

SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT

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DECLARATORY RULING

RE: 62-4-1

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The above matter was brought on for Declaratory Judgment by the Secretary of the South Dakota Department of Labor pursuant to ARSD 47:01:01:04. A telephone conference was held on July 17, 1995 via telephone, with Richard Travis, May, Johnson, Doyle, and Becker, Sioux Falls, South Dakota, and Marie Hovland, Davenport, Evans, Hurwitz, and Smith, Sioux Falls, South Dakota, on the line; it was decided that the matter should be opened up for broader public comment.

A "Notice of Public Hearing Request for Declaratory Ruling" was provided to three newspapers of general circulation. A Declaratory Judgment hearing was then conducted on September 15, 1995, via the Rural Development Telecommunications Network on Friday, September 15, 1995, at 11 a.m. (CDT), with sites at the State Capitol Building, Pierre, the South Dakota School of Mines and Technology, Rapid City, and the Southeast Technical Institute, Sioux Falls, all in South Dakota. James Marsh, Director of the Division of Labor and Management, conducted the hearing on behalf of the Secretary. Public comment was received, and an exhibit 1

(letter from Janice Hoefert) was marked and received into evidence.

The petition for Declaratory Ruling describes the following fact situation: a Claimant is employed in Sioux Falls, and lives outside the city. After she is injured, she drives to Sioux Falls for medical treatment. Treatment is not available anywhere closer than Sioux Falls. The issue, per SDCL 62-4-1, is whether transportation expenses should be provided by the Insurer or Self-Insurer.

SDCL 62-4-1 provides that "The employer shall provide necessary first aid, medical, surgical, and hospital services." This includes necessary transportation expense. Johnson v. Skelly Oil, 359 N.W.2d 130 (S.D. 1984). A specific exception is provided if "the employee selects a health care provider located in a community not the home or workplace of the employee, and a health care provider is available to provide the services needed by the employee in the local community or in a closer community."

The first inquiry, then, is whether the transportation expense is "necessary." In the fact situation provided, this is unknown. It is not specified whether Claimant was unable to work, or if released to work with restrictions, would be required to travel for medical treatment more often than she could work. If she were unable to work, her travel would be necessitated by her treatment, and transportation expense should be provided. If, as an example of a release to work

with restrictions, she were required to treat three days a week, and only released to work for two, she should be paid for additional travel required.

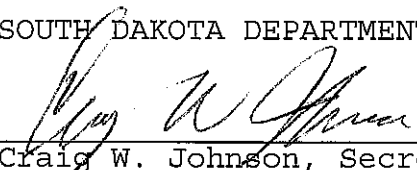
In testimony, a second scenario was outlined, in which the employee was fully released to work in a Yankton clinic, and treated in the same clinic. Such a person would not be entitled to transportation expense, as she would be commuting to Yankton to work anyway. In short, transportation expense includes the cost for such travel as is undertaken for medical treatment, not for other purposes.

In Collins v. Methodist Hospital, HF # 205 90/91, the Department ruled that the claimant was entitled to transportation expense for trips from Mt. Vernon to Mitchell, which was her ordinary commute. The ruling was correct, as the claimant was unable to work at the time. The Collins ruling, however, should not be extended to cases where claimants are also traveling for work or other purposes.

62-4-1 precludes necessary transportation expenses from being paid, when treatment is sought outside the home or workplace community, and treatment is available "closer." This exception would not apply in any of the factual scenarios provided to the Department.

Dated this 24 day of October, 1995.

SOUTH DAKOTA DEPARTMENT OF LABOR



Craig W. Johnson, Secretary