

STATE OF MICHIGAN
COURT OF APPEALS

LINDA KEITH,

Plaintiff-Appellant,

v

CHESANING REST HOME, INC., SECOND
INJURY FUND, and HEALTH CARE
ASSOCIATION,

Defendants-Appellees.

UNPUBLISHED
November 6, 1998

No. 197022
WCAC
LC No. 94-000109

Before: Markman, P.J., and Bandstra and J.F. Kowalski*, JJ.

MEMORANDUM.

Plaintiff appeals by leave granted the decision of the Worker's Compensation Appellate Commission (WCAC) denying an increase of benefits under MCL 418.356(1); MSA 17.237(356)(1). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff received worker's compensation disability benefits based on an injury she received while employed by defendant Chesaning Rest Home as a nurse's aide. Plaintiff filed a petition seeking an increase in benefits under §356(1), asserting that, but for her injury, her earnings would have been expected to increase. The WCAC affirmed the magistrate's denial of an increase, finding that plaintiff failed to present evidence that would establish a reasonable expectation of higher remuneration.

This Court granted plaintiff's application for leave to appeal, and subsequently held the matter in abeyance pending the Supreme Court's review of this Court's decision in *Matney v Southfield Bowl*, 218 Mich App 475; 554 NW2d 356 (1996). In *Matney*, this Court held that evidence of adjustments for inflation, cost of living increases, and changes in the labor market may provide sufficient evidence to support an increase under §356(1). *Id.* at 485.

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

In a peremptory order, the Supreme Court affirmed in part, and reversed in part this Court's decision. *Matney v Southfield Bowl*, 458 Mich 851; ___ NW2d ___ (1998). The Court stated in pertinent part:

The Supreme Court affirms the decision of the Court of Appeals on the question of the plaintiff's right to an increase in weekly wage-loss benefits pursuant to MCL 418.356(1); MSA 17.237(356)(1), because there was competent evidence in the record to justify the conclusion reached by the WCAC. This action should not be construed as indicating agreement with the reasoning set forth in the Court of Appeals opinion. To the extent that the Court of Appeals concluded that extrinsic economic forces are alone sufficient to justify a wage-loss benefits increase under the statute, that conclusion is expressly disavowed. [*Id.*].

There is competent evidence to support the finding of the WCAC that plaintiff failed to present sufficient evidence to support an increase in benefits. Where plaintiff cannot rely on extrinsic economic factors for support, the magistrate and WCAC properly denied her claim under the statute.

We affirm.

/s/ Stephen J. Markman

/s/ Richard A. Bandstra

/s/ John F. Kowalski