

Opinion No. 40

WORKMEN'S COMPENSATION; Hospital Services; ambulance transportation—WORKMEN'S COMPENSATION; Ambulance Service; constitutes "Reasonable hospital services"—INDUSTRIAL ACCIDENT BOARD; Rules, power to make for hospital services—Section 92-706, RCM, 1947

- Held: 1. "Reasonable Hospital Services", as that term is used in the Workmen's Compensation Act (Sec. 92-706, RCM, 1947) includes ambulance service in proper cases.
2. The Industrial Accident Board may not adopt a rule which arbitrarily limits payments for ambulance services to a single trip.
3. Whether or not payment shall be made for ambulance service must be determined by the Industrial Accident Board according to the facts of the individual case.

October 30, 1959

Mr. Russell K. Fillner
 Rosebud County Attorney
 Forsyth, Montana

Dear Mr. Fillner:

You ask whether the Industrial Accident Board can authorize more than one ambulance trip under Section 92-706, RCM, 1947. This section provides that the board shall furnish "reasonable hospital services" when needed.

Your correspondence shows these facts involved:

The Deputy Sheriff of your county was injured in the course of his employment. He was taken to the hospital in Forsyth where it was determined that he had a fracture involving the pelvis and hip socket and that surgical correction beyond the scope of their facilities was necessary. He was taken to Billings by ambulance and returned after operation and treatment to his home to convalesce. Because of the nature of his injury transfer by ambulance in each instance was ordered by the doctor.

The Industrial Accident Board has refused to pay the charge for the ambulance to Billings and back. The basis of their refusal, according to their letter of January 12, 1959, is a rule of long standing. The board allows payment only for the transportation of an injured worker from the accident scene to the nearest doctor or hospital as "reasonable hospital service."

These are the essential facts. There are a number of others but they are not necessary to this opinion. It appears that this is the legal question involved:

Can the Industrial Accident Board, by rule, restrict payment under Section 92-706, RCM, 1947, to one ambulance trip from the accident scene to the place of treatment?

The rule making power of the Board is unquestionable. Its existence is implicit throughout the act, and its rules are presumptively reasonable and lawful (see Section 92-822, RCM, 1947).

The statutory requirement to furnish "reasonable hospital services and medicines" includes the ambulance charges incurred in the transportation of an injured workman from the scene of the injury to a hospital. It was so held in Opinions of the Attorney General, Vol. 24, No. 15, and represents the present practice of the board.

The Industrial Accident Board can through its rule making power construe the statutory phrase "reasonable hospital services" and the construction given by the agency is entitled to the highest respect. This

is the law in Montana but this rule of law cannot serve to alter, extend or add to the statute. The rule or regulation adopted may not be arbitrary or capricious. To be valid it must be reasonably adopted to secure the end in view.

By its practice the Board acknowledges that an ambulance trip is a "reasonable hospital service" under the statute. Since that fact is accepted it follows that two, three, or more ambulance trips could be "reasonable hospital services" depending, of course, on the circumstances and facts of the case. To limit the phrase by rule to allow only one trip is patently arbitrary and such a rule is invalid.

This conclusion does not mean that the board **must** allow more than one ambulance trip, but it does mean that the Board must determine from the facts in the individual case whether the successive trips are "reasonable hospital services."

It is therefore my opinion that "reasonable hospital services" as that term is used in the Workmen's Compensation Act (Section 92-706, RCM, 1947) includes ambulance service in proper cases. It is also my opinion that the Industrial Accident Board may not adopt a rule which arbitrarily limits payments for ambulance services to a single trip; and, finally, whether or not payment shall be made for ambulance service must be determined by the Industrial Accident Board according to the facts of the individual case.

Very truly yours,
FORREST H. ANDERSON
Attorney General