

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1998 MTWCC 33

WCC No. 9801-7902

DARCEE BENNETT

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

CATTIN'S FAMILY DINING

Employer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Summary: Permanently totally disabled claimant sought conversion of her future PTD benefits to a lump sum. Claimant is 37 years old, married, and has a history, with her husband, of poor financial management. For instance, although with limited finances, claimant and her husband purchased two snowmobiles and entered into a contract for deed on a house, with a monthly payment over twice as large as their prior rent.

Held: Request for lump sum of PTD benefits denied. Under section 39-71-741, MCA (1991), the conversion of PTD benefits to a lump sum on the basis of financial need "must be the exception," which the WCC interprets to incorporate the historical best-interests test applicable to lump-sums. See, *Sullivan v. Aetna Life & Cas.*, 271 Mont. 12, 16, 894 P.2d 278, 280 (1995). Debt alone cannot be the basis for lump-summing where debt is pervasive in our society. Lump-summing is not in claimant's best interest because her monthly PTD benefits are the only income she has in her own right; she has twenty-years before she reaches retirement age; she and her husband have proven themselves unable to wisely manage their finances; and they have other means to extricate themselves from their current monthly shortfall, selling their snowmobiles and the house purchased in Missoula.

Topics:

Constitutions, Statutes, Regulations and Rules: Montana Code Annotated: section 39-71-741, MCA (1991). 37-year old claimant sought conversion of her future PTD benefits on the allegation of financial need. Under section 39-71-741,

MCA (1991), the conversion of PTD benefits to a lump sum on the basis of financial need "must be the exception," which the WCC interprets to incorporate the historical best-interests test applicable to lump-sums. See, *Sullivan v. Aetna Life & Cas.*, 271 Mont. 12, 16, 894 P.2d 278, 280 (1995). Lump-summing is not in claimant's best interest because her monthly PTD benefits are the only income she has in her own right; she has twenty-years before she reaches retirement age; she and her husband have proven themselves unable to wisely manage their finances; and they have other means to extricate themselves from their current monthly shortfall.

Benefits: Lump Sums: Best Interests. 37-year old claimant sought conversion of her future PTD benefits on the allegation of financial need. Under section 39-71-741, MCA (1991), the conversion of PTD benefits to a lump sum on the basis of financial need "must be the exception," which the WCC interprets to incorporate the historical best-interests test applicable to lump-sums. See, *Sullivan v. Aetna Life & Cas.*, 271 Mont. 12, 16, 894 P.2d 278, 280 (1995). Lump-summing is not in claimant's best interest because her monthly PTD benefits are the only income she has in her own right; she has twenty-years before she reaches retirement age; she and her husband have proven themselves unable to wisely manage their finances; and they have other means to extricate themselves from their current monthly shortfall.

¶1 The trial in this matter was held on April 2, 1998, in Great Falls, Montana. Petitioner, Darcee Bennett (claimant), was present and represented by Mr. Richard J. Martin. Respondent, State Fund Compensation Fund (State Fund), was represented by Mr. Thomas E. Martello.

¶2 Exhibits: Exhibits 1 through 17 were admitted without objection.

¶3 Witnesses and Depositions: Claimant and her husband, Raymond J. Bennett, were sworn and testified at the trial. In addition, the parties agreed that the Court may consider the depositions of claimant and her husband.

¶4 Issues: Claimant requests that her future permanent total disability benefits be converted, in their entirety, to a lump sum.

¶5 Bench Ruling: At the conclusion of trial, the Court denied the lump-sum request. The following findings of fact and conclusions of law repeat and elaborate on the reasons for the Court's ruling.

¶6 Having considered the Pretrial Order, the testimony presented at trial, the demeanor and credibility of the witnesses, the depositions and exhibits, and the arguments of the parties, the Court makes the following:

FINDINGS OF FACT

¶17 Claimant is permanently totally disabled on account of an industrial injury she suffered on June 26, 1993, while working for Cattin's Family Dining (Cattin's).

¶18 At the time of her industrial injury, Cattin's was insured by the State Fund, which accepted liability. The State Fund agrees that claimant is permanently totally disabled and is currently paying claimant biweekly permanent total disability benefits.

¶19 Claimant's biweekly permanent total disability rate is \$254.88, which is approximately \$554.00 monthly.

