In the
Supreme Court of Ohio

LAMAR THOMAS,	:	Case No. 2022-0787
	:	
Appellee,	:	On appeal from the Franklin County
	:	Court of Appeals,
v.	:	Tenth Appellate District
	:	
JOHN LOGUE [STEPHANIE MCCLOUD], ADMINISTRATOR, OHIO BUREAU OF WORKERS' COMPENSATION,	:	Court of Appeals
	:	Case No. 21AP-385
	:	
	:	
Appellant.		

MERIT BRIEF OF APPELLANT JOHN LOGUE [STEPHANIE McCLOUD], ADMINISTRATOR, OHIO BUREAU OF WORKERS' COMPENSATION

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INTRODUCTION

For much of Ohio's history, workers had little recourse for work-related injuries. Under the common law, injured workers who sought to recover from their employers faced time-consuming and costly litigation. And, because the common law recognized several defenses that protected employers from liability, workers willing to endure litigation rarely recovered damages.

Today, Ohio workers fare much better. Workers' compensation laws require employers to pay into a state insurance fund. The Bureau of Workers' Compensation then uses that fund to pay injured workers for lost compensation and medical care, regardless of the employer's level of fault for the injury. This approach gives workers far more assurance that they will recover for their injuries. And it frequently allows workers to skip adversarial proceedings altogether.

Though this regime benefits Ohio workers, the ease of recovering workers' compensation comes with some tradeoffs. Relevant here, when the Bureau pays an injured worker out of the state insurance fund, it gains a statutory right to recovery—a right the Revised Code calls "subrogation." *See* R.C. 4123.93; R.C. 4123.931. Specifically, if a worker who received state funds goes on to recover money from a third party, subrogation entitles the Bureau to a share of the worker's recovery from the third party. The Bureau puts its share of the recovery back into the state insurance fund, which pays for the claims of other injured workers. R.C. 4123.931(K). Under a statutory formula, the

Bureau's "subrogation interest" factors into its share of the recovery. R.C. 4123.931(B), (D). The Bureau's subrogation interest includes *both* "payments of compensation, medical benefits, rehabilitation costs, or death benefits" *and* "any other costs or expenses paid to or on behalf of the claimant." R.C. 4123.93(D).

In processing workers' claims, the Bureau often pays for medical reviews and exams to develop a claimant's record. The question presented in this case is whether the Bureau may recover a share of these medical-review costs, through subrogation, on the ground that they are costs paid "on behalf of the claimant." The answer is yes. Before receiving payments out of the state insurance fund, claimants must establish their entitlement to benefits. Ohio Admin. Code 4123-3-09(C)(3); *accord* R.C. 4123.05. When claimants fail to establish entitlement to benefits based on their initial applications, the Bureau assumes responsibility for completing the record. Ohio Admin. Code 4123-3-09(B)(1). This record building—though not promising a favorable outcome—increases the odds that a claimant's initially unavailing application will prove successful in the end. Thus, accounting for both the claimant's legal burden and the different stages of the claims process, costs the Bureau pays to build the record are costs the Bureau pays "on behalf of the claimant." R.C. 4123.93(D). It follows that the Bureau may include such costs within its subrogation interest.

In holding otherwise, the Tenth District committed two significant errors. *First*, it took a stilted view of the Bureau's role during the claims process, which led to an

overly narrow view of the Bureau's subrogation rights. *Second*, the Tenth District greatly overstated the scope of the Bureau's "administrative costs"—costs the Bureau must pay independent of the state insurance fund. *See* R.C. 4123.341. This second error has implications that stretch far beyond subrogation, as the Bureau often uses state-insurance funds to pay for the "examinations, recommendations and determinations" that occur during the workers' compensation process. R.C. 4123.30; *accord Northwestern Ohio Bldg. & Constr. Trades Council v. Conrad*, 92 Ohio St. 3d 282, 283, 290 (2001).

STATEMENT OF THE FACTS AND CASE

As just mentioned, this case asks whether the Bureau pays the costs of certain medical reviews "on behalf of the claimant" during the workers' compensation process. *See* R.C. 4123.93(D). At first blush, that question might seem narrow. But the Court will reach the best answer—an answer that will likely affect many other situations in which the Bureau incurs costs—only if it appreciates the history of Ohio's workers' compensation system and the manner in which that system currently works. The Bureau will start with background on those general topics and then turn to the specifics of this case.

1. Before Ohio adopted a system of workers' compensation, injured workers could recover damages only at common law, which required them to prove that their employers were at fault for their injuries. Philip Fulton, *Ohio Workers' Compensation Law* §1.2 (Lexis 2022). That was no mean feat, as the common law recognized various defenses that usually protected employers from liability. *See id.* at §§2.3–2.5. For example,

employers could avoid liability by arguing that employees contributed to their own injuries or assumed the risks of dangerous employment. *Id.* at §§2.3, 2.5. Injured workers thus fared poorly under the common law. They had to endure costly and time-consuming litigation to have a chance at recovery. *See Goodman v. Beall*, 130 Ohio St. 427, 429 (1936). And, given the "ready availability" of favorable defenses for employers, "recourse to the common law system rarely resulted in a recovery for the injured worker." Fulton, *Ohio Workers' Compensation Law* §1.2 (citing Report of Ohio Employer's Liability Commission, pt. 1, XXV through XLIV (1911)).

Eventually, "public sentiment" demanded a change to these harsh realities. *Industrial Comm'n of Ohio v. Weigandt*, 102 Ohio St. 1, 4–5 (1921). More and more Ohioans came to believe that workers "should receive compensation for injuries received in the course of their employment," and that the cost of work-related injuries "should be regarded as" a cost of employers' doing business. *Id.* Driven by these sentiments, the General Assembly enacted Ohio's first workers' compensation law in 1911, which established a voluntary workers' compensation system and created a state insurance fund for the benefit of injured workers. 102 Ohio Laws 524 (1911); *see also State ex rel. Yaple v. Creamer*, 85 Ohio St. 349 (1912).

A year later, in the Constitutional Convention of 1912, Ohio amended its constitution to specifically embrace workers' compensation. At the convention, proponents of workers' compensation argued that a constitutional amendment was needed to avoid

any return to "the old, worn-out methods of compelling the worker to sue for damages"—methods that made it impossible for injured workers and their families "to secure justice or adequate compensation for the loss of life and limb." 2 Proceedings and Debates of the Constitutional Convention of the State of Ohio 1346 (1912). These arguments received little pushback; convention participants unanimously adopted a proposed amendment on workers' compensation, and Ohio electors accepted that proposal by a wide margin. Fulton, *Ohio Workers' Compensation Law* §2.11. The resulting constitutional provision (as slightly revised in 1923) says:

> For the purpose of providing compensation to workmen and their dependents, for death, injuries or occupational disease, occasioned in the course of such workmen's employment, laws may be passed establishing a state fund to be created by compulsory contribution thereto by employers, and administered by the state, determining the terms and conditions upon which payment shall be made therefrom. Such compensation shall be in lieu of all other rights to compensation, or damages, for such death, injuries, or occupational disease, and any employer who pays the premium or compensation provided by law, passed in accordance herewith, shall not be liable to respond in damages at common law or by statute for such death, injuries or occupational disease.

Ohio Const., Article II, Section 35.

The General Assembly heeded the will of the People, enacting a compulsory workers' compensation system in 1913. 103 Ohio Laws 72 (1913). This system relieved workers of the obligation to prove liability, replacing the common-law approach with a new system under which workers could recover for work-related injuries *without regard*

to their employers' fault. *See State ex rel. Crawford v. Industrial Comm'n of Ohio*, 110 Ohio St. 271, 275 (1924).

In sum, about a century ago, Ohio replaced the common-law approach to workplace injuries with a statutory approach. The resulting system reflects a "social bargain." *Holeton v. Crouse Cartage Co.*, 92 Ohio St. 3d 115, 119 (2001). "The pole star of" that bargain "is the welfare of" workers. *State ex rel. Williams v. Industrial Comm'n*, 116 Ohio St. 45, 52 (1927). Under Ohio's workers' compensation statutes, "employers and employees exchange their respective common-law rights and duties for a more certain and uniform set of statutory benefits and obligations." *Holeton*, 92 Ohio St. 3d at 119. With few exceptions, employers contribute to the state insurance fund in exchange for protection from lawsuits and liability. *See* R.C. 4123.35(A); R.C. 4123.38; R.C. 4123.74. Workers, for their part, trade the prospect of full damages under the common law—a prospect that had proved illusory for nearly all injured workers—for the "greater assurance of recovery" under statutory law. *Holeton*, 92 Ohio St. 3d at 119. All in all, this is a very good trade for Ohio workers.

2. Today, Ohio's workers' compensation system is one of the largest state-operated insurance systems in the country. Ohio Bureau of Workers' Comp., Fiscal Year 2021 Annual Report at 1, https://perma.cc/4UX9-LHVR ("Annual Report"). It holds more than $24 billion in assets. *Id.* And it processes tens of thousands of claims from Ohio workers each year. *See id.* at 2, 11.

Two agencies—the Ohio Industrial Commission and the Ohio Bureau of Workers' Compensation—share responsibility for running Ohio's workers' compensation system. The Commission resolves disputed claims. *See, e.g.*, R.C. 4121.03, 4121.34. The Bureau, which is more relevant to this case, is responsible for performing the many other tasks needed to facilitate workers' compensation in Ohio. *See* R.C. 4121.121. And it plays several different roles (sometimes simultaneously) during the workers' compensation process.

Begin with the Bureau's disbursement of state-insurance funds. Again, Ohio law requires that most employers contribute to a state insurance fund. *See* R.C. 4123.35(A); R.C. 4123.38. The Bureau uses that fund to pay workers for costs associated with work-related injuries. Payments from the state insurance fund can take many forms, covering different costs that injured workers would otherwise bear. To be more precise, the Bureau may use the fund to pay for an injured worker's "compensation, medical services, examinations, recommendations and determinations, nursing and hospital services, medicine, rehabilitation, death benefits, funeral expenses, and like benefits for loss sustained on account of injury, disease, or death." R.C. 4123.30. Thus, in addition to paying for direct medical benefits and treatments—things like "medical services," "hospital services," and "medicine"—the Bureau may also use state-insurance funds to pay for the "examinations, recommendations and determinations" needed to assess a workers' condition during the workers' compensation process. *Id.* At the same time, the Bureau

cannot use state-insurance funds for any "other purpose" besides the purposes that the relevant statute expressly authorizes. R.C. 4123.30.

The Bureau, of course, does not pay state-insurance funds to just anyone. Rather, the Revised Code anticipates that injured workers will apply for, and establish their right to, workers' compensation benefits through some form of proof. *See* R.C. 4123.05. Even so, Ohio's "workers' compensation system is designed to avoid the adversarial character of the civil justice system, allowing workers to recover for injuries they suffer on the job without having to undertake the risk and expense of a civil trial." *State ex rel. Ohio AFL-CIO v. Ohio Bureau of Workers' Comp.*, 97 Ohio St. 3d 504, 2002-Ohio-6717 ¶49. The General Assembly has given the Bureau discretion to adopt regulations governing the nature of the application process. R.C. 4123.05; *see also* R.C. 4123.32; R.C. 4121.121(B)(1), (12). Statutory law also tasks the Bureau with determining the "most appropriate" way of investigating and ascertaining the facts surrounding a worker's claim. R.C. 4123.511(A).

To fulfill these assignments, the Bureau has promulgated regulations governing the process by which injured workers seek compensation. Ohio Admin. Code 4123-3. Under those regulations, workers must apply to the Bureau for payment from the state insurance fund or otherwise indicate that they wish to pursue a claim. *See* Ohio Admin. Code 4123-3-08(A)(1). A worker applying for benefits—the "claimant," in regulatory speak—has the burden of establishing the elements of a workers' compensation claim,

including that the "alleged injury or occupational disease was sustained or contracted in the course of and arising out of employment." Ohio Admin. Code 4123-3-09(C)(3); *accord* R.C. 4123.01(C).

Many claims go undisputed. That is largely because of the way in which the Bureau has structured the claims process. Before disputing any claim, the Bureau goes through an "[i]nitial review" stage, which is non-adversarial in nature. Ohio Admin. Code 4123-3-09(B). This non-adversarial review often resolves the matter: if the claimant's application satisfies legal requirements, the Bureau may approve requests—including requests for compensation or medical services—without further proceedings. *Id.* What is more, the Bureau does not dispute a claimant's request simply because it is unsatisfied with the claimant's initial showing. Instead, the Bureau assists in developing the record: the Bureau must, when processing a claim, make "every effort … to complete the record" *before* it decides to dispute a claim. Ohio Admin. Code 4123-3-09(B)(1). For example, the Bureau often fills holes in a claimant's application by ordering a medical exam or a review of the claimant's medical records. Ohio Admin. Code 4123-3-09(C)(4). The Bureau pays for the cost of this record development out of the state insurance fund, which, again, includes funding for "examinations, recommendations and determinations," in addition to direct medical benefits and treatment. R.C. 4123.30. The Bureau likewise covers the costs of travel, lodging, and meals for claimants who must travel for exams. R.C. 4123.53(A); Ohio Admin. Code 4123-6-40.

If, *after* completing the record, the Bureau is unconvinced by a claimant's request, then the claim becomes disputed. Ohio Admin. Code 4123-3-09(B)(1). (A claim may also be disputed if the employer challenges its validity. *Id.*) For disputed claims, a claimant receives a formal hearing before an officer of the Ohio Industrial Commission. *See* Ohio Admin. Code 4123-3-09(B)(2), (D)(2). The Bureau may attend these hearings to represent the interests of the state insurance fund. Ohio Admin. Code 4123-3-09(D)(3). Claimants may file administrative appeals challenging any adverse decision of a hearing officer. R.C. 4123.511(B)–(C); Ohio Admin. Code 4123-3-18(A). And if a claimant disagrees with the ultimate decision of the Commission, the claimant may challenge the decision in court. R.C. 4123.512; Ohio Admin. Code 4123-3-18(B).

Even when the Bureau approves a workers' compensation claim, further proceedings and evaluations are often necessary. For example, after the Bureau approves claims, it relies on managed-care organizations to make medical determinations about the proper way of treating work-related injuries. Ohio Admin. Code 4123-6-04.3(A); *see also Northwestern Ohio Bldg.*, 92 Ohio St. 3d at 283, 290. If workers or employers disagree with a managed-care organization's determinations, the disagreement triggers an alternative dispute resolution process. Ohio Admin. Code 4123-6-16. That process sometimes requires an independent medical examination of the claimant, which the Bureau pays for out of the state insurance fund. *See* Ohio Admin. Code 4123-6-16(E), (I)(2). In a similar vein, the Bureau covers the costs of vocational evaluations when a claimant, af-

ter being approved for workers' compensation, seeks vocational rehabilitation. R.C. 4123.53(A).

Most relevant here, after an injured worker's claim is allowed, the claimant sometimes requests additional conditions, medical benefits, or compensation related to an injury. In general, the Bureau handles these requests in the "usual manner" that it handles all claims for compensation or benefits. Ohio Admin. Code 4123-3-15(A)(6). And the "usual manner" of resolving claims includes the just-discussed process by which the Bureau fills whatever gaps exist in the claimant's record—gaps that, if not filled, will likely result in denial of benefits. *See* Ohio Admin. Code 4123-3-09(B)(1), (C)(4). Simply put, whether facing an initial claim or a request for an additional condition, the Bureau aids claimants by developing evidence that claimants need but have not developed on their own.

3. In addition to making payments out of the state insurance fund, the Bureau has a separate duty to "safeguard and maintain the solvency of the state insurance fund." R.C. 4123.34. It does so by setting premium rates for employers that are "sufficiently large" to ensure that the Bureau can pay for claims out of the state insurance fund. R.C. 4123.29(A). But the Bureau has a simultaneous duty to set the "lowest possible rates" that are consistent with "a solvent state insurance fund." R.C. 4123.34.

