

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
WEST PALM BEACH DISTRICT OFFICE

Transito Alvarez,
Claimant/Ernesto Alvarez (deceased),
Employee,

OJCC Case No. 17-025450CJS

vs.

Accident date: 10/9/2017

Electraserve, Inc./Amerisure Insurance,
Employer/Carrier/Service Agent.

Judge: Carol J. Stephenson

FINAL COMPENSATION ORDER

AFTER PROPER NOTICE TO ALL PARTIES, this cause came before by the undersigned Judge of Compensation Claims upon the Final Merits Hearing scheduled for May 17, 2018. Attorney David Benn appeared for the Claimant along with the Claimant Transito Alvarez. Spanish interpreter Catalina Kidd was present and furnished interpretative services for the Claimant. Attorney Kip Lassner appeared for the Employer/Carrier.

The Petitions for Benefits at issue for OJCC #16-001479 were filed on 10/27/17. The issues contained in the Petitions for Benefits dated December 1, 2017 and December 13, 2017 were resolved with jurisdiction reserved for attorney's fees and costs. Jurisdiction is reserved on the 2/14/18 Petition for Benefits as it has not been yet mediated.

The following stipulations have been reached between the parties:

1. The undersigned has jurisdiction of the parties and of the subject matter.
2. Venue properly lies in Palm Beach County, Florida.
3. The date of accident is October 9, 2017.

4. Mediation was held on 2/13/16.
5. There was an employer/employee relationship at the time of the accident/claim.
6. The employer was properly insured with workers' compensation coverage at the time of the accident/claim.
7. The accident or occupational disease is accepted as compensable.
8. With respect to the specific body part related to the accident, the parties agree N/A as this is a death case.
9. There is timely notice of the accident, injury or occupational disease.
10. Notice of final hearing was timely given to the parties.
11. The case is not governed by a managed care arrangement.
12. The parties agree the AWW is not at issue.

I. CLAIMS:

1. Payment of death benefits to Transito Alvarez from 10/9/17 through present and continuing; and PICA.

II. DEFENSES

1. Death dependent benefits to Transito Alvarez denied as the Claimant has failed to meet her burden of proof to show actual dependence on the deceased worker. No evidence/documentation provided that mother, Transito Alvarez, received substantial and regular support from the deceased, the absence of which would materially alter the person's lifestyle. Specifically, the mother failed to provide evidence of 1) being dependent upon the deceased for support; 2) received substantial support from the deceased; and 3) deceased provided such support regularly and the mother reasonably expected that the deceased would have provided it in the future.
2. PICA is denied as no benefits have been provided.

DOCUMENTARY EVIDENCE:

JUDGE:

1. Composite: 2/23/18 Uniform Pretrial Stipulation and 2/23/18 Order Approving. [DN 27 and

28].

2. 10/27/17 Petition for Benefits [DN 1].

3. Composite: 2/13/18 Mediation report [DN 17].

4. 5/10/18 Order Resetting Final Hearing [DN 43].

5. Composite: Employer/Carrier's and Claimant's Trial summaries for argument purposes only.
[DN 45 and 49].

JOINT:

CLAIMANT:

1. Death Certificate of Santos Ernesto Mejia Alvarez [DN 47].

2. Birth Certificate of Santos Ernesto Mejia Alvarez [DN 48].

3. 4/26/18 Deposition of Transito Alvarez [DN 46].

4. Proffered: 11/15/15 correspondence by decedent [DN 50].¹

EMPLOYER/CARRIER:

1. 10/30/17 Response to Petition for Benefits [DN 3].

LIVE TESTIMONY

Claimant Transito Alvarez.

FACTUAL HISTORY

The Claimant in this matter, Transito Alvarez, is the mother of the deceased employee², Santos Ernesto Mejia Alvarez a/k/a Ernesto Alvarez. . On 10/9/17, while in the course and scope

¹ E/C's objection to this exhibit was sustained on the basis of lack of authentication , hearsay and untimely produced.

² The E/C did not dispute Transito Alvarez was the mother of the decedent employee.

of his employment as an electrician with Electraserve, Inc., Mr. Alvarez fell from a ladder and was pronounced dead at Delray Beach Medical Center that same day due to atlantoaxial dislocation, i.e., a broken neck.

The evidence was the decedent was not married at the time of his death and did not have any surviving children. On the date of accident/death, Ms. Alvarez and the decedent did not live with each other [at the time of the accident the decedent employee was living with his girlfriend]. Born August 14, 1961 in El Salvador, Ms. Alvarez came to the United States in 1995 and has lived here for approximately twenty-three years. She has no formal education and worked in farming in El Salvador. She only speaks Spanish and is illiterate (i.e., she is unable to read and/or write in Spanish). Ms. Alvarez is currently married but has been separated from her spouse for approximately seven years and receives no support. While she worked in restaurant, hotels and vegetable packing plants, Ms. Alvarez has not been employed since approximately 2002. For approximately fifteen years, Ms. Alvarez has had no income and exclusively relies upon the financial support of her children.

