

STATE OF MICHIGAN
COURT OF APPEALS

MARK J. PERRY,

Plaintiff-Appellant,

v

ACORN BUILDING COMPONENTS,

Defendant,

and

SELF INSURER'S SECURITY FUND and
SECOND INJURY FUND,

Defendants-Appellees.

UNPUBLISHED
March 28, 1997

No. 180657
WCAC
LC No. 91000937

Before: Marilyn Kelly, P.J., and MacKenzie and J.R. Ernst,* JJ.

PER CURIAM.

Plaintiff appeals by leave granted from an order of the WCAC denying his application for reimbursement for nursing care services provided from May 1986 through August 1988. Plaintiff argues that the WCAC erred in holding that the one-year-back-rule precludes reimbursement for services provided during any period before April 13, 1989. He asserts that the one-year-back rule is inapplicable, because his injury occurred before the rule's effective date. MCL 418.381; MSA 17.237(381)(3). We affirm.

Plaintiff was seriously injured in an automobile accident in the course of his employment in October, 1978. Between October 1978 and October 1983, he resided in various nursing care facilities. From October 1983 until June 1989, he resided at his home. Between May, 1986 and August 1988, his mother hired and paid for employees to provide his nursing care services.

* Circuit judge, sitting on the Court of Appeals by assignment.

On April 13, 1990, plaintiff filed a petition for hearing or mediation with the Bureau of Worker's Disability Compensation (Bureau) asking for, among other things, employer reimbursement of nursing care expenses he incurred from May 1986 through August 1988. Both the magistrate and the Worker's Compensation Appellate Commission (WCAC) denied reimbursement pursuant to MCL 418.381(3); MSA 17.237(381)(3). That section of the statute limits payments for nursing or attendant care to one year before the date an application for hearing is filed with the Bureau. They determined that the one-year-back rule applied even though the date of the injury occurred before the adoption of the rule.

Plaintiff argues that the one-year back rule should not be applied retroactively. An employee's entitlement to benefits should be determined at the date of the injury. We disagree.

Recently, the Michigan Supreme Court clarified application of the one-year-back rule. *Sokolek v General Motors Corp*, 450 Mich 133; 538 NW2d 369 (1995). In *Sokolek*, the Court held that, where the petition for nursing/attendant care benefits was filed after the statute's 1985 effective date, the one year-back rule applies regardless of the employee's underlying injury date. However, the one-year-back rule does not apply to services provided before the July 30, 1985 effective date of the statute. *Id.*; See, also, *Matney v Southfield Bowl*, 218 Mich App 475; 554 NW2d 356 (1996).

In the instant case, even though plaintiff was injured in 1978, he is entitled to reimbursement only for nursing services provided before July 30, 1985 and those incurred within one year of the filing of his application for reimbursement. *Skolek, supra*; *Matney, supra*. Plaintiff filed his application with the Bureau on April 13, 1990 and sought reimbursement for nursing services provided from May 1986 until August 1988. For those dates, *Skolek* and *Matney* make clear that he is not entitled to reimbursement.

Affirmed.

/s/ Marilyn Kelly

/s/ Barbara B. MacKenzie

/s/ J. Richard Ernst