Separate from those accounting tasks, Ohio law requires that the "administrative costs" of running Ohio's system "shall be borne" by the State and employers.

R.C. 4123.341. Administrative costs are defined as "those costs and expenses that are incident to the discharge of the duties and performance of the activities of the" Bureau and the Industrial Commission. *Id.* In practice, administrative costs are things like payroll, rent, and other overhead. Unlike other agencies, the Bureau does not receive money for these costs from the State's general revenue fund. The Bureau must instead allocate administrative costs among public and private employers. R.C. 4123.342.

Another, related point proves important later on. Recall that Ohio law forbids the Bureau from using state-insurance funds for "purpose[s]" other than those expressly listed within R.C. 4123.30. The list of authorized uses includes the payment of certain costs associated with individual claims, such as payments for "examinations" of claimants. *Above* at 7. But the list *does not* include the "payment of administrative costs." *Corrugated Container Co. v. Dickerson*, 171 Ohio St. 289, 291 (1960) (*per curiam*). Instead, as just mentioned, the Bureau must cover administrative costs through the separate cost-allocation process outlined in R.C. 4123.341 and R.C. 4123.342. From this statutory scheme, it follows that the Bureau does not use state-insurance funds to pay for "administrative costs," as that term is defined within R.C. 4123.341. In light of this distinction, the Bureau maintains an administrative-cost fund, which ensures that money used to pay administrative costs remains separate from state insurance funds. *See* Annual Report at 56.

A final component of ensuring a solvent workers' compensation system is most directly at issue in this case. When the Bureau approves a claim and pays a claimant out of the state insurance fund, it gains "a right of recovery." R.C. 4123.931(A). Though this is a statutory right—not one of common law or contract—Ohio law calls it "subrogation." R.C. 4123.931(H). The Bureau's subrogation rights vest when a claimant, who previously received compensation or benefits, settles claims with, or wins damages against, a third party. In those scenarios, Ohio law entitles the Bureau to a proportionate share of the claimant's settlement or damages. R.C. 4123.931(B), (D). The Bureau deposits money it receives through subrogation back into the state insurance fund. R.C. 4123.931(K).

(A quick aside on terminology. The Revised Code assigns subrogation rights to the "statutory subrogee," R.C. 4123.931(A), which in most situations is the Administrator of the Bureau, *see* R.C. 4123.93(B). That said, employers that self-insure or that contract for direct payments to employees also possess subrogation rights. For ease of reading, this brief will generally refer to the holder of subrogation rights as "the Bureau" rather than as the "statutory subrogee.")

Ohio statutes announce a formula for calculating the value of the Bureau's subrogation rights. *See Groch v. GMC*, 117 Ohio St. 3d 192, 2008-Ohio-546 ¶¶65–71 (diagramming and applying the formula). The subrogation formula allows a claimant "to keep the benefits received from" the workers' compensation process. *Id.* at ¶76. But the

formula entitles the Bureau to a share of the claimant's recovery from a third party. R.C. 4123.931(B). In calculating the Bureau's share, the formula accounts for: (1) a claimant's "uncompensated damages"; (2) a claimant's "net amount recovered" from the third party; and, (3) the Bureau's "subrogation interest." *Id.* The third component, subrogation interest, is central to the dispute here.

A provision of Ohio law, call it the "Subrogation Definition," describes the scope of the Bureau's "[s]ubrogation interest." R.C. 4123.93(D). It says:

> "Subrogation interest" includes past, present, and estimated future payments of compensation, medical benefits, rehabilitation costs, or death benefits, and any other costs or expenses paid to or on behalf of the claimant by the statutory subrogee pursuant to this chapter or Chapter 4121., 4127., or 4131. of the Revised Code.

Id. Parsing the Subrogation Definition's text, the Bureau's subrogation interests includes *both* certain enumerated payments (such as payments for "medical benefits") *and* "any other costs" the Bureau pays "on behalf of the claimant" as part of Ohio's workers' compensation process. *Id.* This definition is broad, and claimants sometimes "have to reimburse [the Bureau] out of recovered damages that are not duplicative" of the workers' compensation payments they receive. *Groch*, 117 Ohio St. 3d 192 ¶77. But other aspects of the subrogation formula work to prevent "excessive reimbursement" and divide "the burden of … undercompensation" between the claimant and the Bureau. *Id.*, ¶¶78–79. In lieu of Ohio's statutory subrogation formula, a claimant may also negotiate

with the Bureau for a "more fair and reasonable" division of a tort recovery fitting a case's circumstances. R.C. 4123.931(B).

At bottom, given all of its accounting responsibilities, the Bureau must understand how to classify the various costs it incurs. To properly manage Ohio's workers' compensation system, the Bureau needs predictable rules for discerning: (1) which costs the Bureau may pay from the state insurance fund, *see* R.C. 4123.30; (2) which costs are administrative costs that the Bureau *cannot* pay from the state insurance fund, *see* R.C. 4123.341; and (3) which costs the Bureau may recover through subrogation and deposit back into the state insurance fund, *see* R.C. 4123.931(K).

4. At long last, turn to the facts of this case. In 2013, Lamar Thomas worked for a waste-management company in the Cleveland area. Compl. ¶1. (Thomas's case was dismissed on the pleadings, so his allegations are presumed true.) While on the job, he was injured in an automobile accident. *Id.*, ¶27. Thomas sought, and the Bureau paid, workers' compensation benefits for neck and back injuries Thomas sustained in the accident. *Id.*, ¶28. The next year, Thomas amended his claim to request that the Bureau allow for additional conditions. He alleged, with an opinion from his physician, that the automobile accident aggravated preexisting lower-back injuries beyond those for which he was initially compensated. *Id.*, ¶¶29–30.

Upon initial review, the Bureau was "[u]nwilling to grant" Thomas's amended request based on Thomas's submissions. *Id.*, ¶32. But rather than immediately disput-

ing Thomas's request, the Bureau referred the matter to an independent physician, Gerald Yosowitz, M.D., for review of the medical records. *Id.* Dr. Yosowitz opined that Thomas's additional conditions were unrelated to the 2013 automobile accident. *Id.* Based on Dr. Yosowitz's opinion, the Bureau referred the matter to a hearing officer of the Industrial Commission. *Id.*, ¶33. At that point, the Bureau disputed Thomas's request for additional payments. *See id.*, ¶34. The hearing officer denied Thomas's request, and Thomas's administrative appeals likewise failed. *Id.*, ¶¶35–37.

Meanwhile, Thomas brought a separate claim against a third party, alleging that the third party's negligence caused his work-related injuries. *Id.*, ¶¶3, 38. Thomas settled this third-party claim in 2015. *Id.*, ¶40. During that process, the Bureau made a subrogation demand, and it received a part of Thomas's settlement. *Id.*, ¶¶39–44. The Bureau's subrogation interest—a factor in the Bureau's share of the settlement, *see* R.C. 4123.931(B)—included the cost of Dr. Yosowitz's medical review. *Id.*

5. In 2021, Thomas sued the Bureau's Administrator in the Ohio Court of Claims. (He filed an earlier suit in the Cuyahoga Court of Common Pleas. That case was transferred to Franklin County and dismissed without prejudice. *Id.*, ¶¶8–18.) Thomas alleged that the Bureau's subrogation demand should not have included the cost of Dr. Yosowitz's review. *Id.*, ¶43. According to Thomas, that cost was *not* paid "on" his "behalf," R.C. 4123.93(D), and thus did not fall within the Bureau's statutory right to subrogation. *Id.*, ¶¶72–73. Thomas also alleged that the Bureau's practices violated his

equal-protections rights under Article I, Section 2 of the Ohio Constitution. *Id.*, ¶¶83–87.

Thomas sought payment of "all funds withheld" under the Bureau's supposedly unlawful practices. *Id.*, Prayer for Relief. He also sought to represent a class of "tens of thousands of" Ohioans. *Id.*, ¶60. In Thomas's view, he is similarly situated to persons who—after receiving workers' compensation and pursuing third-party claims—have been subject to "subrogation demand[s]" from the Bureau that include "the cost of a record review or other administrative defense costs." *Id.*, ¶58. And "administrative defense costs," Thomas says, include costs "not for the purpose of medical treatment." *Id.*, ¶26.

The Administrator moved for judgment on the pleadings, and the Court of Claims dismissed Thomas's case. *Thomas v. Logue*, No. 2021-00112JD (Ohio Ct. of Claims June 28, 2021). It held that Dr. Yosowitz's medical review of Thomas's records fell within the Bureau's subrogation rights. *Id.* at 7–8. In particular, it concluded that the Bureau paid for the cost of the medical review "on behalf of" Thomas. *Id.* The cost was therefore within the statutory definition of "subrogation interest." *Id.* (citing R.C. 4123.93). In holding as much, the Court of Claims stressed that "on behalf of means in the name of, on the part of, as the agent or representative of." *Id.* at 8 (quotation marks omitted). The Court of Claims also recognized that it lacked jurisdiction to entertain Thomas's constitutional claim. *Id.* at 2 n.1.

6. Thomas appealed. In his sole assignment of error, Thomas argued that the Court of Claims erred in interpreting Ohio's subrogation statutes. *Thomas v. Logue*, 2022-Ohio-1603 ¶7 ("App. Op."). Thomas thus abandoned any pursuit of his constitutional claim during the intermediate appeal.

As for the statutory claim, the Tenth District agreed with Thomas and reversed the Court of Claims. It held that the Bureau had no right to subrogation for the cost of Dr. Yosowitz's medical review, reasoning that the Bureau did not pay the cost "on behalf of" Thomas. App. Op. ¶¶17, 24. The court acknowledged that the phrase "on behalf of" captures actions taken "in the interest of" or "on the part of" an individual. App. Op. ¶16 & n.8 (quotation marks omitted). It further acknowledged, at least in the abstract, that Ohio's "workers' compensation process is designed as a nonadversarial system." App. Op. ¶18. Despite these acknowledgements, the Tenth District characterized the Bureau's "operations in reviewing claims" as solely "in the nature of its ministerial or administrative function." *Id.* That is, the Tenth District believed that the Bureau's only purpose in seeking further information was to facilitate its decision-making process. *See* App. Op. ¶19. The court further implied that, for costs to qualify for subrogation, a claimant must "request or authorize" the costs. App. Op. ¶24.

The Tenth District hewed to its position even after reviewing "other provisions of workers' compensation law." App. Op. ¶25. The Tenth District stressed that, under R.C. 4123.341, the State and employers must bear the administrative costs of Ohio's

workers' compensation system. App. Op. ¶28. The term "administrative costs," according to the Tenth District, captures all costs the Bureau incurs "in the processing of an application for benefits." App. Op. ¶29. In reaching that conclusion, the Tenth District did not engage with the Bureau's ability to pay certain costs—like the costs of "examinations, recommendations and determinations" associated with individual claims—via the state insurance fund. R.C. 4123.30. Thus, it did not distinguish between claims-related costs that the Bureau pays out of the state insurance fund and administrative costs that the Bureau pays through a separate cost-allocation process. *See above* at 12.

7. The Administrator appealed and this Court accepted jurisdiction over this case. *Case Announcements*, 168 Ohio St.3d 1414, 2022-Ohio-3636 (Oct. 19, 2022).

ARGUMENT

Appellant's Proposition of Law:

> *The cost of an independent medical review, which the Bureau pays in order to complete the record, is a cost paid "on behalf of the claimant" and thus subject to subrogation.*

I. The Bureau paid for the cost of a medical review "on behalf of" Thomas.

During its initial review of workers' compensation claims, the Bureau of Workers' Compensation often orders a review of a claimant's medical records in order to fill evidentiary gaps in the claimant's application. Ohio Admin. Code 4123-3-09(B)(1), (C)(4). This case presents the question of whether the Bureau incurs the resulting cost "on behalf of the claimant" for purposes of subrogation. *See* R.C. 4123.93(D). The answer is yes, and the Tenth District erred in holding otherwise.

A. To decide whether the Bureau incurs a cost "on behalf of the claimant," a court must look to the Bureau's motive for incurring the cost.

Ohio's workers' compensation system is a statutory creation, *State ex rel. Boswell v. Industrial Comm'n of Ohio*, 125 Ohio St. 341, 346–47 (1932), which displaced the common-law approach to workplace injuries, *Crawford*, 110 Ohio St. at 274–76. Thus, the Bureau's subrogation rights "arise[] from" statutory law, not from analogy to common-law principles. *Ohio Bureau of Workers' Comp. v. McKinley*, 130 Ohio St. 3d 156, 2011-Ohio-4432 ¶¶26–27. This case, it follows, turns on statutory meaning—specifically, the meaning of the term "subrogation interest."

The "starting point" for the analysis is the statutory text. *Spencer v. Freight Handlers, Inc.*, 131 Ohio St. 3d 316, 2012-Ohio-880 ¶16. Here, the critical text is the Subrogation Definition, R.C. 4123.93(D), which describes "subrogation interest" as follows:

> "Subrogation interest" includes past, present, and estimated future payments of compensation, medical benefits, rehabilitation costs, or death benefits, and any other costs or expenses paid to or on behalf of the claimant by the statutory subrogee pursuant to this chapter or Chapter 4121., 4127., or 4131. of the Revised Code.

Id. Most important are the Subrogation Definition's final words, which say that subrogation interest includes "*any* other costs or expenses paid to *or on behalf of the claimant* by the statutory subrogee pursuant to this chapter." *Id.* (emphasis added).

Two points about this language narrow the textual analysis. *First*, the statutory text allows the Bureau to include "*any* other costs or expenses" within its subrogation interest so long as the Bureau pays those costs or expenses "on behalf of the claimant."

Id. (emphasis added). Given that phrasing, whether a cost qualifies as subrogation interest depends not on the nature of the cost itself ("any" type of cost will do), but instead on the reason why the Bureau incurs the cost: a cost is recoverable if it was "paid … on behalf of the claimant." *Second*, the costs to which the text refers include those costs paid "pursuant to this chapter," meaning Revised Code Chapter 4123. *Id.* As explored in more depth below, one statute within Chapter 4123 authorizes the Bureau to make a variety of payments out of the state insurance fund, including for "examinations, recommendations and determinations" that occur during the workers' compensation process. R.C. 4123.30. Even setting that statute aside, Chapter 4123 requires the Bureau to establish a workers' compensation claims process and to decide how best to ascertain the facts of claims. *See* R.C. 4123.05; R.C. 4123.511(A). As a result, any costs the Bureau pays as part of the claims process undoubtedly qualify as costs paid "pursuant to this chapter." R.C. 4123.93(D).

It follows from these two points that *all* costs the Bureau incurs during the workers' compensation process are relevant to subrogation—*if* the Bureau pays the costs "on behalf of the claimant." The key question is what "on behalf of the claimant" means.

The phrase refers to actions taken in the claimant's interest. When interpreting statutory phrases, this Court generally reads "undefined terms as having their plain and ordinary meaning." *Vossman v. Airnet Sys., Inc.*, 159 Ohio St. 3d 529, 2020-Ohio-872 ¶14. As a matter of ordinary meaning and common usage, "on behalf of" is a broad

phrase. To take an action "on behalf of" another is to take an action "in the name of, on the part of, [or] as the agent or representative of" another. *Behalf*, *Black's Law Dictionary* 189 (11th ed. 2019); *accord Behalf*, *The American Heritage College Dictionary* 123 (3d. ed. 1997); *Behalf*, *Webster's II New College Dictionary* 100 (1995). A formal agency relationship need not exist for one to act "on behalf of" another. *Div. of Labor Stds. v. Friends of the Zoo of Springfield, Mo., Inc.*, 38 S.W.3d 421, 423–24 (Miss. 2001). And the phrase "on behalf of" also commonly describes actions taken "in the interest of" another. *Hamdi v. Napolitano*, 620 F.3d 615, 622 (6th Cir. 2010) (quoting *Merriam-Webster Dictionary* (11th ed. 2005)); *United States v. Romero*, 293 F.3d 1120, 1126 (9th Cir. 2002). Consequently, accounting for standard definitions and common usage, the critical inquiry for deciphering whether the Bureau pays a cost "on behalf of" a claimant is the Bureau's motive for taking the action: if the Bureau acts "in the name of," "on the part of," as a "representative of," or "in the interest of" the claimant, then it acts "on behalf of" the claimant.

