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MEDICAL, NURSE, HOSPITAL SERVICES AND MEDICINES—FURNISHED SUBSEQUENT TO JUNE 29, 1917—NECESSARY AS RESULT OF INJURY TO EMPLOYE—PAYMENT SHOULD BE MADE UNDER SECTION 1465-89, G. C., AS IT NOW READS, REGARDLESS OF WHETHER INJURY OCCURRED PRIOR OR SUBSEQUENT TO SAID DATE—OPINIONS ATTORNEY GENERAL, 1917, PAGE 1690, APPROVED AND FOLLOWED.

SYLLABUS:

Payment for medical, nurse and hospital services and medicines which become necessary as the result of an injury suffered by an employe and which are furnished subsequent to June 29, 1917, should be made in accordance with the provisions of Section 1465-89, General Code, as it now reads, regardless of whether the injury to the employe occurred prior or subsequent to said date. (Opinions of the Attorney General, 1917, page 1690, approved and followed.)

Columbus, Ohio, November 6, 1945

The Industrial Commission of Ohio
Columbus, Ohio

Gentlemen:

This will acknowledge receipt of your request for my opinion on the following question:

> "Does the Industrial Commission of Ohio have authority to currently award and pay medical expense, or expense for hospital and nursing services, or expense for medicines in excess of $200.00 in such claims wherein the injury occurred prior to June 29, 1917?"

This precise question was presented to the Attorney General in 1917 and in an opinion rendered by him on September 17 of that year (Opinions of the Attorney General, 1917, page 1690), it was held:

> "Section 1465-89, G. C., relating to awards to be made under the compensation act for payment of medical, hospital and nursing services, etc., as amended 107 O. L. 528, relates to all such services rendered subsequent to time act took effect."

The question arose at that time by reason of Section 1465-89, General Code, being amended, effective June 29, 1917 (107 O. L. 528). Said section prior to said date read in part:

> "In addition to the compensation provided for herein, the board shall disburse and pay from the state insurance fund, such amounts for medical, nurse and hospital services and medicine as it may deem proper, not, however, in any instance, to exceed the sum of two hundred dollars: * * *."

The above provisions were by said amendment changed to read:

> "In addition to the compensation provided for herein, the industrial commission of Ohio shall disburse and pay from the state insurance fund, such amounts for medical, nurse and hos-

> pital services and medicine as it may deem proper, not, however, in any instance, to exceed the sum of two hundred dollars unless in unusual cases, wherein it is clearly shown that the actually necessary medical, nurse and hospital services and medicines exceed the amount of two hundred dollars, such commission shall have authority to pay such additional amounts upon a satisfactory finding of facts being made and upon unanimous approval by such commission * * *."

Said section has since the above date undergone a further amendment (114 O. L. 26), which, however, since no change was effected in the above language, is immaterial hereto.

On commenting on the effect of the amendment to the statute, it was stated in the above opinion:

> "This provision governs the payment of medical, nurse and hospital services and medicine, necessary on account of an injury to an employee; and does not govern the amounts payable to the injured employe, as compensation. The amendment is not retroactive, that is, it would not authorize payment of the additional amount for such purposes, where the services, or medicine had been furnished prior to the taking effect of the amendment; but payment for furnishing the services or medicine must be governed by the law in effect when the same were furnished, not by the date of the accident; I can think of no theory on which the right of payment for the services covered by this amendment should date back to the time of the accident, and be limited by the law then in force."

With the above reasoning I am in full accord. The provisions of law relating to compensation to injured employes or dependents of killed employes in force at the time the cause of action accrues are the measure of right of such employes and dependents to participate in the State Insurance Fund. Industrial Commission v. Kamrath, 118 O. S., page 1. The cause of action for compensation payable to an injured employe occurs at the time he receives the injury. However, the payments provided for in the above statute are not compensation. This is clearly recognized in the statute. In express terms it is stated that the amounts payable thereunder are "in addition to the compensation provided for herein." A cause of action for medical, nurse and hospital services and medicines, obviously. does not accrue until it is determined that such services and medicines are necessary. In other words, if an employe is injured in the course of his employment, a cause of action for compensation immediately accrues on

the date of such injury. However, I am unable to perceive how on such date, when it is not yet known whether medical, nurse and hospital services and medicine will be necessary, he would have a cause of action to enforce the payment of the amounts provided for in the statute intended to compensate for such services.

You are therefore advised that in my opinion, payment for medical, nurse and hospital services and medicines furnshed subsequent to June 29, 1917, should be made in accordance with the provisions of Section 1465-89, General Code, as it now reads, regardless of whether the injury to the employe occurred prior or subsequent to said date.

Respectfully,

HUGH S. JENKINS

Attorney General