 57.090(d)(2) provide that the commission may, with or without a hearing, exempt a person from full or partial payment of the fee and costs for transcript of hearing, but at 8 AAC 57.090(e) that "[a]ny costs or fees awarded by the panel under this section to an indigent appellant as prevailing party shall accrue to the commission to the extent necessary to reimburse the commission for costs relating to the indigent's appeal." (The regulation was amended in 2011; (d)(2) is now subsection (c)).

The commission modified and adopted the *Baker* factors, (*Baker v. University of Alaska*, 22 P.3d 440, 442-443 (Alaska 2001)), for determining indigency:

We examine first whether the appellant is working, capable of working, or has other reliable income (such as on-going payment of compensation); second, whether the appellant has incurred substantial costs associated with the workers' compensation claim that are *not* subject to payment by the opposing party if the appellant prevails; third, the amount of medical treatment debt for which the appellant is directly and personally liable (i.e., that is not covered by other insurance, including Medicare or Medicaid); and fourth, the assets and resources available to the appellant after payment of ordinary household expenses and other unavoidable debts, as detailed in the financial statement affidavit filed by the appellant. In cases where waiver of the cost is not granted for indigence, we will consider other relief, such as allocation of the cost of the transcript among the parties, particularly cross-appellants, or reviewing recordings without a transcript. Dec. No. 013 at 8-9.

Issue: Should transcript costs be waived in Morgan's case?

Holding/analysis: Morgan was not indigent. Under the first factor, she had some employment and had a household income of \$4200/month last year. Under the second, she had no associated costs with the workers' compensation claim that were not capable of being reimbursed if she prevailed. Third, she did have substantial medical debt, and she stated she paid \$635/month on her medical debt. But the medical debt was part of her workers' compensation claim, so that if she prevailed she would be relieved of that debt and reimbursed the payments she made. Fourth, under other unavoidable debt, the commission found she made payments of less than \$100 monthly toward student loans and she also had a mortgage. The commission concluded, "Given

her household resources and earning capacity, she can assume responsibility for at least partial payment of the cost of a transcript.” Dec. No. 013 at 10. However, because payment of the full transcript cost would be a financial hardship and because Alaska Regional filed a cross-appeal, the commission required Morgan and Alaska Regional to each pay for half of the cost of the hearing transcript. The commission waived a transcript for the hearing on reconsideration.

Note: App. Comm’n Dec. No. 035 deals with the merits of Morgan’s appeal.