

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1999 MTWCC 61

WCC No. 9909-8322

LIBERTY NORTHWEST INSURANCE

Petitioner/Insurer for

PACK & COMPANY

Employer

vs.

LOREN HAMS

Respondent/Claimant.

ORDER FOR 39-71-610 BENEFITS

Summary: Claimant obtained an Order from the DOL under 39-71-610, MCA (1997) directing insurer to reinstate TTD benefits for 49 days or until a hearing on TTD claim is held. Insurer appealed under procedures set out in 39-71-610, MCA (1999). Insurer argued that 1999 revisions making clear that 49-day benefits could be obtained before the filing of a petition in the WCC meant that no substantive right to such benefits existed under the 1997 Act, which applies to claimant's injury. Evidence submitted to WCC for purposes of this appeal showed a genuine dispute as to whether claimant had reached MMI and that without further benefits claimant could not meet his current financial obligations.

Held: Court must look to language of 1997 Act, which provides for up to 49 days of benefits when "an insurer terminates biweekly compensation benefits and the termination of compensation benefits is disputed by the claimant." While the section limits benefits to the period prior to a hearing, it does not require the filing of a petition as a condition precedent to receiving benefits. Whether or not the 1999 legislature believed it was expending eligibility for 49-day benefits, such benefits are available under the 1997 Act pre-petition. Benefits ordered where medical reports show genuine dispute and other evidence shows pressing financial obligations which claimant could not meet without benefits.

Topics:

Constitutions, Statutes, Regulations and Rules: 39-71-610, MCA (1997, 1999).

After DOL awarded claimant 49-day benefits, insurer appealed, arguing that 1997

Act applied to claimant's substantive right to benefits and did not allow benefits prior to the filing of a petition in the WCC. Insurer relied on 1999 revisions to section 39-71-610, MCA, which expressly state that 49-day benefits are available prior to petition. WCC held that 1997 statute allowed 49-day benefits where an insurer terminates biweekly compensation benefits and the termination is disputed by claimant. Whether or not the 1999 legislature believed it was expending eligibility for 49-day benefits, such benefits are available under the 1997 Act pre-petition. Benefits ordered where medical reports show genuine dispute and other evidence showed pressing financial obligations which claimant could not meet without benefits.

Benefits: Interim (39-71-610) Benefits. After DOL awarded claimant 49-day benefits, insurer appealed, arguing that 1997 Act applied to claimant's substantive right to benefits and did not allow benefits prior to the filing of a petition in the WCC. Insurer relied on 1999 revisions to section 39-71-610, MCA, which expressly state that 49-day benefits are available prior to petition. WCC held that 1997 statute allowed 49-day benefits where an insurer terminates biweekly compensation benefits and the termination is disputed by claimant. Whether or not the 1999 legislature believed it was expending eligibility for 49-day benefits, such benefits are available under the 1997 Act pre-petition. Benefits ordered where medical reports show genuine dispute and other evidence showed pressing financial obligations which claimant could not meet without benefits.

¶1 This is an emergency appeal by Liberty Northwest Insurance (Liberty) from an Order of the Department of Labor and Industry directing Liberty to reinstate claimant's temporary total disability (TTD) benefits for 49 days or until a hearing on his TTD claim is held. The parties have agreed to submit the appeal to the Court based upon doctors' reports and an unaudited financial statement from claimant. The documents have been received by the Court and the appeal is ready for decision.

¶2 The claimant's date of injury or occupational disease is March 15, 1999, therefore, the 1997 version of section 39-71-610, MCA, applies. The section provides:

39-71-610. Termination of benefits by insurer - department order to pay disputed benefits prior to hearing - limitation on order - right of reimbursement. If an insurer terminates biweekly compensation benefits and the termination of compensation benefits is disputed by the claimant, the department may, upon written request, order an insurer to pay additional biweekly compensation benefits prior to a hearing, but in no event may the biweekly compensation benefits be ordered to be paid under this section for a period exceeding 49 days or for any period subsequent to the date of a hearing. If after a hearing it is held that the

insurer was not liable for the compensation payments ordered by the department, the insurer has the right to be reimbursed for such payments by the claimant.

