

COMMONWEALTH OF MASSACHUSETTS

**DEPARTMENT OF
INDUSTRIAL ACCIDENTS**

BOARD NOS. 019633-00

Regina Hester
City of Boston Public Health Commission
City of Boston

Employee
Employer
Self-Insurer

REVIEWING BOARD DECISION
(Judges Horan, Fabricant and Harpin)

The case was heard by Administrative Judge Heffernan.

APPEARANCES

Rickie T. Weiner, Esq., for the employee at hearing
Charles E. Berg, Esq., for the employee at hearing and on appeal
James N. Ellis, Esq., for the employee on appeal
John T. Walsh, Esq., for the self-insurer

HORAN, J. The employee appeals from a decision denying and dismissing her §§ 13 and 30 claim for nursing assistance and housekeeping services.¹ We recommit the case for further findings of fact.

The employee argues that because the judge failed to make findings in support of his denial of her §§ 13 and 30 claim, his decision is arbitrary and capricious.² We agree. Without adequate findings, we cannot discern whether the judge applied the correct rules of law. Praetz v. Factory Mut. Eng'g and Research, 7 Mass. Workers' Comp. Rep. 45, 47 (1993)(judges must address issues "in a manner enabling this board to determine with reasonable certainty whether correct rules of law have been applied to facts that could properly be found.")

¹ The judge did award the employee permanent and total incapacity benefits. (Dec. 18.)

² Unfortunately, the record is unclear whether the self-insurer conducted a utilization review (UR) of the employee's request for health care services. (October 1, 2010 Tr. 55-56; 452 Code Mass. Regs. § 6.04.)

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Because the employee submitted sufficient evidence to support her claim, we recommit the case for further findings of fact. Santana v. Belden Corp., 5 Mass. Workers' Comp. Rep. 356, 359-360 (1991); compare Klapacs's Case, 355 Mass. 46 (1968); Levy v. Touraine Stores, 1 Mass. Workers' Comp. Rep. 125 (1987).

As the employee has prevailed, an attorney's fee may be due under G. L. c. 152, § 13A(7). Accordingly, employee's counsel may submit a fee petition to this board, accompanied by a fee agreement with the employee. No fee shall be due or collected from the employee without our prior approval.

So ordered.

Mark D. Horan
Administrative Law Judge

Bernard W. Fabricant
Administrative Law Judge

William C. Harpin
Administrative Law Judge

Filed: **August 25, 2015**