

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1996 MTWCC 31

WCC No. 9512-7463

RON BEAULIEU,

Petitioner

vs.

UNINSURED EMPLOYERS' FUND and HUMAN DYNAMICS, INCORPORATED

Respondent/Insurer for

EUREKA PELLET MILLS, INCORPORATED

Employer.

ORDER DENYING MOTION FOR SUMMARY JUDGMENT

Petitioner (claimant) brought this action seeking an increase in temporary total disability benefits, payment for blood tests prescribed by her treating physician, and payment for medical care proved by two physicians. She also seeks attorney fees and a penalty.

Since the filing of the petition the parties have resolved the dispute over claimant's temporary total disability rate. Respondent has also agreed to pay the disputed medical costs but asserts that it is entitled to offset the amounts due by the amounts of prior overpayments it has made with respect to other medical expenses. While claimant concedes there has been some overpayment, he does not agree with the overpayment amount sought by respondent.

Respondent now moves for summary judgment, alleging that the benefits issues raised by the petition have been resolved. It further argues that the resolution of those issues preclude claimant from pressing his claims for attorney fees and costs. In seeking dismissal of the petition, the respondent also alleges that the Court lacks jurisdiction to determine the amount of the overpayment because that issue has not been mediated.

The motion is **denied**. The amounts due for the medical costs mentioned in the petition have *not* been resolved. Respondent has not agreed to pay those amounts in full and intends to offset the overpayments. Lacking an affirmative defense or counter-claim based on the prior overpayments, the Court may be required in this action to order payment of the full amounts of the blood tests and physicians' care. Respondent is, of course, entitled to

pursue mediation regarding the overpayment and then bring its own petition for recoupment of the overpayments but, as it correctly notes, that issue is presently beyond the Court's jurisdiction. Respondent cannot refuse full payment of the medical expenses mentioned in the petition and at the same time seek to dismiss the petition.

This case shall be placed on the next Kalispell trial docket.

SO ORDERED.

Dated in Helena, Montana, this 25th day of April, 1996.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Ms. Laurie Wallace

Mr. Andrew J. Utick

Mr. Daniel B. McGregor

Submitted: April 19, 1996