

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS  
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS  
TAMPA DISTRICT OFFICE

Goldie McGhee,  
Employee/Claimant,

OJCC Case No. 89-002794EDS

vs.

Accident date: 8/25/1989

ACE Hardware/York Risk Services Group,  
and ESIS WC Claims,  
Employer/Carrier/Servicing Agent.

Judge: E. Douglas Spangler

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EVIDENTIARY ORDER ADDRESSING E/C MOTION  
FOR LEAVE TO ISSUE SUBPOENA TO NON-PARTY

A hearing was conducted, telephonically, on September 15, 2016 to consider the Employer/Carrier's Amended Motion for Leave to Issue Subpoena to Nonparty. Attorney Douglas Glicken represented the claimant, Goldie McGhee and also the non-parties, claimant's son Ricky D. Murray and his wife Vicky Murray. Attorney W. Rogers Turner represented the Employer/Carrier (E/C).

The Amended Motion was filed on September 13, 2016, which amended the initial motion that had been filed on August 25, 2016. The E/C is seeking an order from the undersigned to permit the issuance of a Subpoena Duces Tecum to Vystar Credit Union located in Jacksonville, FL to secure "Any and all banking records including associated debit and/or credit card transactions with respect to Vicky Murray from 2/16/2015 to the present." A formal objection to the original Motion was filed on behalf of Vicky Murray by Mr. Glicken on August 29, 2016, and the same objections asserted in that pleading were orally asserted during the hearing by Mr. Glicken toward the amended motion now under consideration.

The E/C had completed depositions of the claimant, and Mr. and Mrs. Murray, on February 22, 2016, and a copy of each of these depositions was presented and received as evidence. A copy of the proposed Subpoena and Notice of Intent to serve same dated May 12,

2016 was received as evidence. A composite of forms documenting attendant care services approved by the claimant representing services allegedly performed by Mr. and Mrs. Murray was received in evidence. In an argument presented during the conduct of the hearing, counsel for the E/C narrowed the scope of the proposed subpoena to be issued by eliminating the request for production of “any and all banking records” thereby limiting the demand for production to records of debit/or credit card transactions with respect to Vicky Murray from February 16, 2015 to present. Based on the pleadings, consideration of the testimony of the witnesses contained in the depositions, and the arguments of counsel, the undersigned authorizes the issuance of the subpoena, as orally amended, to limit discovery to credit and debit card transactions of Vicky Murray only during the period covering February 16, 2016 to present. The reasons for this decision follow.

#### Factual Background

The Claimant, Goldie McGhee is permanently and totally disabled. Based on medical recommendations, the claimant receives 24 hour/day attendant care services. Those services are provided by Mr. and Mrs. Murray. The Murrays document the time they spend while performing these services on a form provided to them which they sign, along with the claimant, attesting to the accuracy of the information submitted under penalty of perjury and a warning that false and fraudulent information could constitute a crime.

In the depositions, the claimant testified that she could not recall any time since the attendant care arrangement had been in place that she had been not attended to, or had been left alone, by Mr. or Mrs. Murray. However, in her deposition, Vicky Murray admitted that, in one instance while all were in Orlando to attend “Mickey’s Christmas Celebration” at Disney World, the claimant did not go with her and her husband into the theme park because she did not feel well enough to go. She and Mr. Murray went to the park without the claimant, based on a belief that she would be comfortable alone at the hotel. This incident was confirmed by Mr. Murray in his deposition. However, he added that the period that the claimant was left alone could not have exceeded two hours total elapsed time. Both Murrays admitted to submitting a time record for this period that falsely indicated no break in their attendance and care provided to the claimant

during this absence; and, the claimant attested to the accuracy of the time as submitted by the Murrays.

This was not the first time the group had traveled out of town together. As revealed in the depositions, the three of them, and the claimant's sister, had undertaken an extensive trip of approximately two weeks duration to the Grand Canyon, Yellowstone, the Black Hills, and other points of interest. However, in this instance the claimant and Mr. and Mrs. Murray stated that the claimant was never alone for any period during the entire trip.

