

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Department of Employment Services**  
**Labor Standards Bureau**



Office of Hearings and Adjudication  
Administrative Hearings Division

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IN THE MATTER OF, )  
)  
MARTHA GIVENS, )  
)  
CLAIMANT, )  
)  
v. )  
)  
DISTRICT OF COLUMBIA DEPARTMENT )  
OF HUMAN SERVICES )  
)  
EMPLOYER. )

AHD No. PBL 08-034  
DCP No. 761011-004-1999-0002

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**ORDER AWARDING AN ATTORNEY'S FEE**

On July 18, 2008, Harold L. Levi, Esquire, (hereinafter, Counsel) in the above-captioned matter, pursuant to Subchapter XXIII of the District of Columbia Government Merit Personnel Act of 1978, as amended, D. C. Code Ann. §1-623.1 *et seq.* (2007) (the Act) and Title 7 of the District of Columbia Municipal Regulations (DCMR), petitioned for an award of an attorney's fee for his representation of Martha Givens, (hereinafter, Claimant), before the Administrative Hearings Division (hereinafter, AHD) in the amount of \$6,600.00. Counsel represents he expended 33 hours at an hourly rate of \$200.00, from February 14, 2008 to July 2, 2008, for legal services performed herein.

A Compensation Order (CO) was issued, on June 23, 2008, awarding Claimant benefits for temporary total disability compensation from February 13, 2008 to the present and continuing, together with payment of causally related medical expenses. As result of the Compensation Order, the D.C. Office of Risk Management, Disability Compensation Program's (hereinafter, Employer) began to pay Claimant benefits.

On August 1, 2008, in response to Counsel's petition for an attorney's fee, the undersigned issued a show cause Order. Thereafter, on August 15, 2008, Employer filed a response to the show cause order. In opposition to Counsel's request for an attorney's fee, Employer contends that Counsel's petition for fees "must" be denied, because Counsel failed to:

- establish his entitlement to the amount of the fee requested,
- establish the amount of the "actual benefits secured" by claimant; and
- establish "a reasonable attorney's fee, not to exceed 20% of the actual benefit secured", pursuant to D.C. Official code §1-623.27 (b)(2).

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Overall, Employer contends that the total amount of “actual benefits secured” by claimant is \$5,760.94. Therefore, Counsel is limited to 20% of those actual benefits, which is \$1,152.18.

Thereafter, Counsel filed a Reply to Employer’s Response to Claimant’s Amended Fee Petition, on August 29, 2008, which contends that there is nothing in the Code which precludes consideration of prospective or continuing disability compensation benefits in considering the maximum amount that may be approved in a fee petition. Furthermore, Counsel contends that as a result of the CO Claimant is owed benefits and medical in total of \$14,500.00, from which he is entitled to a fee award in the amount of \$6,600, based upon services rendered.

In reaching a determination of an appropriate attorney’s fee award pursuant to the Act, the undersigned is governed by D.C. Official Code § 1-623.27, and its implementing regulations, Title 7 of the District of Columbia Municipal Regulations (DCMR), section 109. Section 109.5 states:

**In determining whether to approve a claim, the [Administrative Law Judge] shall consider at least the following factors:**

- (a) The nature and complexity of the claim;**
- (b) The actual time spent on development and presentation of the claim;**
- (c) The amount of compensation accrued and potential future payments;**
- (d) Customary local charges for similar services; and**
- (e) Professional qualifications of the representative.**

To aid the fee adjudicator in considering these factors, Counsel is required to submit an itemized statement in conformance with § 109.3 of the regulations. The itemized statement must demonstrate that the services provided were reasonably necessary, and within the normal course of providing representation for Claimant. Yet, Counsel has failed to present evidence of the nature and complexity of the claim.

After a careful review of the motions filed by the parties, I find that the issues in controversy are the amount of compensation accrued, and the potential future payment secured by Counsel as a result of his contribution to the litigation of this Application. Here, Counsel contends that Claimant is owed \$9,000.00 in benefits owed for retroactive compensation, and owed \$5,500 for medical expenses as well as prospective benefits and medicals, which “cannot be ascertained at this time....”

In contrast, Employer’s formulated calculation of “actual benefits secured” reports that Claimant’s “daily (benefit) rate is \$40.57.” Since the CO established that Claimant’s benefit period begins February 13, 2008, Employer asserts that there are 142 days after the effective date of Claimant’s termination of

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benefits. As a result, when Employer multiplied the Claimant's daily rate (\$40.57 x 142 days), Employer contends that "actual benefit amount secured is \$5,760.94."

Since Counsel failed to provide recorded evidence to support his statement that the actual amount of benefits secured on behalf of the Claimant is \$14,500.00 (\$9,000.00 + \$5,500.00), he has not convinced the undersigned that the petitioned fee amount, \$6,600.00, is "a reasonable attorney's fee, which does not exceed 20% of the actual benefit secured," pursuant to D.C. Official Code §1-623.27 (b)(2). Furthermore, Counsel in his response to Employer's objections to the submitted petition for an attorney's fee, he did not dispute Employer's assertion of "actual benefits secured" of \$5,760.94 by Claimant.

Although the undersigned agrees that Counsel is entitled to an attorney's fee based upon "potential future payments" the Claimant secures as a result of services provided by Counsel, pursuant to 7 DCMR § 109.5 (c), this agency reserves review of the benefit resulting from those future payments at the time the expenses are incurred.

Having given due and sufficient consideration to Counsel's petition for an attorney's fee, Employers show cause opposition response, Counsel's response thereto as well as and pursuant to, 7 DCMR §109, applicable case law, and based upon the 20% limitation of §1-623.27, of the actual benefits secured; and Employer's, non-disputed, calculation of "actual benefits secured," (\$5,760.94), accordingly, it is hereby **ORDERED** that Employer shall pay Counsel an attorney's fees equal to *the lesser of* 20 percent of the disability compensation accrued and actually conferred on Claimant **or \$1,152.18**.

**IT IS SO ORDERED.**



GERALD L. ROBERSON  
ADMINISTRATIVE LAW JUDGE

9-10-2008

DATE

PARTIES SERVED:

HAROLD L. LEVI, ESQUIRE  
ANDREA G. COMENTALE, ACTING SECTION CHIEF  
MARTHA GIVENS, CLAIMANT