

South Carolina Workers' Compensation Commission
 1333 Main Street, Suite 500
 P.O. BOX 1715
 Columbia, SC 29202-1715
 (803) 737-5723



WCC File #: 1318602
 Carrier File #: 002754-031923-WC-01
 Carrier Code #: _____
 Employer FEIN #: _____

Claimant's Name: Dorothy Miller Employer's Name: Husqvarna
 Address: 105 Gizmo Road Address: P.O. Box 1687
 City: Orangeburg State: SC Zip: 29115 City: Orangeburg State: SC Zip: 29116
 Home Phone: 803-937-0720 Work Phone: () - Insurance Carrier: Ace American Insurance Company
 Preparer's Name: Shelby G. Hapeshis Law Firm: Hapeshis Law, LLC Preparer's Phone #: 803.233.2102

Compensation Paid:	Number of Weeks	From (m/d/yyyy)	To (m/d/yyyy)	Amount
1. Number of Weeks T.T.	<u>96 1/7</u>	<u>05/21/14</u>	<u>03/23/16</u>	\$ <u>\$23,452.56</u>
2. Number of Weeks T.P.	_____	_____	_____	\$ _____
3. Number of Weeks P.P.	_____	_____	_____	\$ _____
4. Disfigurement	_____	_____	_____	\$ _____
5. Agreement and Final Release	_____	_____	_____	\$ <u>86,400.00</u>
Total Compensation Paid				\$ <u>136,386.00</u>
6. Total Medical Benefits* Paid	_____	_____	_____	\$ <u>91,644.78 **</u>
7. Funeral Benefits	_____	_____	_____	\$ _____

**includes MSA of \$49,986.00

Case Denied

Date of Injury: 10/8/13
(m/d/yyyy)

By signing this receipt, I acknowledge that I have received the compensation shown above.

By: *Dorothy Miller*
Dorothy Miller, Claimant

By: *Shelby G. Hapeshis*
Shelby G. Hapeshis, Esquire, Employer's Representative

3/12/18
Date (m/d/yyyy)

Print or type the name of the person, other than the claimant, receiving benefits and sign below.

By: _____

Report of Additional Fees and Recoupment

A. Carrier Reimbursement by Third Party	_____	\$ _____
B. Attorney's Fee Paid by Employer	_____	\$ _____
C. Attorney's Fee Paid by Claimant Claims (Non-Contingent Fees only) Comp. Comm.	_____	\$ _____

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MAR 23 2018

SC Court of Appeals

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MAR 14 2018

File this form with the Claims Department according to R.67-414 and R.67-1204. A person, other than the claimant, receiving benefits should sign on the line provided. * Do not include as medical costs fees paid for expert testimony, fees for determining carrier's liability, costs of autopsy, birth and death certificates and impartial examination. Form 19 must be filed within 16 days of final payment of compensation. Form 19 must be filed when a claim is denied.

BEFORE THE

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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION MAR 28 2010

Dorothy Miller,)
)
 Employee/Claimant,)
)
 -vs-)
)
 Husqvarna,)
)
 Employer,)
)
 and)
)
 Ace American Insurance Company,)
)
 Carrier,)
)
 Defendants.)

W.C.C. FILE NO. 1318602 SC Court of Appeals

SETTLEMENT AGREEMENT AND RELEASE

2010 MAR 14 11:41 AM
 SETTLEMENT
 DIVISION OF CLAIMS
 SCWCC

The Claimant, Dorothy Miller, while in the course of employment of Husqvarna sustained bodily injuries to her right wrist and right and left shoulders in an accident (repetitive trauma) arising out of and in the course of her employment on or about October 8, 2013, in the County of Orangeburg, State of South Carolina.

At the time of the accident aforementioned, the Claimant and the Employer were subject to the Workers' Compensation Law of South Carolina (hereinafter called "Act") and the Carrier was the Employer's insurer under said Act.

