

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF
INDUSTRIAL ACCIDENTS

BOARD NO. 019162-08

Todd J. Chamberland
Atlas Distributing Corp.
A.I.M. Mutual Insurance Co.
Workers' Compensation Trust Fund

Employee
Employer
Insurer
Respondent

REVIEWING BOARD DECISION
(Judges Fabricant, Costigan and Horan)

The case was heard by Administrative Judge Levine.

APPEARANCES

Dorothy M. Linsner, Esq., for the insurer
Jerry E. Benezra, Esq., for the insurer on appeal
Frederick W. Uehlein, Esq., for the insurer at oral argument
Judith A. Atkinson, Esq., for the respondent

FABRICANT, J. The Workers' Compensation Trust Fund (Trust Fund) appeals the administrative judge's award of reimbursement for § 30 medical benefits pursuant to G. L. c. 152, § 37, where the qualifying § 30 benefits were paid after the initial non-entitlement period of 104 weeks post-industrial injury, but more than two years before the filing of the insurer's petition for reimbursement. Based on our recent decision in Rowley v. Allston Supply Co., Inc., 25 Mass. Workers' Comp. Rep. ____ (April 12, 2011), we reverse the decision and vacate the challenged portion of the award.

General Laws c. 152, § 37, provides, in pertinent part:

Insurers making payments under this section shall be reimbursed by the state treasurer from the trust fund created by section sixty-five in an amount not to exceed seventy-five percent of all compensation due under sections thirty-one, thirty-two, thirty-three, thirty-four A, thirty-six A, and, where benefits are due under any of such sections, section thirty. . . .

. . . .

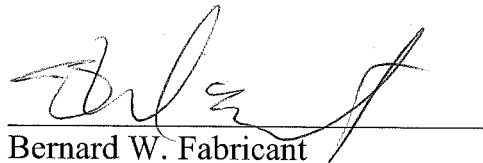
No reimbursement shall be made for payments due during the first one hundred and four weeks from the date of onset of disability or death, whether paid under an agreement, decision, or lump sum settlement. Any

Todd Chamberland
Board No. 019162-08

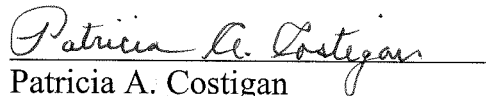
petition for reimbursement under this section shall be filed no later than two years from the date on which the benefit payment for which the reimbursement request is being filed was made.

As the facts in Rowley, supra, are not materially distinguishable from those in the instant case, “we reverse the decision, and vacate so much of [the] award as required the Trust Fund to reimburse the insurer for medical benefits paid after the first 104 weeks of disability but more than two years prior to the . . . filing of its petition.” Id.

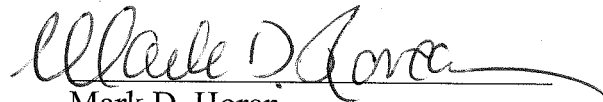
So ordered.



Bernard W. Fabricant
Administrative Law Judge



Patricia A. Costigan
Administrative Law Judge



Mark D. Horan
Administrative Law Judge

Filed:

