

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2003 MTWCC 50

WCC No. 2000-0201

ANN BUSTELL

Petitioner

vs.

AIG CLAIMS SERVICE, INCORPORATED

and THE INSURANCE COMPANY OF PENNSYLVANIA

Respondents/Insurers.

ORDER REGARDING *LOCKHART* LIEN

Summary: Respondent insurer asks for an order clarifying the scope of the *Lockhart* lien applicable to medical benefits, urging that the lien applies only to medical benefits which accrued prior to a Court decision finding it liable for the claimant's industrial injury.

Held: The *Lockhart* attorney fee lien applies to all medical benefits secured through the efforts of the claimant's attorney. *Lockhart v. New Hampshire Ins. Co.*, 1999 MT 205, 295 Mont. 467, 984 P.2d 744. Where the insurer has denied all liability and the Court finds the claim compensable, those efforts encompass both past and future medical benefits, therefore the lien applies to *all* medical benefits, *past* and *future*.

Topics:

Attorneys Fees: Medical Benefits. The *Lockhart* attorney fee lien applies to all medical benefits secured through the efforts of the claimant's attorney. *Lockhart v. New Hampshire Ins. Co.*, 1999 MT 205, 295 Mont. 467, 984 P.2d 744. Where the insurer has denied all liability and the Court finds the claim compensable, those efforts encompass both past and future medical benefits, therefore the lien applies to *all* medical benefits, *past* and *future*.

Attorneys Fee: Lien. The *Lockhart* attorney fee lien applies to all medical benefits secured through the efforts of the claimant's attorney. *Lockhart v. New Hampshire Ins. Co.*, 1999 MT 205, 295 Mont. 467, 984 P.2d 744. Where the insurer has denied all liability and the Court finds the claim compensable, those efforts encompass both past and future medical benefits, therefore the lien applies to *all* medical benefits, *past* and *future*.

Cases Discussed: *Lockhart v. New Hampshire Ins. Co.*, 1999 MT 205, 295 Mont. 467, 984 P.2d 744. The *Lockhart* attorney fee lien applies to all medical benefits secured through the efforts of the claimant's attorney. *Lockhart v. New Hampshire Ins. Co.*, 1999 MT 205, 295 Mont. 467, 984 P.2d 744. Where the insurer has denied all liability and the Court finds the claim compensable, those efforts encompass both past and future medical benefits, therefore the lien applies to *all* medical benefits, *past* and *future*.

¶1 Respondent has asked the Court to clarify the duration of the *Lockhart* attorney fee lien on medical benefits.

¶2 Respondent argues that the lien should apply only to medical expenses incurred prior to May 15, 2002, which is the date this Court issued its Findings of Fact, Conclusions of Law and Judgment finding respondent liable for claimant's industrial injury. The argument is without merit. In *Lockhart v. New Hampshire Ins. Co.*, 1999 MT 205, 295 Mont. 467, 984 P.2d 744, the Supreme Court held that an attorney's fee lien under section 39-61-420, MCA, "applies to medical benefits recovered due to the efforts of the attorney in a workers' compensation case." (Quoted language ¶ 12; holding in subsequent paragraphs.) In this case, the respondent denied the claim and contested all liability. The efforts of the claimant's attorney secured not only the payment of past medical expenses but also established respondent's obligation to pay future medical benefits. Thus, the lien in this case applies to *all* medical benefits, *past* and *future*.

¶3 On her part, claimant moves for sanctions for respondent having requested clarification. Sanctions are an extraordinary remedy. While the Court finds the request without merit, it notes that the respondent merely asked for clarification and set out its position with respect to the lien. I also note there is no benefit to the respondent even if its position were to be accepted. The only question is whether future medical benefits should be paid entirely to medical providers or whether 25% of those benefits should be paid to claimant's attorney.

¶4 The Court's prior Order to Pay *Lockhart* Fees shall be deemed **amended** to provide for payment of the fees on all past and future medical benefits. The request for sanctions is **denied**.

SO ORDERED.

DATED in Helena, Montana, this 18th day of July, 2003.

(SEAL)

\s\ Mike McCarter
JUDGE

c: Mr. Paul E. Toennis
Ms. Melanie S. Pfeifer
Submitted: June 3, 2003