Courts, of course, do not determine a phrase's ordinary meaning by "look[ing] at each word in isolation." *Vossman*, 159 Ohio St. 3d 529 ¶14. They instead read a statute's "text as a whole," *Great Lakes Bar Control, Inc.*, 156 Ohio St. 3d 199, 2018-Ohio-5207 ¶11, and strive to give "significance and effect" to "every word, phrase, sentence and part" of a statute, *State v. Pettus*, 163 Ohio St. 3d 55, 2020-Ohio-4836 ¶11 (quotation marks omitted). That way, "[n]o part of the statute" is treated as "meaningless" unless "that is

manifestly required." *State ex rel. Carna v. Teays Valley Local Sch. Dist. Bd. of Educ.*, 131 Ohio St. 3d 478, 2012-Ohio-1484 ¶19 (brackets and quotation marks omitted).

Here, the Subrogation Definition's surrounding text only confirms that actions taken for the purpose of assisting the claimant are actions taken "on behalf of" the claimant. The Subrogation Definition lists payments of "medical benefits" and payments of "any other costs … on behalf of the claimant" as *separate components* of subrogation interest. R.C. 4123.93(D). So, to give effect to all the words of the statutory text, costs paid "on behalf of the claimant" must refer to something other than "medical benefits" paid to the claimant. Otherwise, the Subrogation Definition's "any other costs" language would be meaningless. *See Carna*, 131 Ohio St. 3d 478 ¶19. In short, the Bureau's motive-based interpretation of "on behalf of" avoids turning "any other costs" into surplusage: that phrase captures costs incurred for actions taken in the interest of claimants that are *not* direct medical benefits.

The evolution of statutory language may also inform its present meaning. *See State v. Jones*, 163 Ohio St. 3d 242, 2020-Ohio-6729 ¶34. That is so for the term "subrogation interest." An earlier version of R.C. 4123.931(A) defined "subrogation interest" to include "past payments of compensation and medical benefits and estimated future values of compensation and medical benefits arising out of an injury to or disability or disease of a claimant." 146 Ohio Laws 3596 (1995). Thus, as formerly defined, subrogation interest was limited to "compensation and medical benefits"—it did not include

other costs the Bureau pays on behalf of the claimant. In 2001, this Court concluded that former R.C. 4123.931 was unconstitutional, in part because that statute's approach to subrogation provided the Bureau "with a windfall at the expense of the claimant's tort recovery." *Holeton*, 92 Ohio St. 3d at 123. Reacting to that decision, the General Assembly quickly amended its subrogation statutes. 149 Ohio Laws 3733 (2003). To avoid the problems *Holeton* identified, the amendments crafted a new subrogation formula that limited the Bureau's recovery to a proportionate share of the claimant's recovery from a third party. R.C. 4123.931(B); *see also Groch*, 117 Ohio St. 3d 192 ¶¶66–71, 78–79. But, as part of the new formula, the amendments *expanded* the definition of subrogation interest—now relocated at R.C. 4123.93(D)—to include payments for "other costs" in addition to compensation and medical benefits. This expansion hammers home the point just made: to qualify as "any other costs … paid … on behalf of the claimant," *id.*, costs need not confer a medical benefit to the claimant.

Adding all of this up, whether the Bureau pays a cost "on behalf of the claimant" is an inquiry into the Bureau's motive for paying the cost at issue. What matters under the Subrogation Definition is whether the Bureau, at the time it commits to a cost, is acting "in the name of," "on the part of," as a "representative of," or "in the interest of" the claimant. Nothing in the statutory text or surrounding context requires an inquiry (after the fact) into whether the Bureau's payment of costs ultimately proved beneficial to the claimant.

B. When the Bureau pays costs to build a claimant's initially unconvincing record, it pays such costs "on behalf of the claimant."

What, then, was the Bureau's motive for incurring a cost in Thomas's case? Recall the facts. After the Bureau approved Thomas's initial claim for workers' compensation, Thomas requested that an additional condition be added to his existing claim. Compl. ¶¶27–31. The Bureau ordered a review of Thomas's medical records based on that request. Thomas alleges that the Bureau ordered the record review *after* determining that his initial submissions did not justify that request, *id.*, ¶32, but *before* it referred his request to the Industrial Commission as a disputed issue, *id.*, ¶33. Thomas's allegations align perfectly with the regulatory process outlined within Ohio Administrative Code 4123-3-09. That is, Thomas's allegations show that the Bureau incurred the cost as part of its initial review of Thomas's request for an additional condition. Ohio Admin. Code 4123-3-09(B). To be even more specific, the Bureau was fulfilling its regulatory obligation to make "every effort … to complete the record" in Thomas's case. *Id.*

The Bureau incurred the cost of this record-building effort "on behalf of" Thomas. *See* R.C. 4123.93(D). To understand why, consider first that *the claimant* bears the burden of establishing the right to compensation or benefits. More precisely, claimants must prove each element of their claim by a preponderance of evidence. Ohio Admin. Code 4123-3-09(C)(3); *accord* R.C. 4123.05; *Bennett v. Adm'r, Ohio Bureau of Workers' Comp.*, 134 Ohio St. 3d 329, 2012-Ohio-5639 ¶17; *State ex rel. Blanton v. Indus. Comm'n*, 99 Ohio St. 3d 238, 2003-Ohio-3271 ¶23; *State ex rel. Ignatious v. Indus. Comm'n*, 99 Ohio St.

3d 285, 2003-Ohio-3627 ¶33. For instance, claimants must prove that "the alleged injury or occupational disease was sustained or contracted in the course of and arising out of employment." Ohio Admin. Code 4123-3-09(C)(3)(c). Thus, if at day's end sufficient record evidence is lacking, that is to the claimant's detriment.

Keeping the burden in mind, consider next how the Bureau's regulations structure the claims process. The General Assembly has given the Bureau broad discretion to determine the "most appropriate" manner for collecting information about a worker's claim. R.C. 4123.511(A). In light of that discretion, the Bureau could have put the onus squarely on claimants to provide evidence justifying their claims. For example, it is easy to imagine a more adversarial system under which the claimant's failure to provide sufficient information automatically triggers a dispute. But that is *not* how the Bureau has structured Ohio's system. Instead, "[c]onsistent with the remedial purpose" of workers' compensation, the Bureau has structured Ohio's system in a manner that *lightens* the claimant's burden and *avoids* adversarial proceedings to the extent possible. *See* Fulton, *Ohio Workers' Compensation Law* §4.3. On the one hand, if a claimant makes a sufficient showing within the initial application, the Bureau immediately approves requests for compensation or benefits without further proceedings. *See* Ohio Admin. Code 4123-3-09(B). On the other hand, if a claimant fails to make a sufficient showing within the initial application, the Bureau takes it upon itself to build the record *before* it disputes a claim. *Id.*

When the Bureau incurs costs as part of this self-imposed duty to build the record, it does so "on behalf of the claimant." And that is so regardless of the end result of the Bureau's record-building efforts. To sharpen that last point, think of some common scenarios in which a person acts "on behalf of" another, no matter the outcome. Start with an attorney trying to discover the facts of a client's case during litigation. To do so, the attorney will likely submit document requests to the opposing party and ask questions to witnesses. Additionally, the attorney may hire an expert *on the chance* that the expert—after taking the time to become familiar with the client's situation—will be willing to offer an opinion in the client's favor. When the attorney engages in such discovery (and incurs the resulting costs of such discovery) the attorney acts on behalf of the client. That holds true even if the attorney's efforts bring to light information that harms the client's case. Consider also a client who hires an appraiser to determine the value of an item. The client hires the appraiser hoping for a good answer, but the client does not know at the time of the hiring what the result will be of the appraiser's evaluation. And the appraiser performs a service on behalf of the client regardless of whether the client likes the ultimate evaluation.

The Bureau acts in a similar manner when it fills gaps in a claimant's record. It incurs the costs of record building on the chance that additional evidence will help improve a claimant's to-that-point-unconvincing application. This approach often bears fruit for claimants: as Thomas seems to appreciate, the Bureau's record-building efforts

frequently "result in additional benefits being paid." Thomas Memo. Opp'n Jur. 1. In other words, the Bureau's efforts often transform unconvincing applications into meritorious workers' compensation claims—a transformation those claimants no doubt appreciate. The Bureau, of course, cannot know at the time it commits to the costs of record building what the results will be of a record review or a medical exam. Sometimes, as in Thomas's case, record building will confirm what the Bureau feared from the claimant's initial submissions—that the claim lacks evidentiary support. But the Bureau's motive, when building the record, is not to draw out bad information. After all, the Bureau has no need to build a record against the claimant. Because the claimant carries the burden, the Bureau—absent its own self-imposed regulatory duties—could dispute a claim based solely on an insufficient application. Thus, against the backdrop of claimants' legal burden, the Bureau undergoes record building to help claimants.

Statutory context supports the above interpretation. Specifically, the Subrogation Definition's application to this case is "best understood" by looking at how it interacts with other provisions within the statutory scheme. *See Turner v. Certainteed Corp.*, 155 Ohio St. 3d 149, 2018-Ohio-3869 ¶27 (plurality op.). Consider, in particular, the interaction between subrogation and the state insurance fund. For any subrogation interest to come about, the Bureau must first make payments out of the state insurance fund. *See* R.C. 4123.30. Once such payments occur, a critical goal of subrogation is to recover a share of a claimant's third-party recovery—calculated based in part on the Bureau's

past payments—and return the money to the state insurance fund. *See* R.C. 4123.931(A), (B), (K). Thus, when considering what costs the Bureau may treat as having been as paid "on behalf of the claimant" for purposes of subrogation, R.C. 4123.93(D), it makes sense to consider what costs the Bureau may pay from the state insurance fund in the first place, R.C. 4123.30.

That consideration proves important here. On the payment side, the Revised Code empowers the Bureau to make payments out of the state insurance fund not just for "medical services" but also for any "examinations, recommendations and determinations" that occur as part of the workers' compensation process. R.C. 4123.30. This authorization, the Court has already concluded, allows the Bureau to pay state-insurance funds to others for the purpose of assessing a claimant's medical condition during the workers' compensation process. *See Northwestern Ohio Bldg.*, 92 Ohio St. 3d at 283, 290. (More on *Northwestern Ohio Building* below at 38–39.) On the recovery side, it thus makes sense to include these "other costs" within the Bureau's subrogation interests. R.C. 4123.93(D). That way, the money already paid out of the state insurance fund will help determine what money goes back into the state insurance fund through subrogation. *See* R.C. 4123.931(K).

Finally, history reinforces that injured workers greatly benefit from how the Bureau has structured Ohio's claims process. Under the common law, injured workers had to endure the time and expense of litigation, and they rarely recovered damages

from their employers for work-related injuries. Fulton, *Ohio Workers' Compensation Law* §1.2. Comparatively, workers fare much better under the workers' compensation system, in part because they "avoid the adversarial character of the civil justice system." *State ex rel. Ohio AFL-CIO*, 97 Ohio St. 3d 504 ¶49. Historically speaking, it is thus accurate to view the Bureau as acting "on behalf of the claimant" in much of what it does to facilitate workers' compensation. One of the reasons why injured workers "avoid the adversarial character of the civil justice system" under Ohio's current system, *id.*, is because the Bureau takes it upon itself to build a claimant's initially unpersuasive record, Ohio Admin. Code 4123-3-09(B).

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All told, when the Bureau orders a review of a claimant's medical records in order to build a claimant's record, *see* Ohio Admin. Code 4123-3-09(B), it incurs the resulting costs "on behalf of the claimant" for purposes of subrogation, s*ee* R.C. 4123.93(D). Before moving on, two observations are worth brief mention.

First, when deciding what it means for the Bureau to pay costs "on behalf of the claimant," the Court should be mindful of this case's procedural posture. This appeal concerns whether *Thomas's alleged circumstances* amount to a viable claim against the Bureau. They do not, for the reasons just discussed. But assuming for argument's sake that this case continues beyond this appeal, Thomas seeks to represent a class that—by Thomas's estimate—consists of tens of thousands of Ohioans. Compl. ¶60. The reason

why Thomas estimates such a large class is because his proposed class overshoots his alleged circumstances. *See id.*, ¶58. Of particular note, Thomas's proposed class would include claimants who (unlike Thomas) received *favorable evidence* as a result of the Bureau's record-building efforts. *See id.* For present purposes, the point is this: even if the Court disagrees with some aspect of the above analysis, it should be careful to avoid any statement that unintentionally blesses Thomas's attempted class action. The proposed class is far too broad, regardless of whether *Thomas* has a legitimate claim against the Bureau.

Second, the Bureau's interpretation of the Subrogation Definition is correct in light of the text, context, and history of Ohio's workers' compensation statutes. The statutory analysis need go no further than that. But, within its existing precedent, this Court has afforded deference to the Bureau's reasonable interpretations of workers' compensation statutes. *Northwestern Ohio Bldg.*, 92 Ohio St. 3d at 287–88. The Bureau recognizes that deference to the statutory interpretation of agencies is a much-debated topic, and one that the Court is currently considering. *See TWISM Enterprises, LLC v. State Bd. of Prof. Eng'rs & Surveyors*, No. 2021-1440 (Ohio). Here, the Bureau's arguments do not focus on deference because it does not need deference to prevail. But if the Court continues the practice of affording deference to agencies, that only strengthens the Bureau's case. To the extent any ambiguity exists, the Bureau's interpretation of Ohio's workers' compensation statutes is certainly reasonable.

II. The Tenth District's contrary analysis is unpersuasive.

The Tenth District saw things differently. It held that, when the Bureau pays costs for the review of a claimant's medical records, it does not do so on behalf of the claimant. App. Op. ¶17. Two errors drove the Tenth District's analysis. First, the Tenth District oversimplified the Bureau's role in processing workers' compensation claims. Second, the Tenth District misinterpreted the scope of the Bureau's administrative costs.

A. The Tenth District misconstrued the Bureau's role during initial review of workers' compensation claims.

The Tenth District's analysis of the Bureau's subrogation interest started on solid footing. The court recognized that, under its the ordinary meaning, the phrase "on behalf of" covers a variety of situations. *See* App. Op. ¶16 & n.8. And it acknowledged that Ohio's "workers' compensation process is designed as a nonadversarial system." App. Op. ¶18. From there, however, the analysis went awry. The Tenth District did not appreciate the steps the Bureau takes to ensure that Ohio's workers' compensation process operates as a "nonadversarial system." *See id.* Instead, the court fixated on a single aspect of the Bureau's role: determining the propriety of the claimant's request. App. Op. ¶¶17, 19. With that singular focus, the Tenth District concluded that the Bureau acts in an entirely "ministerial or administrative" capacity during the claims process, and *not* on behalf of claimants. App. Op. ¶18.

