

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1996 MTWCC 17

WCC No. 9510-7412

GARY CHANDLER

Petitioner

vs.

BITUMINOUS INSURANCE COMPANY

Respondent/Insurer for

PROFESSIONAL DRIVERS RESOURCE

Employer.

ORDER AND JUDGMENT

Summary: Following settlement of dispute over domiciliary care benefits, claimant and insurer disagreed as to whom should receive the checks for domiciliary care.

Held: Settlement agreement provided that insurer would "pay for 11 1/2 hours of domiciliary care per day at the rate of \$7.00 per hour to Gary Chandler. . . ." This language is plain and clear and speaks for itself: payments must be made to claimant Gary Chandler, not to his wife. WCC order includes \$2,500 attorneys fees to claimant's counsel given the plain language of the agreement.

Topics:

Settlements: Interpretation of. Settlement agreement provided that insurer would "pay for 11 1/2 hours of domiciliary care per day at the rate of \$7.00 per hour to Gary Chandler...." This language is plain and clear and speaks for itself: payments must be made to claimant Gary Chandler, not to his wife. WCC order includes \$2,500 attorneys fees to claimant's counsel given the plain language of the agreement.

This matter came on for a conference before the Court. Petitioner, Gary Chandler, and his wife, Vicki Chandler, were present and participated in the conference. Mr. Chandler was represented by Ms. Kristi Blazer. The respondent, Bituminous Insurance Company, was represented by Mr. Alan L. Joscelyn.

The parties presented their positions informally. After their presentation and further discussion, both parties agreed and stipulated that informal disposition of the case under Court rule ARM 24.5.333 is appropriate.

Nature of the Dispute

Petitioner in this case was injured in an industrial accident on October 2, 1987. His injuries were severe. A controversy thereafter arose concerning the amount of benefits due claimant. Following the filing of a petition with the Court, the parties agreed to a settlement conference with the Court's hearing examiner, Ms. Clarice V. Beck. Following that conference they entered into a Full and Final Compromise Settlement, which was thereafter approved by the Department of Labor and Industry. The agreement included a provision for payment of domiciliary care.

A controversy then arose as to whom the domiciliary care payments should be made. Bituminous took the position, as it does in this proceeding, that payments are to the care giver, which at present is the petitioner's wife, Vicki Chandler. In fact, Bituminous has made all payments except one to her. Petitioner, on his part, argues that the agreement specifically provides that payments are to be made to him, and that he is then responsible for payment for his actual care. In addition to seeking an order construing the agreement and directing that future payments be made to him, petitioner requests attorney fees.

The other matter set forth in the petition -- payment for a recliner -- has been resolved and need not be addressed.

Resolution

Regarding payment for domiciliary care, the agreement provides:

The parties agree to accept and pay for 11 1/2 hours of domiciliary care per day at the rate of \$7.00 per hour **to** Gary Chandler during the lifetime of Gary Chandler. The amount may never be increased nor decreased. [Emphasis added.]

If the language of this provision is plain and clear, then it speaks for itself and must be applied as written. *Gropp v. Lotton*, 160 Mont. 415, 420, 503 P.2d 661, 664 (1972). The language is, in fact, plain and clear. Grammatically, the use of the word "to" relates back to the \$7.00 per hour which Bituminous is to pay "to" Gary Chandler. Had the parties intended to refer to domiciliary care rather than payment for that care, then they would have used the words "for Gary Chandler" rather than "to Gary Chandler." Therefore, all payments for domiciliary care must be made to Gary, who is then responsible for securing and paying for his actual care.

Petitioner has incurred attorney fees of approximately \$3,500. Considering the plain meaning of the agreement, the stage of the present proceedings, the efforts of petitioner's

attorneys, and the nature of the controversy, I find that attorney fees are warranted in the amount of \$2,500.

ORDER AND JUDGMENT

For the reasons set forth above,

IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. Respondent, Bituminous Insurance Company, shall make all future payments for domiciliary care payable to the petitioner, Gary Chandler.
2. Respondent shall further pay petitioner's attorneys the sum of \$2,500 for attorney fees in this case.
3. This JUDGMENT is certified as final.

Dated in Helena, Montana, this 12th day of February, 1996.

(SEAL)

\s\ Mike McCarter

JUDGE

c: Ms. Kristi Blazer

Mr. Alan L. Joscelyn

Submitted: February 9, 1996