

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1997 MTWCC 37A

WCC No. 9612-7675

ROBERT CHEETHAM, JR.

Petitioner

vs.

LIBERTY NORTHWEST INSURANCE CORPORATION

Respondent/Insurer for

HAWKEYE CONSTRUCTION

Employer.

ORDER REGARDING MEDICAL PAYMENTS

Petitioner/claimant has moved the Court for an order regarding payment of medical benefits which were found due and owing from respondent. Findings of Fact, Conclusions of Law and Judgment (June 11, 1997). Apparently, respondent proposes to cut checks payable jointly to the claimant, the medical providers and claimant's attorney. Based on his attorney fee agreement, as approved by the Department of Labor and Industry, claimant's attorney asserts a 25% lien on all amounts payable as a result of the Court's decision, and asks that respondent be ordered to pay the amount of the lien directly to him. The motion is well taken.

It is well established that a judgment lien attaches to benefits which are awarded by this Court as a result of the efforts of a claimant's attorney and that this Court has jurisdiction to enforce the lien. See *Kelleher Law Office v. State Compensation Ins. Fund*, 213 Mont. 412, 691 P.2d 823 (1984). The attorney fee agreement in this case provides for "twenty-five percent (25%) of the amount of additional compensation payments the claimant receives from an order of the workers' compensation judge or the Supreme Court due to the efforts of the attorney." (Attorney Retainer Agreement attached to Motion for Order Directing Payment of Attorney Fees.) (Respondent's contention that the agreement provides for only 20% is frivolous and ignores the specific 25% provision for matters resolved by a court judgment.) In the context of a penalty, the Supreme Court has construed "compensation benefits" as encompassing medical benefits, *Carlson v. Cain*, 216 Mont. 129, 136-37, 700 P.2d 607, 612 (1985), and the fee agreement in this case, which was approved by the

Department, **specifically** provides for an attorney fee with respect to medical benefits awarded by the Court. It says in relevant part:

The following benefits shall *not* be considered as a basis for calculation of attorney fees:

(1) The amount of medical and hospital benefits received by the claimant, unless **the worker's compensation insurer has denied all liability**, including medical and hospital benefits, or unless the insurer has denied the payment of certain medical and hospital costs and the attorney has been successful in obtaining such benefits for the claimant.

(Attorney Retainer Agreement attached to Motion for Order Directing Payment of Attorney Fees; emphasis added.) By plain and necessary implication, where the insurer has denied all liability, including liability for medical expenses, and the attorney obtains judgment holding the insurer liable, attorney fees attach the medical expenses.

Respondent's suggestion that medical providers must be joined as a prerequisite to the Court ordering payment of attorney fees from the medical benefits is without merit. The lien attaches as a matter of law and the controversy is between claimant and the insurer.

THEREFORE, IT IS HEREBY ORDERED that 25% of the benefits due claimant, including medical benefits, be paid directly to claimant's attorney as sole payee.

DATED in Helena, Montana, this 16th day of July, 1997.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. David W. Lauridsen

Mr. Larry W. Jones

Submitted: July 14, 1997