The Tenth District erred. It is true, as the Tenth District noted, that *one* of the Bureau's responsibilities during the claims process is to assess "the validity of" workers' claims. Ohio Admin. Code 4123-3-09(B). But that is far from the whole story. Critically here, the Bureau must also make "every effort" to build a claimant's record before it disputes the validity of any claim. Ohio Admin. Code 4123-3-09(B)(1). The Tenth District did not delve into the different stages of the claims process, and it thus did not account for the Bureau's record-building function within its analysis. Relatedly, the court did not engage with the claimant's ultimate burden of proof during the claims process. As a result, the Tenth District did not confront the fact that *the claimant* suffers if there is insufficient record evidence.

The broad implications of the Tenth District's analysis are another sign that the analysis is flawed. Under the Tenth District apparent rule, every action the Bureau takes as part of the claims process is an action taken solely in a "ministerial or administrative" capacity. *See* App. Op. ¶18. Applying that logic, even if (1) the Bureau pays costs for record building out of the state insurance fund, (2) those costs uncover evidence favorable to the claimant, and (3) that favorable evidence leads to the claimant's recovery of medical benefits; the Bureau would still not be able to recover such record-building costs through subrogation. That would be a peculiar result for the General Assembly to command.

With little discussion, the Tenth District also suggested that Thomas needed to authorize the record review for the Bureau to incur the resulting costs on his behalf. App. Op. ¶24. If the Tenth District viewed authorization as a prerequisite for subrogation, it was mistaken. For one thing, the Subrogation Definition's "on behalf of" language sets no such requirement. *See Friends of the Zoo of Springfield, Mo., Inc.*, 38 S.W.3d at 423–24. For another, Ohio's workers' compensation statutes displaced the common law. *Crawford*, 110 Ohio St. at 274–76. Because the General Assembly clearly intended a significant change, interpreting workers' compensation statutes as conforming to the common law risks distorting the General Assembly's work. Fulton, *Ohio Workers' Compensation Law* §1.4; *accord McKinley*, 130 Ohio St. 3d 156 ¶¶26–27. Under Ohio's workers' compensation laws, workers already initiate the claims process by applying for benefits or otherwise indicating that they wish to pursue a claim. Ohio Admin. Code 4123-3-08(A)(1); *see also* R.C. 4123.05. Requiring that workers separately authorize the Bureau to act on their behalves would improperly graft common-law principles of agency onto the workers' compensation process. Said another way, to the extent the Bureau needs a claimant's permission to take actions on the claimant's behalf, that permission is already baked into the "social bargain" of workers' compensation. *See Holeton*, 92 Ohio St. 3d at 119. As part of the bargain, workers exchanged their normal "common-law rights" for the greater certainty of "statutory benefits." *Id.* The Tenth

District—to the extent it meant what it suggested in passing—distorted that bargain by adding requirements to the statutory text.

B. The Tenth District took an overbroad view of the "administrative costs" that the Bureau must pay separately from the state insurance fund.

Towards the end of its analysis, the Tenth District considered whether "other provisions of workers' compensation law" supported its conclusion about the scope of the Bureau's subrogation interest. App. Op. ¶25. It stressed that, under R.C. 4123.341, the State and employers must bear the "administrative costs" of the Bureau and the Industrial Commission. App. Op. ¶28. In the Tenth District's view, the Bureau's "administrative cost[s]" capture all costs incurred "in the processing of a claim for benefits," including the costs of reviewing the medical records of a worker seeking benefits. App. Op. ¶29. From there, it followed that the Bureau needed to bear such costs and could not "pass[] such costs on to claimants" through subrogation. App. Op. ¶¶28–29.

The Tenth District's interpretation of the Bureau's administrative costs lacks support. Recall that, unlike other state agencies, the Bureau and Industrial Commission do not receive money out of the Ohio's general revenue fund to cover the costs of their operations. *Compare* R.C. 4123.342; *with* R.C 113.09. Instead, Ohio law requires the Bureau to separately allocate these "administrative costs" to public and private employers. R.C. 4123.342(A). The relevant statute defines "administrative costs" as "those costs and expenses that are *incident to* the discharge of the duties and performance of the activities of" the Bureau and Industrial Commission. R.C. 4123.341 (emphasis added).

Ordinarily, the phrase "incident to" means "closely related to" or "naturally appearing with." Bryan A. Garner, A Dictionary of Modern Legal Usage 286 (1987). When speaking of an organization, costs "incident to" an organization's operations are generally understood to mean things like payroll, rent, and other overhead. *See, e.g.*, *In re Borders Group, Inc.*, 456 B.R. 195, 211 (Bankr. S.D.N.Y. 2011); *Cent. Me. Med. Ctr. v. Leavitt*, 552 F. Supp. 2d 50, 61 (D. Me. 2008); *Freier v. Freier*, 985 F. Supp. 710, 712 (E.D. Mich. 1997); *In re Wildman*, 72 B.R. 700, 731 (Bankr. N.D. Ill. 1987); *cf. also Sousa v. Miguel*, 32 F.3d 1370, 1376 (9th Cir. 1994); *Conditioned Air Corp. v. Rock Island Motor Transit Co.*, 253 Iowa 961, 970 (1962); 48 C.F.R. §31.105(d)(3). In contrast, costs "incident to" an organization's operations do not include costs "particularly attributable to an individual client or case." *In re Borders Group, Inc.*, 456 B.R. at 211; *see also Black's Law Dictionary* 1330 (11th ed. 2019) (defining "overhead" as "fixed or ordinary operating costs" that "cannot be allocated to a particular product or service").

The phrase "incident to" has a comparable meaning as applied to the Bureau. In performing its various duties, the Bureau incurs many generalized costs that are not attributable to any single individual's claim for benefits. These include the costs associated with paying the "salaries of employees"; providing for "offices, equipment, supplies, and other facilities" for the Bureau; storing the "accounts and records necessary" to Ohio's workers compensation system; maintaining a "data processing system" for the Bureau's use; and preparing an annual budget. R.C. 4121.121(B)(2), (4), (6), (9), (14).

The Bureau must cover these truly administrative costs through the cost-allocation process outlined in R.C. 4123.342. But the Bureau's administrative costs do not include the costs of medical exams or reviews "particularly attributable" to a specific worker's request for compensation. *See In re Borders Group, Inc.*, 456 B.R. at 211.

The interaction of Ohio's workers' compensation statutes reinforces this interpretation. As explained above (at 12), statutory law requires the Bureau to cover different costs in different ways. Key here, R.C. 4123.30 permits the Bureau to pay certain types of costs—costs attributable to individual workers' compensation claims—directly out of the state insurance fund. But the Bureau cannot use state-insurance funds for any "purpose" other than those listed within R.C. 4123.30. And the statute does not list the "payment of administrative costs" as an authorized use of state-insurance funds. *Corrugated Container Co.*, 171 Ohio St. at 291. The Bureau must instead allocate administrative costs to employers under a different statutory process. R.C. 4123.341–.342. Thus, to ensure harmony among Ohio's workers' compensation statutes, *see State v. Pribble*, 158 Ohio St. 3d 490, 2019-Ohio-4808 ¶12, the categorization of certain costs must be mutually exclusive: the claims-related costs that the Bureau pays out of the state insurance fund *cannot* also be "administrative costs" that the Bureau is prohibited from paying out of the state insurance fund.

As a matter of both text and precedent, payments the Bureau makes for medical reviews fall on the state-insurance-fund side of this divide. The textual analysis in-

volves ground already covered. The Revised Code expressly authorizes the Bureau to use state-insurance funds to pay for the "examinations, recommendations and determinations" that occur as part of the workers' compensation process. R.C. 4123.30. Administrative costs, on the other hand, are limited to those generalized costs "incident to" the Bureau's operations, so they do not include costs particularly attributable to an individual worker's request for benefits. R.C. 4123.341.

As for precedent, the Court's decision in *Northwestern Ohio Building* confirms that the Bureau may pay for the costs of medical reviews out of the state insurance fund. The case involved the Bureau's use of managed-care organizations within the workers' compensation system. Once the Bureau approves a worker's claim for medical benefits, the Bureau relies on these organizations to make determinations about what medical services are necessary to treat a worker's allowed condition. *Northwestern Ohio Bldg.*, 92 Ohio St. 3d at 283. In *Northwestern Ohio Building*, the Court held that the Bureau could pay "administrative and performance-incentive fees" to these organizations out of the state insurance fund. *Id.* at 282, 290–91. The Court acknowledged that a contrary argument—that such costs were "administrative" costs that the Bureau needed to account for separately under statute—had superficial appeal. *Id.* at 290 (citing R.C. 4123.341). But the Court gave greater weight to the fact that statutory law authorizes the Bureau to use state-insurance funds to compensate managed care organizations for their medical "recommendations and determinations" during the workers' compensation process. *Id.*

at 290–91 (quoting R.C. 4123.30); *see also id.* at 283. Thus, faced with the statutory division between payments from the state insurance fund and the payment of administrative costs, the Court took a relatively narrow view of the Bureau's administrative costs. Relatedly, the Court avoided an interpretation that would have limited use of state-insurance funds to "the payment of direct disability compensation to claimants." *Id.* at 291.

In light of all this, the Tenth District erred in suggesting that that the Bureau's administrative costs include all costs the Bureau incurs when processing workers' requests for benefits. App. Op. ¶29. The overstatement was likely accidental, based on an isolated and overbroad reading of R.C. 4123.341. The Tenth District, for example, did not mention the Bureau's ability to pay certain costs out of the state insurance fund. *See* App. Op. ¶¶25–29. Nor did the Tenth District address this Court's decision in *Northwestern Ohio Building*. But whatever the reason behind the Tenth District's mistake, this is an error that demands correction. The Bureau incurs many different costs during the workers' compensation process, including the costs of "examinations, recommendations and determinations" that occur at various stages of the workers' compensation process. R.C. 4123.30. To perform its statutory duties, the Bureau needs to know whether it can pay these costs out of the state insurance fund. Thus, even setting aside subrogation, the Tenth District's capacious view of administrative costs—if left

uncorrected—could significantly disrupt the Bureau's management of Ohio's workers' compensation system.

CONCLUSION

The Court should reverse the Tenth District's decision below and reinstate the Court of Claim's dismissal of Thomas's complaint.

Respectfully submitted,

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APPENDIX

Exhibit A

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Lamar Thomas,	:	
Plaintiff-Appellant,	:	
		No. 21AP-385
v.	:	(Ct. of Cl. No. 2021-00112JD)
John Logue, Administrator, Ohio Bureau of Workers' Compensation,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on May 12, 2022, appellant's sole assignment of error is sustained and it is the judgment and order of this court that the judgment of the Court of Claims of Ohio is reversed, and this cause is remanded to that court for further proceedings in accordance with law and consistent with said decision. Any outstanding appellate court costs shall be waived.

DORRIAN, KLATT & MENTEL, JJ.

By /S/ JUDGE
Judge Julia L. Dorrian

Tenth District Court of Appeals

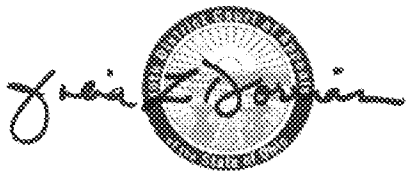
Date: 05-18-2022

Case Title: LAMAR THOMAS -VS- JOHN LOGUE

Case Number: 21AP000385

Type: JEJ - JUDGMENT ENTRY

So Ordered



/s/ Judge Julia L. Dorrian

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Lamar Thomas,	:	
Plaintiff-Appellant,	:	
		No. 21AP-385
v.	:	(Ct. of Cl. No. 2021-00112JD)
John Logue, Administrator, Ohio Bureau of Workers' Compensation,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on May 12, 2022

On brief: *Garson Johnson LLC, James A. DeRoche*, and *Jeffrey D. Johnson*; *Weisman, Kennedy & Berris Co., L.P.A., R. Eric Kennedy,* and *Daniel P. Goetz*; *Ciano Goldwasser, LLP*, and *Andrew S. Goldwasser*, for appellant. **Argued:** *James A. DeRoche.*

On brief: *Brennan, Manna & Diamond, LLC, Robert A. Hager*, *Justin M. Alaburda,* and *Daniel J. Rudary*; *Dave Yost*, Attorney General, *and Timothy M. Miller*, for appellee. **Argued:** *Daniel J. Rudary.*

APPEAL from the Court of Claims of Ohio

DORRIAN, J.

{¶ 1} Plaintiff-appellant, Lamar Thomas, appeals the June 28, 2021 decision and judgment entry of the Court of Claims of Ohio finding defendant-appellee, Ohio Bureau of Workers' Compensation ("BWC"), was entitled to judgment as a matter of law and granting BWC's motion for judgment on the pleadings. For the following reasons, we reverse.

I. Facts and Procedural History

{¶ 2} On March 4, 2021, appellant filed a complaint in the Court of Claims asserting claims for equitable restitution and unjust enrichment in addition to seeking declaratory and injunctive relief. In his complaint, appellant alleged that on September 5, 2013, he was injured in the course and scope of his employment in an automobile accident. Appellant filed a claim for workers' compensation benefits, and such claim was allowed by BWC for cervical and lumbar sprain. According to appellant, his injury was caused by the negligence of a third party, and appellant pursued a separate claim against such party.

{¶ 3} As a result of his injury, appellant sought medical treatment from a physician and received physical therapy. Appellant's physician, Dr. Adam Friedman, authored a report opining that, as a result of the accident, appellant sustained a lumbar sprain and substantially aggravated pre-existing degenerative disc disease as well as pre-existing spondylothesis. On June 14, 2014, appellant filed a request with BWC for an additional allowance for the conditions in Dr. Friedman's report.

{¶ 4} In response to appellant's request for additional allowances, BWC referred the claim to an independent medical examiner, Dr. Gerald Yosowitz, who reviewed appellant's medical records and opined that the additional conditions identified by Dr. Friedman were degenerative and unrelated to the injury sustained by appellant in the automobile accident. Based on Dr. Yosowitz's review, BWC referred appellant's claim to the Industrial Commission of Ohio ("commission").[1] In front of the commission, BWC argued the commission should deny appellant's request for additional allowances.[2] On January 16, 2015, the commission hearing officer disallowed the claim for the requested additional conditions based on Dr. Yosowitz's report. On February 26, 2015, a second commission hearing officer denied appellant's appeal of the January 16, 2015 commission decision. On March 20, 2015, the commission refused appellant's appeal. As a result,

[1] BWC, in its brief in the present matter, states that it denied appellant's request for additional allowances "[b]ased on Dr. Yosowitz's independent review" of appellant's medical records. (BWC's Brief at 23.)

[2]The decisions of the commission do not appear in the record before us. The facts summarized here are based on those allegations contained in appellant's complaint. See below ¶ 9 (discussing standard for judgment on the pleadings under Civ.R. 12(C)).

appellant was not able to participate in the workers' compensation fund for the additional conditions.

{¶ 5} Appellant further alleged that following the settlement of his third-party claim, BWC asserted a right of subrogation in the amount of $6,044.36 from appellant's settlement pursuant to R.C. 4123.93 and 4123.931. BWC's asserted subrogation interest was based in part on a list of medical bills in the amount of $5,544.01. Among the charges listed by BWC for appellant's medical bills was the cost of the record review and report performed by Dr. Yosowitz. Appellant paid BWC $6,044.36 from his third-party settlement to satisfy BWC's asserted subrogation interest. In his complaint, appellant alleged BWC had no legal right to recover the cost of Dr. Yosowitz's services as part of its subrogation interest on the proceeds of appellant's third-party claim and, therefore, BWC was unjustly enriched.

{¶ 6} On April 30, 2021, BWC filed an answer. On May 3, 2021, BWC filed a motion for judgment on the pleadings pursuant to Civ.R. 12(C). On May 14, 2021, appellant filed a memorandum contra BWC's May 3, 2021 motion. On June 28, 2021, the Court of Claims filed a decision holding that BWC's motion for judgment on the pleadings should be granted because appellant could prove no set of facts in support of his claims that would entitle him to relief and BWC was entitled to judgment as a matter of law. On the same date, the Court of Claims filed a judgment entry granting BWC's motion for judgment on the pleadings.