### Discussion

The E/C is arguing that because it is now evident, that on at least the one instance, there is evidence that erroneous or intentionally false information has been submitted by the Murrays, and the claimant, regarding the attendant care time records, the discovery of the credit card/debit card transactions as requested in the subpoena could provide data that verifies, or not, the contentions that the claimant was left alone on the one instance for only two hours, and not left alone any other time. The E/C also argues that information from the debit/credit cards could reveal information regarding occasions, and durations of time, wherein the claimant may have been left unattended. This, it is argued, could have an effect on the now existing medical opinions regarding the scope of the time necessary for continued attendant care activities.

The Murrays' and the claimant's objections to the issuance of a subpoena within the scope now being requested by the E/C are as follows: the subpoena exceeds the scope of the issues now pending in active Petitions for Benefits, and is irrelevant and will not lead to discovery of admissible evidence that addresses those pending issues, contending that discovery of only evidence that would be admissible as relevant to those issues should be permitted. They argue that since the evidence that could be discovered would have nothing to do with present claims for provision of a hospital bed with rails and a reimbursement for an acquired riding chair cover, the information obtained from the subpoena would be fundamentally irrelevant. The other pertinent objection was based on the undersigned not seeing a copy of the subpoena being sought by the E/C, and not reviewing its scope which both became moot when a copy of the subpoena was produced and the scope of the subpoena limited. One other objection contained in the

Response to the motion dealt with matters that were not presented to the undersigned for determination and accordingly will be disregarded.

Both parties provided extensive case law regarding the role of a trial court and the scope of discovery permitted in instances such as this when a nonparty's financial information is being requested via a subpoena to a nonparty entity. The trial court is to maintain the balance between the competing interests of the need for discovery of relevant evidence, and the privacy interests of the party from whom the financial information is being sought. To that end, if the court determines if the information meets the relevancy test, the court may then protect the privacy interests by requiring that the information be produced for *in camera* review. Where the information being sought appears to be relevant to the subject matter of the pending action, the information is fully discoverable. A party's financial information, if relevant to disputed issues in the underlying action is not exempted from discovery. *Friedman v. Heart Institute of Port St. Lucie, Inc.*, 863 So.2d 189,194 (Fla. 2003).

The undersigned rejects the Murray's and claimant's arguments and objections that information being requested is not relevant or would not reasonably lead to discovery of admissible evidence. The scope of a worker's compensation claim is not limited by what a petition for benefits is presently demanding. The scope of the claim encompasses provision of all benefits by the carrier to the claimant as required by law. Discovery is permissible as long as that discovery reasonably suggests admissible evidence could be revealed. Hence, requests to produce and depositions of parties and non-parties occur before and after the initiation of litigation through the filing of a petition for benefits.

In this instance, the ongoing requirement of the E/C to provide attendant care that the nature of the injury and the process of recovery require is well within the scope of the claim. Changes in the needs of the claimant for attendant care, or the abilities or trustworthiness of the providers of such care are well within the scope of the underlying claim and are the within the permissible scope for discovery. The occurrence of one instance of a breakdown in the attendant care plan makes any inquiry as to the possible occurrence of other such events relevant. Thus, the subpoena, as presently limited, passes the relevance test.

As for the privacy test, most of the privacy concerns dissipated when the E/C limited the scope of discovery to credit and debit cards. There are virtually no legitimate privacy concerns regarding a credit card transaction as the transaction itself involves vendors and other persons beyond the credit card holder. The same third party involvement is also common regarding transactions involving the use of a debit card. No argument or reason was advanced by Mrs. Murray that specifically identified any privacy concern regarding the information to be revealed by a debit card use report that contained cash withdrawal information. Thus, the undersigned at this time finds no reason to require that any of the information or documentation that may be produced pursuant to the subpoena should require *in camera* review before it is reviewed by the E/C.

Accordingly, it is Ordered:

The E/C may issue a Subpoena to Vystar Credit Union to obtain debit and/or credit card transaction information with respect to Vicky Murray, from 2/16/2015 to the present.

DONE AND ORDERED this 22nd day of September, 2016, in Tampa, Hillsborough County, Florida.



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