

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2003 MTWCC 25

WCC No. 2002-0592

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TIM I. MARTIN

Petitioner

vs.

THE HARTFORD

Respondent/Insurer.

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FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

**AFFIRMED 3/10/04**

**Summary:** Claimant petitioned for a lump-sum conversion of his lifetime expectancy of permanent total disability benefits.

**Held:** Claimant's monthly income exceeds his monthly expenses, he has savings, and he expects to receive more than enough monies to pay for the dental bills and home repairs which his family needs. His request is denied.

**Topics:**

**Benefits: Lump Sums: Generally.** Assuming the law in effect in 1999 permits full lump-sum conversion of all future permanent total disability benefits, where claimant is doing well financially on his biweekly benefits in that his monthly income exceeds his expenses; where he has money coming in which will pay for extraordinary expenses; and where he is still able to financially assist his adult children and take vacations, he has failed to show that a lump-sum conversion of his permanent total disability benefits satisfies either the traditional best interests test or the criteria of section 39-71-741(1)(c), MCA.

**Benefits: Lump Sums: Generally.** Building an estate and obtaining money for investment are not legitimate purposes for obtaining a lump sum.

**Benefits: Lump Sums: Best Interests.** Assuming the law in effect in 1999 permits full lump-sum conversion of all future permanent total disability benefits, where claimant is doing well financially on his biweekly benefits in that his monthly income exceeds his expenses; where he has money coming in which will pay for extraordinary expenses; and where he is still able to financially assist his adult children

and take vacations, he has failed to show that a lump-sum conversion of his permanent total disability benefits satisfies either the traditional best interests test.

¶1 The trial in this matter was held on September 16, 2002, in Great Falls, Montana. Petitioner, Tim I. Martin (claimant), was present and represented by Mr. Richard J. Martin. Respondent, The Hartford (Hartford), was represented by Mr. William O. Bronson.

¶2 Following trial the parties indicated they were engaged in settlement negotiations. Those negotiations were only partially successful and on January 23, 2003, counsel for Hartford indicated that the only issue to be resolved is whether the claimant is entitled to a lump-sum conversion of his permanent total disability benefits. That issue was deemed submitted as of January 23, 2003.

¶3 Exhibits: Exhibits 1 through 13 and 15 through 26 were admitted without objection. There was no Exhibit 14. Exhibit 27 was admitted for demonstrative purposes.

¶4 Witnesses and Deposition: Tim I. Martin, Karla Martin (claimant's wife), and Linda Slavik testified at trial. The parties also submitted the deposition of Tim I. Martin for the Court's consideration.

¶5 Issues Presented: In light of the parties' notice that the claimant's claim for permanent partial disability benefits has been settled, the only issue presented for resolution by this Court is:

Whether Petitioner is entitled to a lump sum conversion of his permanent total disability benefits relating to his January 27, 1999 claim.

(Pretrial Order at 2.)

¶6 Having considered the Pretrial Order, the testimony presented at trial, the demeanor and credibility of the witnesses, the deposition and exhibits, and the arguments of the parties, the Court makes the following:

#### FINDINGS OF FACT

¶7 The claimant is 48 years old. He is married to Karla Martin and they have two children living at home - Tonya, who is 18 and a senior in high school, and Joshua, who is 8. They also have adult children not living at home ages 29, 28, 26, 22, and 20.

¶8 Prior to the injuries at issue in this case, the claimant worked for Enterprise Electric, Incorporated (Enterprise) in Great Falls. He was a communications technician.

¶9 On January 13, 1998, the claimant injured his back when loading a cable reel onto a truck. (Ex. 1 at 1.) He reinjured his back on January 27, 1999, when he slipped and fell at work. (*Id.* at 2.)

¶10 At the time of the accidents, Enterprise was insured by Hartford. Hartford accepted liability for both claims. (Pretrial Order, Uncontested Fact 3.)