¶110 Claimant is presently 37 years of age. Thus, it will be approximately 28 years until she reaches normal retirement age. She is not entitled to social security disability benefits since she failed to work enough quarters to qualify. Her sole income is from her workers' compensation benefits.

¶111 Claimant has been married to Raymond J. Bennett for 10 years. The Bennetts have two young children.

¶112 In 1992 the Bennetts declared bankruptcy.

¶113 Between 1994 and 1996 claimant sought and received lump-sum advances totaling \$20,000. (Exs. 14 and 17.)

¶114 Between 1994 and 1996 the Bennett's monthly expenses approximately doubled.

¶115 Since 1991 the Bennetts have spent \$21,000 on snowmobiles.

¶116 In April 1996, the Bennetts purchased a house in Great Falls for \$45,000. They sold the house in 1997 for \$33,000, a loss of \$12,000, after renters trashed it. While this may constitute an exceptional circumstance, it adds to the overall impression of the Court that the Bennetts are poor financial managers and make poor financial decisions.

¶117 In the late summer of 1996, the Bennetts moved from Great Falls, where they had lived for a number of years, to Missoula because Mr. Bennett believed he had greater job opportunities in Missoula. However, Mr. Bennett is now earning less than he was earning in Great Falls in April 1996, when he reported monthly income of \$1,500. (Ex. 15 at 5.) His current monthly income is \$1,477.

¶118 Mr. Bennett has historically had periods of unemployment. Even though he expected better job opportunities in Missoula, he was recently off work for two weeks.

¶119 In April 1996, the Bennetts were paying \$399.00 a month for rent. (Ex. 15 at 5.) Since moving to Missoula they have purchased a home on a contract for deed which requires monthly payments of \$930.93. (Ex. 2 at 1.) The increase in the cost of housing is the

equivalent of a \$500.00 a month pay cut from what Mr. Bennett was earning in Great Falls in April 1996.

¶20 Claimant requests a lump-sum conversion to enable her to pay her indebtedness, including a significant portion of the remaining balance on the house in Missoula and attorney fees. The total amount of debts and attorney fees she would pay is approximately \$68,000. The amount available for a lump-sum conversion is approximately \$85,000. Claimant provided no justification for lump summing the \$17,000 difference. Thus, at best, she has provided evidence for a partial lump-sum advance.

¶21 In any event, a lump-sum conversion or advance is **not** in the claimant's best interest because:

(1) The only income she has in her own right is her \$544 monthly workers' compensation benefits. That income must sustain her for the next 28 years. While she may presently rely on her husband's contribution, that contribution is not guaranteed in the same manner as workers' compensation benefits. It is common knowledge that 50% of marriages end in divorce. Moreover, claimant's husband has previously experienced periods of unemployment, and it is foreseeable that he may do so in the future.

(2) Claimant and her husband have to date proven themselves unable to wisely manage their finances. In the last four years claimant has been advanced \$20,000 in benefits but still has fallen behind financially. She and her husband have previously declared bankruptcy. They have opted to invest in expensive snowmobiles rather than control their debt. They have made a financially unwise move to Missoula. They have allowed their monthly expenses to double in a two-year period.

(3) The Bennetts have other means to extricate themselves from their current monthly shortfall. They could sell the snowmobiles and the Missoula house.

CONCLUSIONS OF LAW

¶22 Since claimant was injured on June 26, 1993, the 1991 version of the Workers' Compensation Act applies to her lump-sum request. *Buckman v. Montana Deaconess Hospital*, 224 Mont. 318, 321, 730 P.2d 380, 382 (1986).

¶23 Section 39-71-741, MCA (1991), governs her request. It provides in relevant part:

39-71-741. Compromise settlements and lump-sum payments. (1)(a) Benefits may be converted in whole to a lump sum:

- (i) if a claimant and an insurer dispute the initial compensability of an injury; and
- (ii) if the claimant and insurer agree to a settlement.

(b) The agreement is subject to department approval. The department may disapprove an agreement under this section only if there is not a reasonable dispute over compensability.

(c) Upon approval, the agreement constitutes a compromise and release settlement and may not be reopened by the department.

(2)(a) If an insurer has accepted initial liability for an injury, permanent partial disability benefits may be converted in whole or in part to a lump-sum payment.

(b) The total of any lump-sum conversion in part that is awarded to a claimant prior to the claimant's final award may not exceed the anticipated award under 39-71-703 or \$20,000, whichever is less.

