

COMMONWEALTH OF MASSACHUSETTS

**DEPARTMENT OF
INDUSTRIAL ACCIDENTS**

BOARD NO. 805631-85

James Wilson (deceased)

Judith Wilson

Western Massachusetts Electric Company

Western Massachusetts Electric Company

Employee

Claimant

Employer

Self-insurer

REVIEWING BOARD DECISION ON REMAND

(Judges Costigan, McCarthy and Fabricant¹)

APPEARANCES

Earlon L. Seeley, III, Esq., for the claimant

Ronald C. Kidd, Esq., for the self-insurer

COSTIGAN, J. This case returns to the reviewing board on remand from the Appeals Court, Wilson's (dependent's) Case, 67 Mass. App. Ct. 1 (2006), which decision reversed the decision of the reviewing board.² The board had determined that pursuant to G. L. c. 152, § 38, payments received by the claimant widow in a loss of consortium settlement should not be considered when determining whether she was fully self-supporting, for purposes of her claim for § 31 benefits beyond the 250-week statutory maximum.³

In reversing the board's decision, the Appeals Court held:

[I]n determining whether a surviving dependent is 'in fact not fully self-supporting' pursuant to G. L. c. 152, § 31, damages paid pursuant to a suit

¹ As two members of the original panel no longer serve on the reviewing board, the panel has been reconstituted.

² 18 Mass. Workers' Comp. Rep. 222 (2004)

³ Under the 1993 loss of consortium structured settlement, Mrs. Wilson's recovery included: 1) an initial payment of \$100,000; 2) monthly payments of \$2,000 for life and balloon payments of \$25,000 every five years (the first in 1998 and the second in 2003); and 3) a \$100,000 payment when she reaches the age of eighty.

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for lack of consortium are not excludable income pursuant to § 38. Thus, in the instant matter, the \$2,000 monthly payment made pursuant to the settlement is properly included in determining the claimant's income under § 31. However, this falls short of the claimant's \$2,606 in monthly expenses. We therefore vacate the judgment and remand the matter to the reviewing board for a determination as to how the \$25,000 balloon payments and the \$100,000 initial lump sum payment shall be factored in the determination of the claimant's monthly income.

Id. at 8-9. The court gave the reviewing board the option of making this "determination on its own" or "remand[ing] the matter to an administrative judge," should we conclude that further fact finding is required. Id. at 9, fn.11. We so conclude.

As the administrative judge who originally decided this case no longer serves on the industrial accident board, we direct the senior judge to reassign this matter to a new administrative judge for further findings of fact consistent with the decision of the Appeals Court. In the exercise of his or her discretion, the administrative judge may conduct further proceedings at which additional testimony and evidence may be allowed.

So ordered.

Patricia A. Costigan
Administrative Law Judge

William A. McCarthy
Administrative Law Judge

Bernard W. Fabricant
Administrative Law Judge

Filed: **September 28, 2006**