II. Assignment of Error

{¶ 7} Appellant appeals and presents the following sole assignment of error for our review:

> The trial court erroneously interpreted "subrogation interest" [R.C. 4123.93(D)] to include administrative costs that neither the injured worker nor the statutory subrogee could recover from a liable third party.

III. Assignment of Error—Interpretation of R.C. 4123.93(D)

{¶ 8} In his assignment of error, appellant asserts the court erred by granting judgment on the pleadings in favor of BWC because it incorrectly interpreted the statutory definition of the term "subrogation interest" under R.C. 4123.93(D) to include

administrative costs paid by BWC unrelated to an injured worker's medical treatment or compensation.

A. Motion for Judgment on the Pleadings Under Civ.R. 12(C)

{¶ 9} Pursuant to Civ.R. 12(C), "[a]fter the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." A court considering a motion under Civ.R. 12(C) must construe the material allegations in the complaint and all reasonable inferences to be drawn by the same in favor of the nonmoving party as true. *Ohio Mfrs. Assn. v. Ohioans for Drug Price Relief Act*, 147 Ohio St.3d 42, 2016-Ohio-3038, ¶ 10. Viewing the allegations in such light, the court may only grant a motion under Civ.R. 12(C) where it finds no material factual issues exist and the movant is entitled to judgment as a matter of law. *Hinkle v. L Brands, Inc. World Headquarters*, 10th Dist. No. 21AP-80, 2021-Ohio-4187, ¶ 9. Thus, a motion under Civ.R. 12(C) " 'tests the allegations of the complaint and presents a question of law.' " *Jackson v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 19AP-621, 2020-Ohio-1518, ¶ 11, quoting *Zhelezny v. Olesh*, 10th Dist. No. 12AP-681, 2013-Ohio-4337, ¶ 9. *See Lytal v. Crawl for Cancer, Inc.*, 10th Dist. No. 17AP-771, 2018-Ohio-2017, ¶ 8, citing *State ex rel. Midwest Pride IV, Inc. v. Pontious*, 75 Ohio St.3d 565, 570 (1996), citing *Peterson v. Teodosio*, 34 Ohio St.2d 161, 166 (1973) (stating that a court is permitted to consider both the complaint and answer in resolving the question of law presented by a Civ.R. 12(C) motion).

B. Subrogation Under Ohio Workers' Compensation Law

{¶ 10} R.C. Chapter 4123 provides the statutory framework for Ohio's workers' compensation system. *See Stolz v. J & B Steel Erectors, Inc.*, 146 Ohio St.3d 281, 2016-Ohio-1567, ¶ 10. Under this chapter, the entity responsible for paying workers' compensation benefits to an injured claimant has a right of reimbursement from any recovery obtained by the claimant from a third party responsible for the injury. *Ohio Bur. of Workers' Comp. v. Miller*, 10th Dist. No. 12AP-753, 2013-Ohio-2072, ¶ 10, citing *Ohio*

Bur. of Workers' Comp. v. McKinley, 130 Ohio St.3d 156, 2011-Ohio-4432, ¶ 27.[3] This right of subrogation is codified in R.C. 4123.931(A), which provides that "[t]he payment of compensation or benefits [under workers' compensation statutes] creates a right of recovery in favor of a statutory subrogee against a third party, and the statutory subrogee is subrogated to the rights of a claimant against that third party. The net amount recovered is subject to a statutory subrogee's right of recovery." R.C. 4123.93 defines the terms used in the provisions of workers' compensation statutes related to subrogation:

> (A) "Claimant" means a person who is eligible to receive compensation, medical benefits, or death benefits under this chapter or Chapter 4121., 4127., or 4131. of the Revised Code.
>
> (B) "Statutory subrogee" means the administrator of workers' compensation, a self-insuring employer, or an employer that contracts for the direct payment of medical services pursuant to division (P) of section 4121.44 of the Revised Code.
>
> (C) "Third party" means an individual, private insurer, public or private entity, or public or private program that is or may be liable to make payments to a person without regard to any statutory duty contained in this chapter or Chapter 4121., 4127., or 4131. of the Revised Code.
>
> (D) "Subrogation interest" includes past, present, and estimated future payments of compensation, medical benefits, rehabilitation costs, or death benefits, and any other costs or expenses paid to or on behalf of the claimant by the statutory subrogee pursuant to this chapter or Chapter 4121., 4127., or 4131. of the Revised Code.

[3] Although it is not necessary to analyze the history of subrogation under workers' compensation law to dispose of the question presented in this case, we nevertheless note that the present statutory scheme was substantially amended in response to a decision of the Supreme Court of Ohio. In *Holeton v. Crouse Cartage Co.*, 92 Ohio St.3d 115 (2001), the Supreme Court struck down a prior version of the workers' compensation subrogation law, finding that it "operates unconstitutionally * * * because it allows for reimbursement from proceeds that do not constitute a double recovery." *Holeton* at 126. Following *Holeton*, the General Assembly enacted 2002 Sub.S.B. No. 227 ("S.B. 227"), which amended subrogation provisions in R.C. 4123.93 and 4123.931. *See State ex rel. United Auto., Aerospace & Agricultural Implement Workers of Am. v. Ohio Bur. of Workers' Comp.*, 108 Ohio St.3d 432, 2006-Ohio-1327, ¶ 14. The Supreme Court noted that Sub.S.B. 227 repealed the provisions that had been found unconstitutional in *Holeton* and found that, in replacing those provisions, "the manifest objective of the General Assembly in enacting S.B. 227 was to comply with our holding in *Holeton*." *Id.* at ¶ 17.

C. Interpretation of R.C. 4123.93(D)

{¶ 11} This case presents a question of statutory interpretation regarding the scope of the statutory subrogee's subrogation interest as that term is defined under R.C. 4123.93(D). When interpreting statutory provisions, "our paramount concern is the legislative intent in enacting the statute." *State ex rel. Steele v. Morrissey, Aud.*, 103 Ohio St.3d 355, 2004-Ohio-4960, ¶ 21, citing *State ex rel. United States Steel Corp. v. Zaleski*, 98 Ohio St.3d 395, 2003-Ohio-1630, ¶ 12. " 'If the meaning of the statute is unambiguous and definite, it must be applied as written and no further interpretation is necessary.' " *State ex rel. Natl. Lime & Stone Co. v. Marion Cty. Bd. of Commrs.*, 152 Ohio St.3d 393, 2017-Ohio-8348, ¶ 14, quoting *State ex rel. Savarese v. Buckeye Local School Dist. Bd. of Edn.*, 74 Ohio St.3d 543, 545 (1996). *See State v. Porterfield*, 106 Ohio St.3d 5, 2005-Ohio-3095, ¶ 11 (stating that "[o]nly when a definitive meaning proves elusive should rules for construing ambiguous language be employed. Otherwise, allegations of ambiguity become self-fulfilling"); *State v. J.L.S.*, 10th Dist. No. 18AP-125, 2019-Ohio-4173, ¶ 71.[4]

{¶ 12} Statutory interpretation presents a question of law subject to a de novo standard of review. *Natl. Lime & Stone* at ¶ 14, citing *Ceccarelli v. Levin*, 127 Ohio St.3d 231, 2010-Ohio-5681, ¶ 8; *State ex rel. Peregrine Health Servs. of Columbus, L.L.C. v. Sears, Dir., Ohio Dept. of Medicaid*, 10th Dist. No. 18AP-16, 2020-Ohio-3426, ¶ 23. The Supreme Court of Ohio has held that courts " 'must give due deference to an administrative interpretation formulated by an agency that has accumulated substantial expertise, and to which the General Assembly has delegated the responsibility of implementing the legislative command.' " *Bernard v. Unemp. Comp. Rev. Comm.*, 136 Ohio St.3d 264, 2013-Ohio-3121, ¶ 12, quoting *Swallow v. Indus. Comm.*, 36 Ohio St.3d 55, 57 (1988). If the statute in question " 'is silent or ambiguous with respect to the specific issue, the question

[4] We note that R.C. 4123.95 provides: "Sections 4123.01 to 4123.94, inclusive, of the Revised Code shall be liberally construed in favor of employees and the dependents of deceased employees." *See State ex rel. McDonald v. Indus. Comm.*, 10th Dist. No. 20AP-386, 2021-Ohio-4494, ¶ 27; *State ex rel. Gen. Motors Corp. v. Indus. Comm.*, 10th Dist. No. 06AP-373, 2006-Ohio-6786, ¶ 20, fn. 7 (stating that R.C. 4123.95 requires liberal construction of a statute where "the statute is ambiguous and requires construction"). *See generally Daugherty v. Cent. Trust Co. of Northeastern Ohio, N.A.*, 28 Ohio St.3d 441, 447 (1986), quoting *Dennis v. Smith*, 125 Ohio St. 120, 124 (1932) (stating that " ' "liberal construction" is not meant that words and phrases shall be given an unnatural meaning, or that the meaning shall be * * * expanded to meet a particular state of facts' "). As we do not find the statutory provisions at issue in this matter to be ambiguous, we need not apply R.C. 4123.95.

for the court is whether the agency's answer is based on a permissible construction of the statute.' " *Lang v. Dir., Ohio Dept. of Job & Family Servs.*, 134 Ohio St.3d 296, 2012-Ohio-5366, ¶ 12, quoting *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984).[5] *See Collateral Mgt. L.L.C. v. Ohio Dept. of Commerce*, 10th Dist. No. 20AP-123, 2021-Ohio-1641, ¶ 24, citing *Clark v. State Teachers Retirement Sys.*, 10th Dist. No. 18AP-105, 2018-Ohio-4680, ¶ 38. However, courts grant no deference to an administrative agency's interpretation of a statute when that interpretation conflicts with the express terms of an unambiguous statute. *Employer's Choice Plus, Inc. v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 18AP-297, 2019-Ohio-4994, ¶ 24, quoting *Lang* at ¶ 12. *See Clark* at ¶ 38.

{¶ 13} Appellant contends BWC improperly included its administrative costs in calculating its subrogation interest. Specifically, appellant argues that BWC improperly included the cost of Dr. Yosowitz's record review and report as part of the medical bills in its subrogation interest following the settlement of appellant's third-party claim. BWC responds that Dr. Yosowitz's report should be included in its subrogation interest because it was a cost or expense paid "on behalf of" appellant as that term is used in R.C. 4123.93(D).

{¶ 14} The court, construing the meaning of "costs or expenses" and "on behalf of" under R.C. 4123.93(D) according to rules of grammar and common usage, found that such terms "pertain to an amount paid by BWC or expenditure paid by BWC in the name of, on the part of, or as the agent or representative of a claimant." (June 28, 2021 Decision at 8.) As a result, the court found that "the costs and expenses incurred by BWC in connection with an injured worker's medical review—in this case [appellant]—are included within the statutory definition of 'subrogation interest' under R.C. 4123.93(D) because it is an expenditure paid by BWC on the part of a claimant." (June 28, 2021 Decision at 8.)

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[5] We note that *Chevron*, on which *Lang* relies for its interpretation of agency authority, was based on the policy formulation and rulemaking process employed by federal agencies. *See Chevron* at 843-44, quoting *Morton v. Ruiz*, 415 U.S. 199, 231 (1974) (" 'The power of an administrative agency to administer a congressionally created . . . program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress.' If Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation."). *See also* R.C. 1.49(F) (providing that where "a statute is ambiguous, the court, in determining the intention of the legislature, may consider among other matters * * * [t]he administrative construction of the statute"). The case before us does not involve policy formulation or rulemaking.

{¶ 15} Here, we find the express terms of the statute to be unambiguous, though in so finding, we reach a different conclusion from BWC and the Court of Claims. The phrase "on behalf of" is not defined by the statute. Where "a term is not defined in the statute, it should be accorded its plain and ordinary meaning." *Rhodes v. New Philadelphia*, 129 Ohio St.3d 304, 2011-Ohio-3279, ¶ 17, citing *Sharp v. Union Carbide Corp.*, 38 Ohio St.3d 69, 70 (1988). In reviewing the statutory language, we must read words and phrases in context and construe them according to the rules of grammar and common usage. R.C. 1.42.[6] *See In re Acubens, L.L.C.*, 10th Dist. No. 17AP-870, 2018-Ohio-2607, ¶ 14, citing *Steele* at ¶ 21, citing *State ex rel. Rose v. Lorain Cty. Bd. of Elections*, 90 Ohio St.3d 229, 231 (2000); *Great Lakes Bar Control, Inc. v. Testa*, 156 Ohio St.3d 199, 2018-Ohio-5207, ¶ 9, quoting Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012) (" 'The words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.' "). In giving words their common, everyday meaning, it is common for a court to rely on dictionary definitions. *See Centerville v. Knab*, 162 Ohio St.3d 623, 2020-Ohio-5219, ¶ 24; *DLZ Corp. v. Ohio Dept. of Adm. Servs.*, 102 Ohio App.3d 777, 780 (10th Dist.1995).

{¶ 16} Merriam-Webster's Collegiate Dictionary defines "on behalf of" both as "in the interest of" and "as a representative of." *Merriam-Webster's Collegiate Dictionary* 110 (11th Ed.2014).[7] Similarly, the New Oxford American Dictionary defines "on behalf of" to mean: (1) "in the interests of a person, group, or principle"; (2) "as a representative of"; and (3) "on the part of; done by." *New Oxford American Dictionary* 150 (3d Ed.2010). The American Heritage Dictionary of the English Language defines "on behalf of" both as "[f]or the benefit of; in the interest of," and "[a]s the agent of; on the part of." *The American Heritage Dictionary of the English Language* 162 (5th Ed.2018). Webster's Third New

[6] R.C. 1.42 requires that where "[w]ords and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise," they must be "construed accordingly." *See Youngstown Sheet & Tube Co. v. Lindley*, 56 Ohio St.2d 303, 309 (1978). Here, the parties have not submitted any authority to support a technical or particular meaning for the phrase "on behalf of" under R.C. 4123.93(D). As a result, we must proceed with the command of R.C. 1.42 to read and construe the statute in question "in context and * * * according to the rules of grammar and common usage." *Charvat v. Farmers Ins. Columbus, Inc.*, 178 Ohio App.3d 118, 2008-Ohio-4353, ¶ 12 (10th Dist.).

[7] *See* Merriam-Webster, *Behalf*, https://www.merriam-webster.com/dictionary/behalf (accessed May 12, 2022).

International Dictionary defines "on behalf of" as "in the interest of," "as the representative of," and "for the benefit of." *Webster's Third New International Dictionary* 198 (2002).[8] The Random House Dictionary of the English Language 188 (2d Ed.1987) defines "on behalf of" to mean "as a representative of or a proxy for"; it also defines "on (someone's) behalf" to mean "in the interest or aid of (someone)." Thus, under the common sense meaning of "on behalf of" as defined above, any costs or expenses that are paid either in the interest of or as a representative of the claimant are within the scope of the statutory subrogee's subrogation interest under R.C. 4123.93(D). We find this common sense meaning of "on behalf of" resolves the question before us when applied to the facts of this case. *See Madden v. Cowen & Co.*, 576 F.3d 957, 973 (9th Cir.2009) (finding the phrase "on behalf of" in a statutory provision had an "unambiguous, common sense meaning" that did not necessitate inquiring of other statutes); *Rine v. Imagitas, Inc.*, 590 F.3d 1215, 1224-25 (11th Cir.2009) (considering the "ordinary meaning" of the phrase "on behalf of").