(c) An agreement is subject to department approval. The department may disapprove an agreement only if the department determines that the settlement amount is inadequate. If disapproved, the department shall set forth in detail the reasons for disapproval.

(d) Upon approval, the agreement constitutes a compromise and release settlement and may not be reopened by the department.

(3) Permanent total disability benefits may be converted in whole or in part to a lump sum. The total of all lump-sum conversions in part that are awarded to a claimant may not exceed \$20,000. A conversion may be made only upon the written application of the injured worker with the concurrence of the insurer. Approval of the lump-sum payment rests in the discretion of the department. The approval or award of a lump-sum payment by the department or court must be the exception. It may be given only if the worker has demonstrated financial need that:

(a) relates to:

(i) the necessities of life;

(ii) an accumulation of debt, incurred prior to the injury; or

(iii) a self-employment venture that is considered feasible under criteria set forth by the department; or

(b) arises subsequent to the date of injury or arises because of reduced income as a result of the injury.

(4) Any lump-sum conversion of benefits under subsection(3) must be converted to present value using the rate prescribed under subsection (5)(b).

(5)(a) An insurer may recoup any lump-sum payment amortized at the rate established by the department, prorated biweekly over the projected duration of the compensation period.

(b) The rate adopted by the department must be based on the average rate for the United States 10-year treasury bills in the previous calendar year, rounded to the nearest whole number.

(c) If the projected compensation period is the claimant's lifetime, the life expectancy must be determined by using the most recent table of life expectancy as published by the United States national center for health statistics.

(6) Subject to the other provisions of this section, the department has full power, authority, and jurisdiction to allow, approve, or condition compromise settlements for any type of benefits provided for under this chapter or lump-sum payments agreed to by workers and insurers. All such compromise settlements and lump-sum payments are void without the approval of the department. Approval by the department must be in writing. The department shall directly notify a claimant of a department order approving or denying a claimant's compromise or lump-sum payment.

(7) A dispute between a claimant and an insurer regarding the conversion of biweekly payments into a lump-sum is considered a dispute, for which a mediator and the workers' compensation court have jurisdiction to make a determination. If an insurer and a claimant agree to a compromised and release settlement, or a lump-sum payment but the department disapproves the agreement, the parties may request the workers' compensation court to review the department's decision.

¶24 Claimant's request initially fails because it exceeds the \$20,000 limit on partial lump-sum advances. Claimant has already received \$20,000 in advances. She failed to present evidence for a lump-sum conversion of the entire balance due her. At best she presented evidence for another partial lump-sum advance. (In light of this resolution, the Court need not determine whether the \$20,000 limit applies to lump-sum conversions of all future benefits.)

¶25 A further reason exists for denying the claimant's petition. Section 39-71-741, MCA, expressly provides that lump summing "must be the exception" to the general scheme of biweekly benefits and that the claimant must demonstrate "financial need." I interpret that language as incorporating the historical best-interests tests applicable to lump-sums. *Sullivan v. Aetna Life & Cas.*, 271 Mont. 12, 16, 894 P.2d 278, 280 (1995); *Willoughby v. Arthur G. McKee & Co.*, 187 Mont. 253, 257, 609 P.2d 700, 702 (1980). If the legislature did not intend to incorporate the historical best interests test, and the statute is interpreted to allow lump-summing based on *any* financial need, then lump summing would become the

rule, biweekly benefits the exception. Debt, which is one of the stated grounds for lump summing, is prevalent in our society. If that is the only criteria to be satisfied, lump sums would be routine, a result which flies in the face of the basic principle of statutory construction requiring that all the words of a statute be given meaning and effect, if possible. *Groves v. Clark*, 277 Mont. 179, 184, 920 P.2d 981, 984 (1996).

JUDGMENT

¶26 1. Claimant is not entitled to a lump-sum conversion of her permanent total disability benefits or to a partial lump summing of such benefits.

¶27 2. The petition in this matter is **dismissed with prejudice**.

¶28 3. Claimant is not entitled to costs.

¶29 4. This JUDGMENT is certified as final for purposes of appeal pursuant to ARM 24.5.348.

¶30 4. Any party to this dispute may have 20 days in which to request a rehearing from these Findings of Fact, Conclusions of Law and Judgment.

DATED in Helena, Montana, this 22nd day of April, 1998.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. Richard J. Martin

Mr. Thomas E. Martello

Date Submitted: April 2, 1998