

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1993 MTWCC 1

WCC No. 9305-6793

DONALD COOPER

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Defendant.

**ORDER DENYING CLAIMANT'S PROTECTIVE ORDER;
ORDER GRANTING DEFENDANT'S MOTION TO COMPEL**

Defendant has filed a MOTION TO COMPEL claimant to provide certain information regarding checking accounts, savings accounts and credit cards. Specifically, defendant requests an order compelling claimant to answer Interrogatories No. 8 and No. 10 and to produce those materials identified in Request For Production No. 9. The interrogatories request the claimant to provide identifying information concerning checking and savings accounts (Interrogatory No. 8) and credit cards (Interrogatory No. 10). Request For Production No. 9 requests claimant to provide credit card statements. Claimant has objected to all of these on relevancy and privacy grounds and has filed a counter motion for a protective order.

Rule 24.5.323(4) of the Administrative Rules of Montana provides that each interrogatory shall be answered unless it is objected to, and further provides: "Objections may be made because of annoyance, expense, embarrassment, oppression, irrelevance, or other good cause." Rule 24.5.324 of the Administrative Rules of Montana provides that a party may request production of documents or records "which may be relevant."

Claimant in this matter is seeking retroactive and prospective payment for 24 hour per day domiciliary care. In its BRIEF IN SUPPORT OF MOTION TO COMPEL, the defendant states that claimant is contending that he suffers cognitive deficits, that he is incapable of caring for himself, and that he requires almost constant supervision. The brief further states that claimant contends that "due to those cognitive deficits claimant is incapable of managing his own finances and has had to rely on the services of his wife, and now his parents, to manage his financial affairs." Defendant argues that evidence regarding claimant's financial affairs may show the claimant is capable of reasonably managing his own financial and personal affairs. With respect to credit card

statements, defendant argues that the information may additionally show travel by the claimant and rebut claimant's contention that he has not travelled significantly without direct supervision.

Claimant asserts that bank and credit card information is irrelevant. He states that he has already given deposition testimony concerning his financial dealings, and that his mother has also testified. With respect to his mother he states that "she can attest that she typically manages this aspect of claimant's life, further proving the need for care benefits." This latter assertion clearly shows the relevancy of the defendant's inquiry. Claimant cannot on the one hand present evidence that he is incapable of managing his financial affairs to support his claim for domiciliary care and at the same time claim that inquiry into his personal involvement in those financial affairs is irrelevant.

The test of relevancy in discovery matters is whether "the information sought appears reasonably calculated to lead to the discovery of admissible evidence." Rule 26(b)(1) Montana Rules of Civil Procedure. The claimant contends that his inability to manage his financial affairs is evidence of his need for domiciliary care. He also claims that his need is for constant care. The information sought could lead to the discovery of evidence contradicting those claims. This test is met.

Claimant also resists the discovery on the basis of his constitutional right to privacy, citing *State v. Burns*, 253 Mont. 37, 830 P.2d 1320 (1992). That case, however, involved the subpoena of very personal information from a non-party. By putting his ability to manage his own financial and personal affairs into issue, for purposes of this action he has waived any privacy interests he may otherwise have in those affairs.

IT IS HEREBY ORDERED that, for the foregoing reasons, the defendant's MOTION TO COMPEL is GRANTED and the CLAIMANT'S MOTION FOR A PROTECTIVE ORDER is DENIED.

IT IS FURTHER ORDERED that within ten (10) of this order the claimant shall serve the defendant with answers to Interrogatories Nos. 8 and 10 and produce for inspection and copying all those documents identified in DEFENDANT'S REQUEST FOR PRODUCTION NO. 9.

DATED in Helena, Montana, this 20th day of September, 1993.

(SEAL)

/s/ Mike McCarter
JUDGE

Ms. Kristine L. Foot
Mr. Oliver H. Goe