{¶ 17} BWC argues that its subrogation interest includes the payment to Dr. Yosowitz for his record review and report because such payment was made on behalf of appellant. BWC supports this by arguing that appellant voluntarily initiated the request for additional allowances and, therefore, BWC was acting "to determine the propriety of [appellant's] request" by ordering the record review and report. (BWC's Brief at 24.) As a result, BWC argues that the cost or expense of the medical record review and report was

[8] We note BWC's argument that there exists a distinction between the phrases "on behalf of" and "in behalf of." However, while this may have been true, modern sources acknowledge that such distinction is no longer observed, or observed only infrequently. *See Merriam-Webster* at 110 ("A body of opinion favors *in* with the 'interest, benefit' sense of *behalf* and *on* with the 'support, defense' sense. This distinction has been observed by some writers but overall has never had a sound basis in actual usage. In current British use, *on behalf* (*of*) has replaced *in behalf* (*of*); both are still used in American English, but the distinction is frequently not observed."); *American Heritage Dictionary* at 162 ("Statistically, *on behalf of* is used far more frequently than *in behalf of*, and in fact the Usage Panel prefers *on behalf of* for both meanings.") (Emphasis sic.); *Garner's Modern English Usage* 103 (4th Ed.2016) ("The phrases *in behalf of* and *on behalf of* have traditionally signified different things. *In behalf of* means 'in the interest or for the benefit of' * * * *on behalf of* means 'as the agent or representative of' * * *. In current usage, the distinction is seldom followed; *on behalf of* is much more common in both senses."); *United States v. Romero*, 293 F.3d 1120, 1126 (9th Cir.2002) (stating that "the plain meaning of 'on behalf of' is broader than 'to the benefit of,' as the term also encompasses acting in a *representative* capacity") (Emphasis sic.); *Colony Tire Corp. v. Fed. Ins. Co.*, 217 F. Supp.3d 860, 866 (E.D.N.C.2016); *Occidental Fire & Cas. Co. v. Soczynski*, D.Minn. No. 11-2412 (JRT/JSM), 2013 U.S. Dist. LEXIS 2687 (Jan. 8, 2013), fn. 15 (noting that "the strict distinction between 'on behalf of' and 'in behalf of' * * * has been largely abandoned in the English language"); *Jamison v. First Credit Servs., Inc.*, 290 F.R.D. 92, 99 (N.D.Ill.2013). Regardless, any difference between these phrases is immaterial to our resolution of the question presented as the result is the same under either definition.

incurred in appellant's name and on his behalf. Despite this creative framing of the facts, BWC's argument belies its relationship with claimants, such as appellant, and contravenes the common sense meaning of the phrase "on behalf of" as it is used in R.C. 4123.93(D).

{¶ 18} Appellant alleged in his complaint that he filed his claim for additional allowances after consulting his doctor, undergoing an evaluation, and providing support for his claim in the form of his doctor's medical report. BWC's actions upon receiving the claim were in its ministerial capacity through its review and processing of the claim by authorizing Dr. Yosowitz's review of appellant's medical records. In making its argument, BWC correctly notes that the workers' compensation process is designed as a nonadversarial system. *See State ex rel. Ohio AFL-CIO v. Ohio Bur. of Workers' Comp.*, 97 Ohio St.3d 504, 2002-Ohio-6717, ¶ 49 (stating that the "workers' compensation system is designed to avoid the adversarial character of the civil justice system"). However, the nonadversarial nature of the claim review process does not mean that BWC's actions are undertaken as the representative of or for the benefit of the claimant. Rather, BWC's operations in reviewing claims, including, as here, requests for additional allowances, are in the nature of its ministerial or administrative function. This crucial distinction is supported by BWC's own statements.

{¶ 19} As previously noted, BWC states that in ordering Dr. Yosowitz's record review and report, it was acting "to *determine* the *propriety* of [appellant's] request." (Emphasis added.) (BWC's Brief at 24.) BWC states that Dr. Yosowitz's medical review "was necessary to *evaluate* whether [appellant] was entitled to participate in the workers' compensation fund for the additional allowances." (Emphasis added.) (BWC's Brief at 22.) In order "[t]o assist in this *determination*," BWC relied on its authority under Ohio Adm.Code 4123-3-09(C)(4) to " 'at any point in the *processing* of an application for benefits, *require* the employee to submit to a physical examination or may refer a claim for investigation.' " (Emphasis added.) (BWC's Brief at 22, quoting Ohio Adm.Code 4123-3-09(C)(4).) *See* R.C. 4123.53(A) (providing that BWC "may require any employee claiming the right to receive compensation to submit to a medical examination"). By these statements, it is clear that BWC was not ordering the record review in the interest of or as the representative of appellant, but, rather, to fulfill its ministerial purpose of administering the workers'

compensation system. *See State ex rel. Crabtree v. Bur. of Workers' Comp.*, 71 Ohio St.3d 504, 507 (1994) (stating that the statutory framework of Ohio's workers' compensation system "consistently reflected" that the BWC's "role is ministerial"); *Greene v. Conrad*, 10th Dist. No. 96APE12-1780 (Aug. 21, 1997); *Broyles v. Conrad*, 2d Dist. No. 20670, 2005-Ohio-2233, ¶ 12. *See also Willitzer v. McCloud*, 6 Ohio St.3d 447, 449 (1983) (stating, under a prior version of workers' compensation scheme that an independent physician examining workers' compensation claimants, at the request of the commission for the purpose of reporting their medical conditions was performing an "investigative-medical fact-finding function").

{¶ 20} BWC states that its "mission" is "to ensure that a claimant is fully and fairly compensated to the extent he or she is entitled to be—*no more and no less*." (Emphasis sic.) (BWC's Brief at 27.) Citing another provision of Ohio's workers' compensation statutes, BWC acknowledges that its "role" in this process is to serve "as steward and fiduciary of the State Insurance Fund." (BWC's Brief at 25, citing R.C. 4123.32(B).) *See State ex rel. Daily Servs., L.L.C. v. Morrison*, 154 Ohio St.3d 498, 2018-Ohio-2151, ¶ 25 (stating that BWC "has a fiduciary responsibility to safeguard the Workers' Compensation Fund"); *State ex rel. Harry Wolsky Stair Builder, Inc. v. Indus. Comm.*, 58 Ohio St.3d 222, 224 (1991) (stating that BWC's "sole fiduciary responsibility is to the State Insurance Fund"). Contrary to BWC's contentions, these statements of its purpose do not demonstrate that BWC is acting as the representative of or in the interest of claimants. Instead, they provide more support for BWC's ministerial role in fairly administering the claims presented to it by claimants.

{¶ 21} Next, BWC argues that "any" is a term that expands the scope of costs or expenses to include " 'all' costs or expenses of 'whatever kind' that were paid 'to or on behalf of' the claimant." (BWC's Brief at 19.) While it is true that the term "any" expansively qualifies the types of costs or expenses within the scope of subrogation interest under R.C. 4123.93(D), it is also true that "any" such costs or expenses must still be "paid to or on behalf of the claimant." Thus, considering the word in context, as we are required to do by R.C. 1.42, our determination as to the plain language of the statute is unchanged.

{¶ 22} BWC cites *McManus v. Indus. Comm.*, 66 Ohio App. 14 (1st Dist.1940), for the proposition that it was acting as " ' "the representative, if not the champion, of the claimant, to the extent of seeing that exact justice is done him" ' " by ordering Dr. Yosowitz to complete a medical record review and report. *McManus* at 21, quoting *Miles v. Elec. Auto-Lite Co.*, 133 Ohio St. 613, 616 (1938), quoting *Roma v. Indus. Comm.*, 97 Ohio St. 247, 252 (1918). First, it is important to note that *McManus* and the cases quoted therein were decided prior to amendments to Ohio's workers' compensation statutes which substantially changed the framework under which BWC and the commission operate. *See State ex rel. Ohio AFL-CIO v. Voinovich*, 69 Ohio St.3d 225, 226 (1994) (discussing 1993 Am.Sub.H.B. No. 107 which "abolished the five-member Industrial Commission of Ohio, created a new three-member Industrial Commission, substantially amended the workers' compensation law, and made appropriations for the Bureau of Workers' Compensation and the new commission"); *Druck v. Dynalectric Co. of Ohio*, 2d Dist. No. 19688, 2003-Ohio-3767, ¶ 14, fn. 2, citing *Greene*, *supra* (stating that "BWC claims examiners are charged with 'reviewing and processing' claims for benefits and 'investigating the facts,' but they no longer conduct adjudicative hearings").[9]

{¶ 23} Second, significant factual differences distinguish *Roma*, the case which originated the language in *McManus* cited by BWC, from the present matter. In *Roma*, the court considered the question of whether an appeal from an order of the commission to the Mahoning County Common Pleas Court was timely because the claimant did not receive actual notice of the commission's order denying compensation for the claimant's injury. Because the claimant's attorney withdrew from representation and the record reflected that the claimant did not have actual notice of the commission's denial, which was sent to the claimant's former attorney, the court found the claimant's appeal to the common pleas court was timely. In so finding, the court noted that "the principles and objects sought to be attained by the Workmen's Compensation Act" included "obviat[ing] the necessity of claimants dealing with the board through agents, representatives or attorneys." *Roma* at 252. The court found that by "voluntarily submit[ting] to the decision of the Board of

[9] We further note the provisions at issue here were enacted and amended subsequent to *McManus* and the decisions cited therein.

Awards," the claimant "denied to himself the right he may have had, if any, to prosecute his claim in the courts of the state." *Id.* In this context, the court found that "[t]he state of Ohio by the very terms of the law becomes in fact the representative, if not the champion, of the claimant, to the extent of seeing that exact justice is done him, and it is quite manifestly the intention of the law that the ordinary rules of procedure, although wise and fair in the abstract, must give way, if, in adhering to them, any conclusion even savoring of injustice would result." *Id.* at 252-53. Therefore, we find BWC's citation of *McManus* is not dispositive of the question before us in the present matter both due to the substantial developments in the law following the issuance of *Roma*, the decision on which the quoted portion of *McManus* relies, and factual distinctions separating that matter from the present.

{¶ 24} Thus, we cannot agree that including the cost of a record review and report performed by mandate of BWC in furtherance of BWC's administrative mission of discerning the merits of appellant's request for additional allowances comports with the common sense meaning of the phrase "on behalf of." Indeed, this interpretation strains the natural and most obvious reading of the statute's language. *See Stolz* at ¶ 9, citing *Ohio Neighborhood Fin., Inc. v. Scott*, 139 Ohio St.3d 536, 2014-Ohio-2440, ¶ 22 (stating in the context of applying an unambiguous statute that "a court must give effect to the natural and most obvious import of a statute's language, avoiding any subtle or forced constructions"). Appellant did not request or authorize the services of Dr. Yosowitz; nor was BWC acting as appellant's representative by requesting the record review to further its ministerial function. Applying the common meaning of the express terms of the statute to the undisputed facts of this case leads to a straightforward, unambiguous result—BWC's administrative costs are not encompassed by the definition of subrogation interest. As a result, the Court of Claims erred in finding Dr. Yosowitz's medical review and report was properly included in BWC's subrogation interest.

{¶ 25} We note appellant also argues that the court erred in failing to consider potential conflict between the parties' differing interpretations of the definition of subrogation interest and other provisions of workers' compensation law. Although analysis of other statutory code provisions is unnecessary given our resolution of the question under

the common, everyday meaning of the text at issue, and recognizing precedent of the Supreme Court applying the in pari materia rule of construction to ambiguous statutory language, we nevertheless find the context of the subrogation provision at issue within the broader scope of workers' compensation law to be of note. *See Ohio Neighborhood* at ¶ 34, citing *State v. Krutz*, 28 Ohio St.3d 36, 37-38 (1986) (citing *Krutz* for the proposition that "in pari materia rule applies only when a statute is ambiguous or the significance of its terms is doubtful"); *State ex rel. Herman v. Klopfleisch*, 72 Ohio St.3d 581, 585 (1995). *See also* R.C. 1.42; *Great Lakes Bar Control* at ¶ 9.

{¶ 26} The Supreme Court has stated the following with regard to potentially conflicting statutory provisions:

> First, all statutes which relate to the same general subject matter must be read in pari materia. And, in reading such statutes in pari materia, and construing them together, this court must give such a reasonable construction as to give the proper force and effect to each and all such statutes. The interpretation and application of statutes must be viewed in a manner to carry out the legislative intent of the sections. All provisions of the Revised Code bearing upon the same subject matter should be construed harmoniously. This court in the interpretation of related and co-existing statutes must harmonize and give full application to all such statutes unless they are irreconcilable and in hopeless conflict.

(Internal citations omitted.) *Johnson's Markets, Inc. v. New Carlisle Dept. of Health*, 58 Ohio St.3d 28, 35 (1991). Thus, "[t]he statutory-construction canon of in pari materia instructs that statutes relating to the same subject 'be construed together, so that inconsistencies in one statute may be resolved by looking at [the] other statute on the same subject.' " *State v. Smith*, __Ohio St.3d __, 2022-Ohio-274, ¶ 30, quoting *Black's Law Dictionary* 911 (10th Ed.2014). *See Thomas v. Freeman*, 79 Ohio St.3d 221, 225 (1997) (stating that the "maxim of in pari materia indicates that acts will be given full meaning and effect if they can be reconciled"); *State v. Pribble*, 158 Ohio St.3d 490, 2019-Ohio-4808, ¶ 12, quoting *State v. Moaning*, 76 Ohio St.3d 126, 128 (1996) (" 'It is a well-settled rule of statutory interpretation that statutory provisions be construed together and the Revised Code be read as an interrelated body of law.' "); *Meyers v. Hadsell Chem. Processing, L.L.C.*, 10th Dist. No. 18AP-387, 2019-Ohio-2982, ¶ 34.

{¶ 27} R.C. 4123.53(A) provides in pertinent part as follows:

> The administrator of workers' compensation or the industrial commission may require any employee claiming the right to receive compensation to submit to a medical examination, vocational evaluation, or vocational questionnaire at any time, and from time to time, at a place reasonably convenient for the employee, and as provided by the rules of the commission or the administrator of workers' compensation. A claimant required by the commission or administrator to submit to a medical examination or vocational evaluation, at a point outside of the place of permanent or temporary residence of the claimant, as provided in this section, is entitled to have paid to the claimant by the bureau of workers' compensation the necessary and actual expenses on account of the attendance for the medical examination or vocational evaluation after approval of the expense statement by the bureau.

Thus, in the process of reviewing a claimant's claim, BWC may require the claimant to submit to a medical examination pursuant to R.C. 4123.53(A). It is further noteworthy that, in the event a claimant is required to submit to an examination outside the claimant's place of residence, the claimant is entitled to be paid for the expense of attending the examination. Similarly, Ohio Adm.Code 4123-3-09(C)(4) provides that "[t]he bureau or commission may, at any point in the processing of an application for benefits, require the employee to submit to a physical examination or may refer a claim for investigation."

{¶ 28} R.C. 4123.341 provides in pertinent part:

> The administrative costs of the industrial commission, the bureau of workers' compensation board of directors, and the bureau of workers' compensation shall be those costs and expenses that are incident to the discharge of the duties and performance of the activities of the industrial commission, the board, and the bureau under this chapter and [other listed workers' compensation statutes], and all such costs shall be borne by the state and by other employers amenable to this chapter * * *.

Thus, under R.C. 4123.341, BWC's administrative costs include those costs and expenses that are incident to the discharge of its duties and performances of its activities. BWC, along with subject employers, is required to bear the burden of paying for such administrative costs, and is prohibited from passing such costs on to claimants. *See Cirino v. Ohio Bur. of Workers' Comp.*, 153 Ohio St.3d 333, 2018-Ohio-2665, ¶ 4, quoting R.C. 4123.341 (stating

that "the bureau * * * is required to ensure that all 'administrative costs'—that is, all costs that are 'incident to the discharge of the duties and performance of the activities of the * * * bureau'—are borne by the state and employers").