Following said accident, the Defendants paid temporary disability benefits in the amount of \$23,452.56 and medical benefits in the amount of \$41,658.78 Dollars. *In addition, Defendants agree to fully fund a self-administered Medicare Set-aside Account in the amount of \$49,986.00.*

The employee is represented by Chip Alexander, Esquire, Esquire of Shelly Leeke Law Firm, LLC in North Charleston, South Carolina. The employer and carrier are represented by Shelby G. Hapeshis, Esquire of Hapeshis Law, LLC in Irmo, South Carolina. Disputes exist

between the parties as to: Extent of injuries; Whether or not employee has reached maximum medical improvement; Carrier's entitlement, if any, to credit for overpayment of temporary total; Claimant's entitlement to further medical care; Claimant's entitlement to further payments of temporary disability and the extent of any causally related permanent disability, if any.

The parties hereto now advise that, in view of the aforementioned disputes, an agreement has been reached to settle this matter in its entirety, pursuant to Section 42-9-390.

Under the proposed settlement, the Defendants have agreed to pay, and the Claimant has agreed to accept, the sum of **\$86,400.00 (Eight Six Thousand Four Hundred Dollars and 00/100)** in full settlement and satisfaction of every liability under the Act growing out of or in any way connected with any injury and/or accident occurring on or about October 8, 2013; further, claimant states there are no other workers' compensation claims, reported or unreported, at any other time prior to this agreement.

The Carrier agrees to fully fund a self-administered Medicare Set-aside Account in the amount of \$49,986.00 (*Exhibit A*) to be used solely for legitimate medical expenses related to or resulting from the work-related injury described herein, which would otherwise be reimbursable or paid for by Medicare. The claimant understands and acknowledges the terms and conditions for a self-administered Medicare Set Aside Account as outlined and attached in *Exhibit B*.

As an integral part of this settlement agreement, it is expressly understood and agreed that the Defendants have paid all medical expenses for which they are liable and that the Claimant is responsible for any and all other medical expenses of whatsoever nature and the Defendants shall have no liability therefor.

The Claimant hereby asserts that she has been fully advised of all her rights under the South Carolina Workers' Compensation Act, and is of the opinion that the proposed settlement is reasonable and fair and in this opinion, the Claimant's attorney concurs. The Claimant hereby

asserts that she recognizes that her consent to, and the approval of, this settlement is a final determination and adjudication of all benefits under the South Carolina Workers' Compensation Act, growing out of, or in any way connected with, any known injury and/or accident occurring on or about October 8, 2013.

NOW, THEREFORE, in consideration of the payment to the Claimant of the sum of **\$86,400.00 (Eight Six Thousand Four Hundred Dollars and 00/100)**, and in further consideration of the mutual covenants, stipulations, and releases herein contained, the Claimant hereby releases and discharges Husqvarna and Ace American Insurance Company, and binds Claimant's heirs, executors, administrators, dependents, next of kin, privies, and assigns under the Act and agrees to release, discharge, defend, and indemnify Husqvarna and Ace American Insurance Company and their respective agents, servants, insurers, physicians, privies, and their successors, from any and all debts, claims, demands, causes of action, rights of action, and liabilities whatsoever of any known injury and/or accident on or about October 8, 2013 including, but not limited to, any right which the Claimant might otherwise have to demand benefits for disability, disfigurement, bodily impairment, medical treatment, medicine or drugs, prosthetic devices, lost time or death, under the Act or otherwise and specifically including any right which Claimant might otherwise have to demand further benefits by way of compensation or medical care under the Act because of a change in condition hereinafter (which is expressly waived, released and renounced) whether or not arising out of, or directly or indirectly in any way conceivably attributable to any known injury and/or accident occurring on or about October 8, 2013, further, claimant states there are no other workers' compensation claims, reported or unreported, at any other time prior to this agreement.