¶3 Initially, Liberty argues that benefits cannot be ordered under the section until a petition is filed with the Workers' Compensation Court. At present the underlying dispute is in mediation. Claimant is precluded from petitioning the Court until mediation is complete. § 39-71-2401, MCA.

¶4 Liberty points out that the 1999 legislature amended section 39-71-610, MCA, to specifically provide for benefits while mediation is pending. As amended, the section now provides:

39-71-610. Termination of benefits by insurer -- department order to pay disputed benefits prior to hearing or mediation -- limitation on order -- right of reimbursement. If an insurer terminates biweekly compensation benefits and the termination of compensation benefits is disputed by the claimant, the department may, upon written request, order an insurer to pay additional biweekly compensation benefits prior to a hearing before the workers' compensation court or prior to mediation, but in no event may the biweekly compensation benefits be ordered to be paid under this section for a period exceeding 49 days or for any period subsequent to the date of the hearing or mediation. A party may appeal this order to the workers' compensation court. If after a hearing before the workers' compensation court it is held that the insurer was not liable for the compensation payments ordered by the department, the insurer has the right to be reimbursed for the payments by the claimant.

Based on the additional language expressly permitting benefits pending mediation, Liberty argues that the legislature intended to change existing law, thus it reasons that pre-1999 the section did not allow benefits pending mediation and prior to the filing of a petition with the Court.

¶5 Liberty relies upon the rule of statutory interpretation which states "that when the legislature amends a statute, it intends to make a change in existing law and the courts will endeavor to give some effect to the amendment." *Tuttle v. Morrison-Knudsen Co., Inc.*, 177 Mont. 166, 172-3, 580 P.2d 1379, 1382 (1978). The principle, however, is not immutable, it is merely an aid to construction. It does not trump the "prime directive" to courts, which requires them to follow and apply an unambiguous statute *as written*. "When the language of a statute is clear and unambiguous, we look no further than to the plain meaning of the statute for its interpretation." *State v. Dahlin*, 289 Mont. 182, 187, 961 P.2d 1247, 1250 (Mont. 1998). "In the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted." § 1-2-101, MCA.

¶6 On its face the 1997 version of section 39-71-610, MCA, provides for up to 49 days of benefits when "an insurer terminates biweekly compensation benefits and the termination of compensation benefits is disputed by the claimant." Its only requirements are (1) termination of benefits and (2) a dispute. While the section limits the benefits to the period "prior to hearing," it does not require the filing of a petition as a condition precedent to the benefits or preclude benefits during the mediation process. The Court cannot insert any such conditions. § 1-2-101, MCA. Thus, whether or not the legislature believed it was expanding eligibility for the benefits to the pre-petition period, on its face the statute already made claimant eligible for the benefits.

¶7 Claimant's benefits have been terminated. His filing of a mediation petition shows that he disputes the termination. Both conditions for benefits under section 39-71-610, MCA (1997), have been met.

¶8 Turning to the merits of the request for benefits, the medical reports submitted to the Court show that there is a genuine dispute as to whether the claimant has reached maximum medical improvement. His financial information also shows that without further benefits he will be unable to meet his current financial obligations. Under these circumstances, benefits are appropriate.

¶9 Liberty, however, argues that benefits should be denied because claimant may not be able to pay the benefits back, as provided in the section, should Liberty prevail. Whether that possibility is a legitimate consideration under the section need not be answered by the Court since claimant's financial statement shows a significant net worth.

¶10 I therefore find that claimant is entitled to benefits under section 39-71-610, MCA (1997), pending a hearing before this Court, but in no event to exceed 49 days. The benefits shall be paid retroactive to the date of the Department Order. In the event that the parties do not resolve their dispute and the claimant does not diligently prosecute a petition with this Court, then Liberty shall be entitled to reimbursement for the benefits paid pursuant to this Order. *State Fund v. Nancy (Anderson) Blatnik*, 1999 MTWCC 29. It shall also be entitled to reimbursement should it prevail on the underlying claim in an action before this Court.

SO ORDERED.

DATED in Helena, Montana, this 5th day of October, 1999.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Larry W. Jones

Mr. Kenneth S. Thomas

Date Submitted: September 23, 1999