{¶ 29} From the foregoing, it is clear that, in the processing of a claim for benefits, BWC has the authority to refer such claim for investigation, as was done in this case when BWC sought Dr. Yosowitz's opinion of appellant's medical records. The fact that this procedure occurs in the processing of an application for benefits, renders this procedure "incident to the discharge of the duties and performance of the activities" of the BWC. R.C. 4123.341. As a result, BWC, not the claimant, is required to bear the expense of such administrative cost. Considering R.C. 4123.53(A), Ohio Adm.Code 4123-3-09(C)(4), and R.C. 4123.341 in pari materia with R.C. 4123.93, it is apparent that the cost or expense of the medical record review and report prepared by Dr. Yosowitz at the direction of BWC was an administrative cost, and, as such, was required to be borne by BWC, not charged to appellant as part of BWC's subrogation interest. Therefore, having found under the common, everyday meaning of the plain language of R.C. 4123.93(D) that the cost or expense paid by BWC for Dr. Yosowitz's record review and report cannot be considered to be encompassed under the statutory definition of subrogation interest, we must sustain appellant's assignment of error and remand this matter for further proceedings.

{¶ 30} Accordingly, we sustain appellant's sole assignment of error.

IV. Conclusion

{¶ 31} Having sustained appellant's sole assignment of error, we reverse the June 28, 2021 decision and judgment entry of the Court of Claims of Ohio and remand this matter to that court for further proceedings consistent with law and this decision.

Judgment reversed
and cause remanded.

KLATT and MENTEL, JJ., concur.

IN THE COURT OF CLAIMS OF OHIO

LAMAR THOMAS Plaintiff v. OHIO BUREAU OF WORKERS' COMPENSATION Defendant	Case No. 2021-00112JD Judge Patrick E. Sheeran JUDGMENT ENTRY

For reasons set forth in the Decision filed concurrently herewith, the Court GRANTS Defendant's Motion For Judgment On The Pleadings filed on May 3, 2021. Judgment is rendered in favor of Defendant. Court costs are assessed against Plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

Patrick E. Sheeran

PATRICK E. SHEERAN
Judge

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IN THE COURT OF CLAIMS OF OHIO

LAMAR THOMAS Plaintiff v. OHIO BUREAU OF WORKERS' COMPENSATION Defendant	Case No. 2021-00112JD Judge Patrick E. Sheeran DECISION

Defendant Ohio Bureau of Workers' Compensation (BWC) moves for judgment on the pleadings on Plaintiff Lamar Thomas's class-action complaint in which Thomas seeks restitution, on behalf of himself and all similarly situated persons, based on BWC's alleged wrongful subrogation recovery of an expenditure for a medical review related to Thomas's workers' compensation claim. Thomas opposes BWC's motion.

When the material allegations in Thomas's complaint, as well as all reasonable inferences, are drawn in favor of Thomas, the Court finds beyond doubt that Thomas can prove no set of facts in support of his claims that would entitle him to relief and that BWC is entitled to judgment as a matter of law.

I. Background

On September 5, 2013, Thomas, who at that time was an employee of Chris Daniel dba World Waste Cleveland Waste, was injured in an automobile accident while Thomas was in the course and scope of his employment. The BWC allowed Thomas's claim for workers' compensation for a cervical and lumbar sprain. (Complaint, ¶ 1-2, 27, 28.) Thomas's treating physician authored a report wherein he opined that Thomas also substantially aggravated pre-existing degenerative disc disease at L3-L4, as well as pre-existing spondylothesis at L5. (Complaint, ¶ 30.) BWC referred the claim to Dr. Gerald Yosowitz, M.D.—a physician reviewer—who reviewed some medical records

and who opined that the additional conditions were degenerative and unrelated to the injury sustained in the automobile collision. (Complaint, ¶ 32.) BWC referred the matter to the Industrial Commission for hearings. (Complaint, ¶ 33.) During the hearings BWC's attorneys submitted Dr. Yosowitz's report in support of a contention that Thomas's additional request should be denied. (Complaint, ¶ 34.)

Thomas brought a third-party claim against the tortfeasor, which was resolved through settlement on May 13, 2015. (Complaint, ¶ 40.) BWC made a subrogation demand that included the cost of Dr. Yosowitz's medical review. (Complaint, ¶ 41-42.) Thomas asserts that BWC "exacted $6,044.36 out of [his] tort recovery, and a portion of those dollars were for the cost of the defense medical review * * *." (Complaint, ¶ 44.)

Thomas later sued BWC in the Cuyahoga County Common Pleas Court, wherein Thomas apparently challenged the amount of BWC's subrogation recovery. (Complaint, ¶ 8, Exhibit 1). The Cuyahoga Common Pleas Court ultimately transferred the case to the Franklin County Common Pleas Court, where, upon a Stipulation of Dismissal, the case was dismissed without prejudice on March 18, 2020. (Complaint, ¶ 17.) On March 4, 2021, Thomas brought suit against BWC in this Court. Plaintiff asserts four "counts," which present claims seeking injunctive relief, as well as relief based on equitable restitution, unjust enrichment, and a violation of the doctrine of equal protection.[1] BWC has answered the complaint.

On May 3, 2021, BWC moved for judgment on the pleadings because, in its view, the costs and expenses incurred by BWC in connection with an injured worker's medical review are incurred "on behalf of" the claimant and are included within the statutory definition of "subrogation interest" under R.C. 4123.93(D). In opposition, Thomas contends, "A 'subrogation interest' cannot possibly include the cost of a medical record review because: (1) the medical record review was not for the purpose of medical treatment and the reviewing physician did not provide any medical care or treatment to

[1] It is well established that this Court lacks jurisdiction to consider constitutional claims. *Gordon v. Ohio Dept. of Rehab. & Correction*, 10th Dist. Franklin No. 17AP-792, 2018-Ohio-2272, ¶ 26.

[Thomas]; (2) the medical record review was performed at the request of the BWC and was used to defend against Mr. Thomas's worker's compensation claim; and (3) the expense for the record review was not claimed or recovered by Mr. Thomas in his action against the third party tortfeasor." Thomas further contends that BWC's interpretation of R.C. 4123.93(D) is overly broad and unreasonable, that it violates R.C. 4123.95, which requires R.C. 4123.01-4123.94 to be liberally construed in favor of employees and the dependents of deceased employees, and that BWC's proposed interpretation contradicts guidance given by BWC and the Industrial Commission of Ohio.

II. Law and Analysis

A. Legal Standard

Pursuant to Civ.R. 12(C), a motion for judgment on the pleadings "presents only questions of law." *Fontbank, Inc. v. CompuServe, Inc.*, 138 Ohio App.3d 801, 807, 742 N.E.2d 674 (10th Dist.2000). The standard for a motion for judgment on the pleadings under Civ.R. 12(C) "is similar to the standard for evaluating a Civ.R. 12(B)(6) motion to dismiss, except that Civ.R. 12(C) permits the court to consider the complaint and answer, where a Civ.R. 12(B)(6) motion limits the court's consideration to the complaint." *Daudistel v. Village of Silverton*, 1st Dist. Hamilton No. C-130661, 2014-Ohio-5731, ¶ 20. *See Rushford v. Caines*, 10th Dist. Franklin No. 00AP-1072, 2001 Ohio App. LEXIS 1512, at *5 (Mar. 30, 2001) (observing that under Ohio law a Civ.R. 12(C) motion has been characterized as a belated Civ.R. 12(B)(6) motion and the same standard of review is applied).

Under Civ.R. 12(C) any party "may move for judgment on the pleadings after the pleadings are closed." *S.E.A. Inc. v. Dunning-Lathrop & Assocs.*, 10th Dist. Franklin Nos. 03AP-1051, 03AP-1052, 2004 Ohio App. LEXIS 3734, at *9 (Aug. 5, 2004). When a court reviews a Civ.R. 12(C) motion, a court "is limited to only the allegations contained in the complaint and answer, and any writings properly attached to such, and

the trial court may not consider any evidentiary materials." *S.E.A. Inc.* at *10. Under Civ.R. 12(C), a dismissal "is appropriate where a court (1) construes the material allegations in the complaint, with all reasonable inferences to be drawn therefrom, in favor of the nonmoving party as true, and (2) finds beyond doubt, that the plaintiff could prove no set of facts in support of his claim that would entitle him to relief. * * * Thus, Civ.R. 12(C) requires a determination that no material factual issues exist and that the movant is entitled to judgment as a matter of law." *State ex rel. Midwest Pride IV v. Pontious*, 75 Ohio St.3d 565, 570, 664 N.E.2d 931 (1996). "Under Civ.R. 12(C), if the party opposing the motion pleads facts which are contradictory to those alleged by the moving party, the motion must be denied." *Epperly v. Medina City Bd. of Edn.*, 64 Ohio App.3d 74, 76, 580 N.E.2d 807 (9th Dist.1989), citing *Carolyn Riley & Assoc., Inc. v. Falb* (Sept. 16, 1987) Summit App.No. 13083, unreported, 1987 WL 16987, citing 10 Wright & Miller, Federal Practice and Procedure (1973), Section 2713. *Accord Krassen v. Climaco, Climaco, Lefkowitz & Garofoli Co., L.P.A.*, 8th Dist. Cuyahoga No. 80305, 2002-Ohio-3438, ¶ 17, citing *Epperly*, *supra* ("[i]f the party opposing the motion pleads facts contradictory to those alleged by the movant, the motion for judgment on the pleadings must be denied").

B. Analysis

The parties do not dispute the material facts underlying this case. The parties agree that, after Thomas's treating physician opined that Thomas's BWC claim should be amended, BWC referred Thomas's amended claim to a physician who opined that an additional allowance was not causally related to Thomas's workplace injury. The parties also agree that Thomas asserted a civil claim for damages against a third-party tortfeasor, that Thomas settled his third-party claim, and that BWC made a subrogation demand, which included the cost for the physician's medical review of a claimed additional allowance. Because the material facts are not under dispute, BWC's motion presents the Court with an issue of statutory interpretation—whether costs and

expenses incurred by BWC regarding an injured worker's medical review are included within the statutory definition of "subrogation interest."

Statutory interpretation poses a question of law. *City of Independence v. Office of the Cuyahoga Cty. Executive*, 142 Ohio St.3d 125, 2014-Ohio-4650, 28 N.E.3d 1182, ¶ 18. The "necessity of considering the facts or the evidence to determine whether a legislative act applies to a particular case does not turn the issue of statutory interpretation into a question of fact." *City of Independence* at ¶ 18, citing *Henley v. City of Youngstown Bd. of Zoning Appeals*, 90 Ohio St.3d 142, 148, 735 N.E.2d 433 (2000).

The Ohio Supreme Court has held, "The object of judicial investigation in the construction of a statute is to ascertain and give effect to the intent of the law-making body which enacted it." *Slingluff v. Weaver*, 66 Ohio St. 621, 64 N.E. 574 (1902), paragraph one of the syllabus. The Ohio Supreme Court has further held that "the intent of the law-makers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation. The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction." *Slingluff* at paragraph two of the syllabus. *Accord State v. Elam*, 68 Ohio St.3d 585, 587, 629 N.E.2d 442 (1994) (stating that the "polestar of statutory interpretation is legislative intent, which a court best gleans from the words the General Assembly used and the purpose it sought to accomplish. Where the wording of a statute is clear and unambiguous, this court's only task is to give effect to the words used").

Additionally, the Ohio Supreme Court has held that "where its provisions are ambiguous, and its meaning doubtful, the history of legislation on the subject, and the consequences of a literal interpretation of the language may be considered; punctuation may be changed or disregarded; words transposed, or those necessary to a clear

understanding and, as shown by the context manifestly intended, inserted." *Slingluff* at paragraph one of the syllabus. But the Ohio Supreme Court has cautioned, "A direction to liberally construe a statute in favor of certain parties will not authorize a court to read into the statute something which cannot reasonably be implied from the language of the statute. *Szekely v. Young*, 174 Ohio St. 213, 188 N.E.2d 424 (1963), paragraph two of the syllabus. And a court is not obligated to defer to the BWC's or Industrial Commission's policy statement when such a statement contravenes the express language of a statute. *See State ex rel. Burrows v. Indus. Comm. of Ohio*, 78 Ohio St.3d 78, 81, 676 N.E.2d 519 (1997).

The Ohio Supreme Court has noted that "subrogation in the workers' compensation context cannot be analogized to subrogation arising from contract or equitable principles and concluded that workers' compensation subrogation is not the same as typical subrogation, which often arises in the insurance context." *Ohio Bur. of Workers' Comp. v. McKinley*, 130 Ohio St.3d 156, 2011-Ohio-4432, 956 N.E.2d 814, ¶ 24, citing with approval *Corn v. Whitmere*, 183 Ohio App.3d 204, 2009-Ohio-2737, 916 N.E.2d 838, ¶ 30. And recently the Tenth District Court of Appeals noted that the legislative scheme of the Ohio workers' compensation system may be summarized as follows:

> The General Assembly established the Ohio Workers' Compensation system to **supplant** unsatisfactory common law remedies, not merely to supplement or amend those previously available. * * * The rights and duties thus created are purely statutory, resting not on any common law principles but **exclusively** on the grant of legislative authority by the enabling Workers' Compensation Act.

(Emphasis added.) *Cirino v. Bur. of Workers' Comp.*, 10th Dist. Franklin No. 20AP-187, 2021-Ohio-1382, ¶ 31, citing Ct. of Cl. No. 2018-1140JD (Feb. 28, 2020 Decision at 10),

citing Fulton, *Ohio Workers' Compensation Law*, Section 1.1, at 2 (5th Ed.2018). Accordingly, Thomas's contention that in this instance subrogation principles arising from contract or equitable principles should control is not well taken.

R.C. 4123.93 is a definitional section that explains the meaning of terms appearing in R.C. 4123.931, which sets forth the statutory subrogee's right of subrogation and details how that right is implemented. *Ohio Bur. of Workers' Comp. v. McKinley*, 130 Ohio St.3d 156 at ¶ 14. *See* R.C. 4123.931(A) (providing that the "payment of compensation or benefits pursuant to this chapter or [R.C. Chapter 4121., 4127., or 4131] creates a right of recovery in favor of a statutory subrogee against a third party, and the statutory subrogee is subrogated to the rights of a claimant against that third party. The net amount recovered is subject to a statutory subrogee's right of recovery"); *see also* R.C. 4123.93(B) (defining "statutory subrogee" as "the administrator of workers' compensation, a self-insuring employer, or an employer that contracts for the direct payment of medical services pursuant to [R.C. 4121.44(P)]").

Pursuant to R.C. 4123.93(D), as used in R.C. 4123.93 to 4123.932, the term "subrogation interest" "includes past, present, and estimated future payments of compensation, medical benefits, rehabilitation costs, or death benefits, and *any other costs or expenses paid to or on behalf of* the claimant by the statutory subrogee pursuant to this chapter or Chapter 4121., 4127., or 4131. of the Revised Code." (Emphasis added.) A review of R.C. 4123.93 discloses that the terms "costs or expenses," and "on behalf of" are not defined in R.C. 4123.93. Because the terms "costs or expenses," and "on behalf of" are undefined, the terms' common, everyday meaning applies. *See Satterfield v. Ameritech Mobile Communs., Inc.*, 155 Ohio St.3d 463, 2018-Ohio-5023, 122 N.E.3d 144, ¶ 18 ("[t]erms that are undefined in a statute are accorded their common, everyday meaning"). R.C. 1.42. In common usage, "cost" means the "amount paid or charged for something; price or expenditure," *Black's Law Dictionary* 436 (11th Ed.2019), and "expense" means an "expenditure of money, time,

labor, or resources to accomplish a result." *Black's Law Dictionary* at 723. And in common usage the phrase "on behalf of" means "'in the name of, on the part of, as the agent or representative of.'" *Black's Law Dictionary* at 189.