The Claimant's net proceeds of \$57,162.25 from the foregoing lump sum settlement, (\$86,400.00 less attorneys' fees of \$27,563.94, less costs of \$464.09, less lien to prior attorney of

\$1,209.72, equaling \$57,162.25 net proceeds to Claimant) shall be prorated based on the Claimant's current age of sixty (60). S.C. Code Ann. § 19-1-150 (1976, as amended), yields a life expectancy of 24.08 years (1,252.16 weeks). Therefore, the Claimant's net proceeds of \$57,162.25 shall be prorated at the rate of \$45.65 per week. *James v. Anne's Inc.*, 386 S.C. 326, 688 S.E.2d 562 (2010), rev'd on reh'g, 390 S.C. 188, 701 S.E.2d 730 (2010); *Social Security Program Operations Manual System* DI 52001.555(4) (f/k/a *Utica-Mohawk Mills v. Orr*, 227 S.C. 226, 87 S.E.2d 589 (1955); as well as the provisions of the South Carolina Workers' Compensation Act, as interpreted by the Courts of the State of South Carolina.

It is expressly understood that the defendant takes no position and makes no representation as to the requested allocation of the proposed settlement sum as set forth hereinabove and that the proposed allocation in no way affects the absolute release of the defendant.

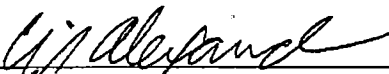
This Agreement shall not be subject to review, modification, or amendment by the Commission or the Courts of this State and is res judicata.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as

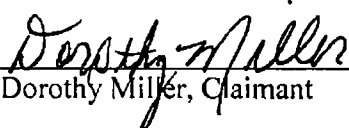
of March 6, 2018.

WITNESSED AND APPROVED:

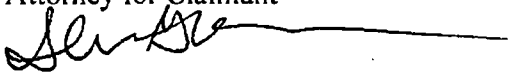
In the presence of:



Chip Alexander, Esquire, Esquire
Attorney for Claimant



Dorothy Miller, Claimant



Shelby G. Hapeshis, Esquire
Attorney for Employer/Carrier

Date: 3/12/18
Columbia, South Carolina



MEDICARE SET-ASIDE ALLOCATION FOR

Claimant:	Dorothy Miller	Date of Injury:	10/02/2013
Date of Birth/Age:	08/22/1957 (Age: 60)	Claim No.:	002754-031923-WC-01
Jurisdiction	South Carolina	Employer:	Husqvarna
SSN:	XXXX-XX-6065	Referring Party:	Gallagher Bassett - Charlotte, NC
Gender:	Female	Adjuster:	Hansel Lawton
Median Rated Age:	63 provided by KP Underwriting	Life Expectancy:	21
Entitlements:	Receiving Medicare	Funding:	TBD
Medical (Medicare Parts A & B):	\$35,320.00	Initial Deposit*:	\$4,760.61
Rx (Medicare Part D):	\$14,666.00	Annual Deposit:	\$2,261.29
Total MSA:	\$49,986.00	Calculation Method:	Medical: WC fee schedule Rx: Red Book

Please note the seed money/initial deposit represents two years of medical treatment.

Claim Summary

Medical Records and Payment Screens Received/Reviewed

Record Description	Date(s)
payment history	10/1/2017
prescriptions	4/1/2016
Carolina Shoulder & Knee Specialists	11/11/15-3/9/2016
Dr. Hampton	2/23/2016
Lexington Medical Center	12/8/2015
Dr. Buckaloo	9/22/2015

ICD codes for Occupationally Related Conditions

Code	Description
729.5	right wrist hand pain
354.3	radial tunnel syndrome
354	right carpal tunnel syndrome
354.2	ulnar neuropathy
354.2	right cubital tunnel syndrome
727.04	right DeQuervain's
727.61	right shoulder tear
726.2	left shoulder impingement

This file was referred to Optum for the purpose of completing a Medicare Set-Aside evaluation in furtherance of settlement negotiations. This evaluation is based solely upon the medical records and other information as provided by the referring party. Proposal identifies only Medicare's potential exposure in this workers' compensation settlement and is not intended to be used as a life care plan. Medicare covered services were identified in accordance with published CMS manuals and policies in effect at the time of review. Claim-related medical treatments and services paid from this MSA are not subject to Medicare Part A, B and/or D co-pays and deductibles. Optum Proprietary & Confidential Information © 2017 Optum All Rights Reserved.