She lives with her son Jose Alvarez along with his wife and their three children. Before the accident, the decedent gave her cash for one half of the rent, \$1400.00 per month (Jose paid the other half) and \$300.00 for expenses in addition to the rent and to help with the other bills. The frequency of when he gave her cash did vary, but it was least once a month or when the bills arrived. Their 'procedure' was for her to tell him when she had a bill and then he would go with her to his bank on Saturdays to give her cash. Her daughter Maria Candelaria would give her \$100.00 to buy other things. The Claimant paid the bills with the cash the decedent gave her as she does not have a bank account. She testified the decedent would still be contributing to her if

he were still alive.

Her current obligations are rent (\$1400.00), water, cable, gas, cell phone and medications. Her son Jose continues to pay \$700.00 of the rent and for now her daughter Maria is picking up the other half of the rent. The Claimant did not know how much longer her daughter can continue to fill the void with contributions as she is married and has her own family. The Claimant can no longer afford to have her hair fixed, go to stores or go out to eat.

In her deposition, the Claimant further elaborated her water bill was \$140-160 and the decedent would give her \$50-60 towards it. [Claimant Ex.3, p. 23] Her power bill would run from \$100-200 per month, and the decedent would help her with half of it. [*Id.* at 22]. The decedent also helped with groceries. [*Id.* at 36].

CONCLUSIONS OF LAW

1. The Court has jurisdiction of the subject matter and the parties of this claim. The stipulations of the parties are adopted and shall become part of the findings of facts herein. The documentary exhibits offered by the parties are admitted into evidence and shall become a part of the record herein.
2. In making the determinations set forth below, I have attempted to distill the salient facts together with the findings and conclusions necessary to resolve this claim. I have not attempted to painstakingly summarize the substance of the parties' arguments, nor the support given to my conclusions by the various documents submitted and accepted into evidence; nor have I attempted to state nonessential facts. Because I have not done so does not mean that I have failed to consider all of the evidence. In making my findings of fact and conclusions of law in this

claim, I have carefully considered and weighed all evidence submitted to me.

3. I have observed the candor and demeanor of the witnesses and have resolved all of the conflicts in the testimony and evidence presented to me. I have considered arguments of counsel for the respective parties, and analyzed statutory and decisional law of Florida. Based upon the foregoing, the evidence and the applicable law, I make the following findings of fact and conclusion of law:

4. The Claimant filed a claim seeking parental dependency benefits, penalties, costs, and attorney fees. The burden is on the dependent parent to show that she was dependent on the deceased for support. Section 440.16, Florida Statutes states, in pertinent part, that if the death results from the accident within 1 year thereafter, the employer shall pay, to the parents, 25% to each, such compensation to be paid during the continuance of dependency.

I find that the Claimant has met her burden with competent, substantial evidence.

5. There are six (6) essential elements a Claimant must demonstrate to establish compensability under the Florida Workers' Compensation Act pursuant to *MacDon Lumber Co. v. Stevenson*, 117 So.2d 487 (Fla. 1961):

A. That the Claimant is an actual dependent based upon physical or mental incapacity, or lack of means;

B. That the dependency existed at the time of the death of the employee;

C. That the deceased employee must have made substantial contributions towards the support of the Claimant;

D. That such contribution must have been regularly made with reasonable expectation that they would continue into the future;

E. (NOT APPLICABLE TO THE INSTANT CASE) If the contributions are made by a child to parent with whom the child is living and from whom the child is receiving board, proof that the contributions paid towards the parent exceed, in substantial amount, the reasonable value of the board, lodging or other accommodations received by the child; and

F. The extent to which the contributions of the deceased employee enable the dependent to maintain his or her accustomed standard of living.

6. Although at times she had trouble grasping the meaning of words used and concepts and in articulating answers, I find the Claimant Transito Alvarez to be a very credible witness and as such, I accept her uncontradicted testimony.

7. Accordingly, I find there was competent, substantial evidence that the Claimant was an actual dependent of the decedent employee based on lack of means. At the time of his death the Claimant had no source of income and continues to have no source of income. Her dependency existed at the time of the death of the employee.

Moreover, I find the deceased employee made substantial contributions towards the support of the Claimant. Not only did he pay half of her rent but also at least one-half of her other bills as well as giving her money for non-essentials. These contributions were regularly made with the reasonable expectation that they would continue into the future. While the contributions may have been in cash, it was how this son and mother, as well as her other children, chose to deal with each other and in paying bills.

Furthermore, the contributions of the decedent enabled his mother to maintain her accustomed standard of living, such as having her bills paid so that she would have a roof over her head, power and water. In addition the decedent's contributions enabled his mother to have

what for her were the niceties of life, such as having her hair fixed or going out to eat. There was no evidence presented that the Claimant received anything, such as insurance proceeds as a result of her son's death, or had accumulated any surplus funds or property.

WHEREFORE, it is ORDERED AND ADJUDGED:

1. The claim for payment of death benefits to Decedent's mother, Transito Alvarez, in the amount of 25% of the Decedent's TTD rate per Fla. Stat. 440.16 from October 9, 2017 to present and continuing is **GRANTED**.
2. The Claimant's claim for penalties, interests, attorney's fees and costs is **GRANTED**.
3. Jurisdiction is reserved to determine the amount of attorney's fees and costs if the parties are unable to agree.

DONE AND SERVED this 1st day of May, 2018, in West Palm Beach, Palm Beach County, Florida.



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