When the terms "costs or expenses" and "on behalf of" in R.C. 4123.93(D) are considered according to the rules of grammar and common usage, the Court determines that these terms pertain to an amount paid by BWC or expenditure paid by BWC in the name of, on the part of, or as the agent or representative of a claimant. In the Court's view, the costs and expenses incurred by BWC in connection with an injured worker's medical review—in this case Lamar Thomas—are included within the statutory definition of "subrogation interest" under R.C. 4123.93(D) because it is an expenditure paid by BWC on the part of a claimant. *Compare Cirino v. Ohio Bur. of Workers' Comp.*, 153 Ohio St.3d 333, 2018-Ohio-2665, 106 N.E.3d 41, ¶ 4 ("[r]egardless of which payment method the bureau chooses to offer, however, it is required to ensure that all 'administrative costs'—that is, all costs that are 'incident to the discharge of the duties and performance of the activities of the * * * bureau'—are borne by the state and employers. R.C. 4123.341").

The Court is cognizant that in a related case the Franklin County Court of Common Pleas denied BWC's motion for judgment on the pleadings on the issue whether the statutory definition of subrogation interest allows, as a matter of law, BWC to collect from a claimant the costs of BWC's independent medical review from the claimant's settlement with a third-party tortfeasor. (Exhibit 2, Complaint) and that in another related case the Cuyahoga County Court of Common Pleas denied BWC's motion to dismiss. (Exhibit 1, Complaint). The Court concludes, however, that, as a matter of precedent, neither the decision of the Franklin County Common Pleas Court nor the decision of the Cuyahoga County Common Pleas Court creates a definitive interpretation of R.C. 4123.93(D) that this Court is required to follow when deciding this

case.[2] Moreover, the parties ultimately dismissed the case before the Franklin County Common Pleas Court and, consequently, the case before the Franklin County Common Pleas Court may be treated as if it was never commenced. *See Zimmie v. Zimmie*, 11 Ohio St.3d 94, 95, 464 N.E.2d 142 (1984) ("[a]fter its voluntary dismissal, an action is treated as if it had never been commenced").

Accordingly, when the material allegations in Thomas's complaint, as well as all reasonable inferences, are drawn in favor of Thomas, the Court finds beyond doubt that Thomas can prove no set of facts in support of his claims that would entitle him to relief and that BWC is entitled to judgment as a matter of law.

III. Conclusion

For reasons set forth above, the Court holds that BWC's motion for judgment on the pleadings should be granted.

PATRICK E. SHEERAN
Judge

[2] In *Gulfstream Aero. Corp. v. Camp Sys. Internatl.*, S.D.Ga. No. 405CV018, 2007 U.S. Dist. LEXIS 64142, at *6-7 (Aug. 30, 2007), quoting Charles A. Sullivan, *On Vacation,* 43 Hous. L. Rev. 1143, 1146-48 (footnotes omitted), a federal district court discussed the meaning of precedent:

> [T]he law uses "precedent" in two very different ways. In the weaker sense, "precedent" merely refers to any authoritative pronouncement of a court that other courts have an obligation to respect; in this sense, any court decision may be a "persuasive precedent," although precisely what that means--how respectful a court must be--is unclear. The second, and stronger, sense is "binding precedent," which means that a lower court, subject to the appellate jurisdiction of the higher court, is required to follow the decisions of that court, or, more accurately, to follow the "holdings" of that court. This is sometimes called the doctrine of vertical precedent; "*stare decisis*" is also sometimes used to refer to binding precedent in this sense, although it is often used to refer only to what has been called horizontal precedent, the obligation of a court to follow its own precedents.

Ohio Administrative Code

Rule 4123-3-09 Procedures in the processing of applications for benefits.

Effective: July 1, 2019

(A) Numbering and recording.

(1) Upon receipt, the bureau will assign a claim number to each initial application for benefits. The bureau shall provide the claim number to the claimant and employer. In cases where a deceased employee has filed, during his or her lifetime, an industrial claim for the injury or disability which is the subject matter of the death claim, the application for death benefits shall be assigned the original claim number.

(2) The claim number should be placed on all documents subsequently filed in each claim and the claim number should be given when inquiry is made concerning each claim.

(B) Initial review and processing of new claims.

Immediately after numbering and recording, all new claim applications, except applications of employees of self-insuring employers, shall be reviewed and processed by the bureau. "Processing on the question of compensability" means making a determination on the validity of the industrial claim.

(1) Uncontested or undisputed claims.

A "contested or disputed claim," as used herein, is where the employer or the bureau of workers' compensation questions the validity of a claim for compensation or benefits. No claim shall be regarded as a contested or a disputed claim requiring a formal (public) hearing, solely by reason of incomplete information, unless every effort has been made to complete the record.

(a) If a state fund claim meets the statutory requirements of compensability, the claims specialist shall have authority to approve such claim for payment of medical bills and temporary total disability compensation or other appropriate compensation. The approval of the claim must contain the

description of the condition or conditions for which the claim is being allowed and part or parts of the body affected.

(b) In the processing of initial applications in state fund claims, requesting payment of compensation in addition to medical benefits, the claims specialist may approve temporary total disability compensation over a period not to exceed four weeks, without medical proof in the record, provided that the application has been properly completed and signed, certified by the employer and was otherwise noncontroversial. If medical proof was submitted with the initial application, the above limitation shall not apply. Upon approval of the claim the claimant shall be notified in writing that his or her attending physician's report will be necessary for consideration of any additional payment of compensation and an appropriate form shall be enclosed, with the necessary instructions, for the claimant's convenience.

(2) Contested or disputed claims.

(a) Contested or disputed claims as well as claims requiring investigation shall be referred, immediately after the initial review, to the appropriate office of the bureau from which investigation and determination of issues may be made most expeditiously.

(b) If the bureau or the employer contests the claim application and the claimant is not available for an adjudication due to the claimant's service in the armed services of the United States, the bureau shall continue the matter in accordance with the Servicemembers Civil Relief Act until the claimant is available for adjudication of the claim.

(3) Applications for death benefits.

Immediately after numbering and recording, all applications for death benefits shall be referred to the appropriate office of the bureau from which investigation and determination of issues may be made most expeditiously. Every effort should be made to complete the investigation within the shortest time possible, depending on the facts and circumstances of each particular case, to enable prompt adjudication of such claims by the bureau.

(4) Contested (disputed) applications for workers' compensation benefits filed by employees of self-

insuring employers shall be referred to the industrial commission for a hearing.

(C) Proof.

(1) In every instance the proof shall be of sufficient quantum and probative value to establish the jurisdiction of the bureau to consider the claim and determine the rights of the applicant to an award. "Quantum" means measurable quantity. "Probative" means having a tendency to prove or establish.

(2) Proof may be presented by affidavit, deposition, oral testimony, written statement, document, or other forms.

(3) The burden of proof is upon the claimant (applicant for workers' compensation benefits) to establish each essential element of the claim by preponderance of the evidence. Essential elements shall include, but will not be limited to:

(a) Establishing that the applicant is one of the persons who under the act have the right to file a claim for workers' compensation benefits;

(b) That the application was filed within the time period as required by law;

(c) That the alleged injury or occupational disease was sustained or contracted in the course of and arising out of employment;

(d) In death claims, that death was the direct and proximate result of an injury sustained or occupational disease contracted in the course of and arising out of employment; the necessary causal relationship between an injury or occupational disease and death may be established by submission of sufficient evidence to show that the injury or occupational disease aggravated or accelerated a pre-existing condition to such an extent that it substantially hastened death;

(e) Any other material issue in the claim, which means a question that must be established in order to determine claimant's right to compensation and/or benefits.

"Preponderance of the evidence" means greater weight of evidence, taking into consideration all the

evidence presented. Burden of proof does not necessarily relate to the number of witnesses or quantity of evidence submitted, but to its quality, such as merit, credibility and weight. The obligation of the claimant is to make proof to the reasonable degree of probability. A mere possibility is conjectural, speculative and does not meet the required standard.

(4) The bureau or commission may, at any point in the processing of an application for benefits, require the employee to submit to a physical examination or may refer a claim for investigation.

(5) Procedure on employer's request for medical examination of the claimant by a doctor of employer's choice.

The employer may require a medical examination of the employee as provided in section 4123.651 of the Revised Code under the following circumstances:

(a) Such an examination, if requested, shall be in lieu of any rights under paragraph (C)(5)(b) of this rule and in no event will the claimant be examined on the same issue by a physician of the employer's choice more than one time. The exercise of this examination right shall not be allowed to delay the timely payment of benefits or scheduled hearings. Requests for further examinations will be made to the bureau or commission following the provisions of paragraph (C)(5)(b) of this rule. The cost of any examination initiated by the employer shall be paid by the employer including any fee required by the doctor, and the payment of all of the claimant's traveling and meal expenses, in a manner and at the rates as established by the bureau from time to time. If employed, the claimant will also be compensated for any loss of wages arising from the scheduling of an examination.

All reasonable expenses shall be paid by the employer immediately upon receipt of the billing, and the employer shall provide the claimant with a proper form to be completed by the claimant for reimbursement of such expenses.

The employer shall promptly inform the bureau or the commission, as well as the claimant's representative, as to the time and place of the examination, and the questions and information provided to the doctor. A copy of the examination report shall be submitted to the bureau or commission and to the claimant's representative upon the employer's receipt of the report from the doctor.

Emergency treatment does not constitute an examination by the employer for the purposes of this rule. Treatment by a company doctor as the treating physician constitutes an examination for the purposes of this rule. The procedure set forth in paragraph (C)(5)(a) of this rule shall be applicable to claims where the date of injury or the date of disability in occupational disease claims occur on or after August 22, 1986.

(b) If after one medical examination of the claimant under paragraph (C)(5)(a) of this rule, an employer asserts that a medical examination of the claimant by a doctor of the employer's choice is essential in the defense of the claim by the employer, a written request may be filed with the bureau for that purpose. In such request the employer shall state the date of the last examination of the claimant by a doctor of employer's choice on the question pending. If there was no such prior examination, the request must so indicate.

(c) If the claim is pending before the industrial commission or its hearing officers and the question sought to be clarified by such examination is not within the jurisdiction of the bureau (for example: permanent total disability), the request shall be referred, forthwith, to the industrial commission or to the appropriate hearing officer, as the case may be, for further consideration.

(d) If the question sought to be clarified by the requested examination is within the bureau's jurisdiction (for example: temporary total disability in otherwise undisputed claim, allowance of additional condition), the bureau shall immediately act upon the request.

If, upon a review of the claim file the bureau is of the opinion that the request should be denied for the reason that the claimant has been recently examined by a doctor of the employer's choice, or for any other reason indicating that further examination would not be pertinent to the defense of the claim, based on the facts and circumstances of each particular case, the matter shall be referred, forthwith, to the appropriate district hearing officer for further consideration. In cases of temporary total disability, a medical examination performed within the past thirty days shall be regarded as "recent." If the question involves additional allowance of claim for an additional condition allegedly causally related to the allowed injury or occupational disease, a medical examination performed within the past sixty to ninety days may be regarded as "recent," depending on the nature and type of the condition and/or disability.

(e) All reasonable expenses incurred by the claimant in submitting to such examination, including any travel expense that the claimant may properly incur, shall be paid by the employer immediately upon receipt of the billing. Payment for traveling expenses shall not require an order of the bureau or commission, unless there is a dispute. The employer shall provide the claimant with a proper form to be completed by the claimant for reimbursement for traveling expenses. In addition, if the claimant sustains lost wages as a result of such examination, the employer shall reimburse the claimant for such lost wages within three weeks from the date of examination. Expenses incurred by the claimant and wages lost by reason of attending such examination are not to be paid in the claim.

(f) The employer shall make arrangements for such examination within fifteen days from the date of receipt of the order of approval. The examination shall be performed not later than within thirty days from the date of the receipt of approval.

The doctor's report shall be filed with the bureau immediately upon its receipt. Failure of the employer to comply with this rule shall not delay further action in the claim, unless it is established that the omission was due to causes beyond the employer's control.

(6) Procedure for obtaining the deposition of an examining physician. Authority to allow depositions is within the exclusive jurisdiction of the industrial commission. Any such request, if filed with the bureau, shall be referred, forthwith, to the industrial commission for further consideration.

(D) Hearings and orders.

(1) Unless required by law or by the circumstances of the claim, the claim shall be adjudicated without a formal hearing.

(2) Disputed or contested claims shall be set for a formal (public) hearing on the question of allowance before the district hearing officers. A "disputed or contested claim," as used herein, is where the employer or the claimant questions the decision of the bureau regarding a request for compensation or benefits. No claim shall be regarded as a contested or disputed claim requiring a formal (public) hearing, solely by reason of incomplete information unless every effort has been made to complete the record In the event the employer or claimant object to the decision of the

bureau, such objection shall be made in writing with rationale and supporting evidence, as appropriate.

(3) The administrator or his or her designee may appear at such hearings to represent the interest of the state insurance fund and/or the surplus fund.

(4) The bureau shall make payment on orders of the commission, and district or staff hearing officers in accordance with law and rules of the bureau and the industrial commission.

(5) If the administrator or his or her designee is of the opinion that an emergency exists which requires an immediate hearing of a claim, he or she may request an emergency hearing. "Emergency," as used herein, means a sudden, generally unexpected occurrence or set of circumstances demanding immediate action. Such request shall be made in accordance with the rule of the industrial commission on emergency hearings as defined in rule 4121-3-30 of the Administrative Code.

(E) Representation of claimants and employers before the bureau. Representation of claimants and employers before the bureau is a matter of individual free choice. The bureau does not require representation nor does it prohibit it. No one other than an attorney at law, authorized to practice in the state of Ohio, shall be permitted to represent claimants for a fee before the bureau.

(F) If the bureau or the parties believe that clarification of issues will facilitate the processing of the claim, the claimant, employer, and their duly authorized representatives, as defined in rule 4123-3-22 of the Administrative Code, shall be given an opportunity to provide additional evidence on questions pertaining to the claim pending before the bureau.

The evidence shall be made a part of the claim file to be considered by the bureau when the determination is made on the issue pending before the bureau.

Ohio Revised Code

Section 4123.93 Subrogation definitions.

Effective: August 31, 2016

Legislation: House Bill 207 - 131st General Assembly

As used in sections 4123.93 to 4123.932 of the Revised Code:

(A) "Claimant" means a person who is eligible to receive compensation, medical benefits, or death benefits under this chapter or Chapter 4121., 4127., or 4131. of the Revised Code.

(B) "Statutory subrogee" means the administrator of workers' compensation, a self-insuring employer, or an employer that contracts for the direct payment of medical services pursuant to division (P) of section 4121.44 of the Revised Code.

(C) "Third party" means an individual, private insurer, public or private entity, or public or private program that is or may be liable to make payments to a person without regard to any statutory duty contained in this chapter or Chapter 4121., 4127., or 4131. of the Revised Code.

(D) "Subrogation interest" includes past, present, and estimated future payments of compensation, medical benefits, rehabilitation costs, or death benefits, and any other costs or expenses paid to or on behalf of the claimant by the statutory subrogee pursuant to this chapter or Chapter 4121., 4127., or 4131. of the Revised Code.

(E) "Net amount recovered" means the amount of any award, settlement, compromise, or recovery by a claimant against a third party, minus the attorney's fees, costs, or other expenses incurred by the claimant in securing the award, settlement, compromise, or recovery. "Net amount recovered" does not include any punitive damages that may be awarded by a judge or jury.

(F) "Uncompensated damages" means the claimant's demonstrated or proven damages minus the statutory subrogee's subrogation interest.