Denied Body Parts and/or Other Non-Related Conditions

Description
asthma
acid reflux
obesity
hernia repair
malignant neoplastic disease
left carpal tunnel syndrome

Accident Description – Initial Injury and Treatment

Ms. Miller is a 60 year old individual who, on 10/2/13 strained her right wrist tightening a bolt and she also suffered bilateral shoulders, right elbow and left wrist injuries. She underwent diagnostic testing and follow-up visits for right hand and wrist pain. She later was diagnosed with De-Quervain's disease and carpal tunnel syndrome. Physical therapy was prescribed and in 5/2014, she underwent a right carpal tunnel and DeQuervain's tendon sheath release. Follow-ups, physical therapy and medication management followed surgery. Wrist pain continued to be noted after surgery. Ulnar neuropathy, cubital tunnel syndrome, thumb pain and parasthesias were added diagnoses.

In 1/2015, she underwent a right cubital tunnel release. She also continued with DeQuervain's disease, ulnar neuropathy, cubital tunnel syndrome, radial tunnel syndrome, thumb pain and parasthesias and carpal tunnel syndrome. She underwent steroid injections. Up through late 2015, she continued with right carpal tunnel syndrome, right rotator cuff tear and thumb pain. She was at MMI, as of 7/2015. By 9/2015, Additional bilateral shoulder diagnostic testing and injections were completed. Up through late 2015, she was noted having a complete right shoulder tear. In 12/2015, she underwent a right shoulder decompression.

In 2016, physical therapy and orthopedic follow-ups continued after surgery. She also continued with a complete right shoulder tear post surgery, bilateral carpal tunnel syndrome (the left carpal tunnel appeared to be non-related and/or denied under this claim) and left shoulder impingement. Medications also continued to be used. She underwent right wrist injections, in 2016.

Summary of Current Medical and Prescription Treatment

The current medical treatment status was unknown. As of 3/2016, she continued with left shoulder impingement syndrome and a right shoulder complete tear. Lidocaine injections continued to be completed.

As of 4/2016, she continued using industrial Nabumetone.

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Medicare Set-Aside Allocation

Future Medicare-Covered Expenses:

Item/Service	CPT Code	Frequency (over L/E)	Unit Cost	Lifetime Cost
Orthopedic Specialist/PCP	99213	12 x a year	\$97.00	\$24,444.00
Cortisone Injections	ALL INCLUSIVE	11 over LE	\$87.47	\$962.17
Physical Therapy	97530	24 over LE	\$130.50	\$3,132.00
Left Shoulder MRI Scan w/out contrast	73221	Every 5 years	\$317.99	\$1,271.96
Right Shoulder MRI Scan w/out contrast	73221	Every 5 years	\$317.99	\$1,271.96
Right Elbow MRI Scan w/ & w/out contrast	73223	Every 5 years	\$612.50	\$2,450.00
Left Shoulder X-rays	73030	Every 3 years	\$38.00	\$266.00
Right Shoulder X-rays	73030	Every 3 years	\$38.00	\$266.00
Right Elbow X-rays	73070	Every 3 years	\$35.50	\$248.50
Right Wrist X-rays	73110	Every 3 years	\$46.00	\$322.00
Labs	85025, 80053 & 36415	Annual	\$32.64	\$685.44
Total Medical Allocation				\$35,320.00

Future Medicare-Covered Prescription Expenses:

Drug Name	Dosage	NDC	Frequency per				Price Per Unit	Lifetime Cost
			Day	Wk	Mo	# Years		
Nabumetone	750 MG	50268-0590-13			60	21	\$0.97	\$14,666.40
Total Prescription Allocation								\$14,666.00

This report has been prepared by our MSP Compliance team.

Respectfully submitted,

Jody Korte, MSCC
 Medicare Set-Aside Specialist

This file was referred to Optum for the purpose of completing a Medicare Set-Aside evaluation in furtherance of settlement negotiations. This evaluation is based solely upon the medical records and other information as provided by the referring party. Proposal identifies only Medicare's potential exposure in this workers' compensation settlement and is not intended to be used as a life care plan. Medicare covered services were identified in accordance with published CMS manuals and policies in effect at the time of review. Claim-related medical treatments and services paid from this MSA are not subject to Medicare Part A, B and/or D co-pays and deductibles. Optum Proprietary & Confidential Information © 2017 Optum All Rights Reserved.

TERMS AND CONDITIONS FOR BENEFICIARY ADMINISTERED
MEDICARE SET-ASIDE ACCOUNT

Medicare Beneficiary: Dorothy Miller
HIC #:
Injury: right wrist, bilateral shoulders
Employer: Husqvarna

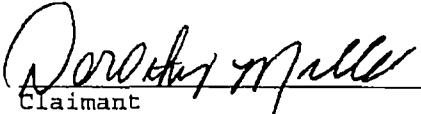
Federal regulations provide that the liability for work-related injury lifetime medical expenses should not be shifted to Medicare from the responsible party. Accordingly, a portion of a Medicare beneficiary's workers' compensation settlement must be set aside to pay for the beneficiary's future work-related injury or illness medical expenses. 42 C.F.R. § 411.46. Federal regulations also provide that Medicare will not pay for any medical expenses for the work-related injury or illness, after a workers' compensation settlement is received, until the amount of the lump sum settlement allocated to future medical expenses is exhausted. *Id.*

Consequently, in order to comply with the applicable federal regulations and to reasonably recognize Medicare's interests, the claimant will use \$ 0 from his/her workers' compensation settlement award to fund a Medicare Set-Aside Account. After adhering to the following terms and conditions in administering the Set-Aside Account, then, when the set-aside funds are depleted and a satisfactory final accounting has been provided to the Centers for Medicare & Medicaid Services, (CMS), Medicare will pay for any Medicare covered medical treatment received as a result of the injury sustained at work. However, failure to adhere to any of the following terms and conditions, CMS may regard such a default as a failure to reasonably recognize Medicare's interests and may deny Medicare coverage for all medical treatments due to his/her work-related injuries. The terms and conditions are as follows.

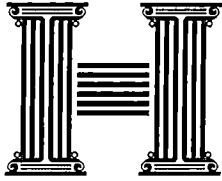
1. Initial Set-Aside Account Funding - The Medicare Set-Aside Account shall initially be funded with \$ 0 from the proceeds of the \$ 86,400.00 settlement award received in your workers' compensation lawsuit. This account shall be a separate account from your personal savings or checking account.
2. Set-Aside Account Interest Income - The Medicare Set-Aside funds shall be placed in an interest bearing account that is insured by the Federal Deposit Insurance Corporation. A copy of the documents establishing the Medicare Set-Aside Account shall be sent to CMS within 30 days of the workers' compensation settlement award being disbursed.
3. Distribution of the Set-Aside Account Funds - The funds in the Medicare Set-Aside Account shall be used solely for legitimate medical expenses incurred for those medical needs related to or resulting from your work-related injury, which would otherwise be reimbursable or paid for by Medicare. Funds in the Medicare Set-Aside Account shall not be used to pay for medical services not covered by Medicare. A copy of the booklet, "Medicare & You," can be obtained from your local Social Security office for a list of services not covered by Medicare. If there are any questions concerning what Medicare covers, please call 1-800-MEDICARE.

4. Set-Aside Account Interest Income - All interest earned on the Medicare Set-Aside Account will be allowed to accrue in the account and will be used solely for medical expenses, that would otherwise be covered by Medicare.
5. Reimbursement to Medicare - In the event CMS determines that Medicare has paid benefits prior to the depletion of funds in the Medicare Set-Aside Account that should have been paid from the set-aside account, CMS, or its designated fiscal intermediary or carrier, shall have the right to seek and receive reimbursement of any such conditional payments or overpayments from the Medicare Set-Aside Account to the extent that there are funds remaining in the account at that time.
6. Accounting Records - The claimant shall maintain accurate records of the distributions and expenditures from the Medicare Set-Aside Account. Your records should indicate the date of service, the diagnosis, the service received, who received payment and the date of the payment. You shall also retain a receipt or other evidence of each and every payment made from the Medicare Set-Aside Account.
7. Annual & Final Accountings - The claimant will submit an annual accounting to CMS' Medicare contractor for each calendar year no later than March 1 of the following year. You shall notify CMS' Medicare contractor once the Set-Aside Account is depleted and shall submit a final accounting within 60 days of the funds being depleted. The annual and final accounting will include the information set forth in paragraph six and a copy of the receipt or other evidence of every payment made from the Medicare Set-Aside Account.
8. Delivery of Notices & Accountings - Upon approval of the WCMSA allocation, CMS will issue instructions entitled, Administering Your Workers' Compensation Medicare Set-aside Arrangement (WCMSA), along with a self-attestation letter. Annual self-attestation should continue through depletion of the account. It is important that the administrator understands and complies with these instructions. The self-attestation letter must be signed and forwarded to CMS' Medicare contractor (listed on the approval letter from CMS) no later than 30 days after the end of each year (beginning with one year from establishment of the WCMSA account).
9. Distributions Following Death of Beneficiary - In the event that the claimant dies before the funds in the Medicare Set-Aside Account are depleted, the account will continue to exist for 180 days from the date of death to enable any outstanding bills for work-related injury medical expenses that would otherwise be covered by Medicare to be paid. After the 180 days has elapsed, any funds remaining in the Medicare Set-Aside Account shall be paid to the claimant's estate or subject to the State Law.
10. Misappropriated Set-Aside Account Funds - If, after the Medicare Set-Aside Account is depleted, the final accounting reveals that funds in the account were used to pay for items other than legitimate medical expenses for medical needs related to or resulting from the work-related injury, which would otherwise be covered by Medicare, CMS will withhold Medicare coverage for work-related injury medical expenses in an amount equal to the misappropriated funds.

I, Dorothy Miller, have read and understood the above-listed terms and conditions. I agree to abide by these terms and conditions in order to protect my ability to obtain Medicare coverage for my work-related injury medical expenses once the Medicare Set-Aside Account is depleted. I understand that if I fail to abide by the above-listed terms and conditions, I may not be eligible for Medicare coverage for my work-related injury medical expenses.


Claimant

3-6-18
Date



HAPESHIS LAW, LLC

Shelby G. Hapeshis
Shelby@hapeshislaw.com

March 20, 2018

RECEIVED
MAR 23 2018
SC Court of Appeals

(U.S. MAIL)
Jenny Kitchings
Clerk of Court
SC Court of Appeals
Post Office Box 11629
Columbia, S.C. 29211

Re: **Claim Settled**
Dorothy Miller, Employee, Respondent v. Husqvarna, Employer
and Ace American Insurance Company, Appellants.
Appellate Case No. 2017-001246

Dear Ms. Kitchings:

Please be advised that the parties reached an agreement to resolve all issues related to the above matter. As a result, the Petitioners, Husqvarna and Ace American Insurance Company are withdrawing their Petition and request the proceeding be dismissed. Enclosed are copies of the settlement documents.

Sincerely,


Shelby G. Hapeshis

SGH/caw
Cc: Chip Alexander, Esquire
S.C. Workers' Compensation Commission

1900.0490

Hapeshis Law, LLC
PO Box 4247
Irmo, South Carolina 29063

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