¶11 Hartford concedes claimant is permanently totally disabled and is paying him biweekly permanent total disability benefits based on his latest, January 27, 1999 injury. Claimant seeks to convert all his

future entitlement into a lump sum to pay off a mortgage and invest in an annuity. His last demand letter before trial was on July 24, 2002. In it he requested a lump sum totaling \$175,352 - \$75,352 in cash with the remaining \$100,000 to be used to purchase an annuity. At trial claimant testified he would pay off his mortgage and "invest" the remainder.

¶12 Claimant has failed to show he cannot financially sustain himself with his present income and assets, or that he has a pressing financial need for either a partial or whole lump-sum advance.

¶13 His family monthly income as of October 2002, is:

(1) Wife's wages ( $\$7.82/\text{hour} \times 40 \text{ hours/week} \times 52.14 \text{ weeks/yr} \div 12 \text{ months}$ )	\$1,359.11
(2) Social Security Disability (after deducting \$50 withheld for medicare)	\$974.00
(3) Social Security supplement for son Joshua	\$175.00
(4) Workers' Compensation Benefits ( $\$164.93 \times 52.14 \text{ weeks/year} \div 12$ )	\$716.62
(5) Monthly Annuity from settlement of third party action unrelated to the present action. (Ex. 26 at 3.)	<u>\$500.00</u>
<b>TOTAL MONTHLY INCOME</b>	<b>\$3,724.73</b>

¶14 In addition to the regular monthly income listed above, the claimant is owed \$20,000 by his son, which was to be paid in October 2002. In addition to that sum, he is due the following lump-sum payments from the third-party settlement mentioned in the above table:

November 30, 2003	\$7,000.00
November 30, 2008	\$13,500.00
November 30, 2013	\$10,000.00
November 30, 2018	\$15,000.00
November 30, 2023	<u>\$26,000.00</u>
<b>TOTAL</b>	<b>\$71,500.00</b>

In assessing the claimant's present needs, I consider only the November 30, 2003 payment since the other payments are remote. With the 2003 payment, claimant's income during the year following trial will be augmented by \$27,000.

¶15 Claimant's monthly expenses at the time of trial were as follows:

House mortgage payment	\$957.00
Groceries	\$450.00
Meals out (two times a week)	\$150.00
Clothing	\$50.00
Auto insurance	\$138.00
Gasoline for autos	\$100.00
Auto repairs and maintenance	\$50.00
Telephone	\$190.00
Television	\$63.00
House utilities	\$175.00
Internet fees	\$46.00
Conseco (loan)	\$58.00
MBNA (credit card)	\$100.00
Capital One (credit card)	\$100.00
Household Union Plus (loan)	\$100.00
Big Sky Taekwondo (son Joshua)	\$55.00
Prescription drugs	\$50.00
Other medical expenses	\$100.00
Great Falls Clinic (Medical bills)	\$183.86
Life Insurance	\$87.00
Gifts (mostly to children and grandchildren)	\$150.00
Donations	\$25.00
Miscellaneous	<u>\$100.00</u>
TOTAL EXPENSES	\$3,477.86

¶16 On the face of the claimant's own accounting, his monthly income exceeds his monthly expenses by \$246.87. Moreover, there is room to reasonably tighten up on expenses. I note that his telephone service is costing him \$190 a month. That amount is grossly excessive and he testified that when his present contract ends he will find cheaper service. Finders of fact (juries and judges) may use their common sense and experience in analyzing evidence, and based on my own experience, a land line, cell phone, and a long distance phone card can be had for less than \$100 monthly with virtually unlimited calls. Tightening up on telephone expenditures will increase the claimant's monthly surplus to approximately \$336 monthly. Further, claimant subscribes to premium cable TV services, eats out frequently and spends \$150 monthly on his adult children and grandchildren. He also recently incurred \$3,154 in credit card charges for a vacation to Denver and Las Vegas. I am not suggesting that the claimant's expenditures are extravagant. Given the claimant's income, it appears he can afford the premium cable tv, eating out, and helping out his children and grandchildren, and certainly I cannot fault him for doing so. I only point out that there is room within his budget to adjust his spending to take in account other needs that may arise without tapping into his future workers' compensation benefits.

¶17 Claimant does not have extraordinary debt, as should be plain from his monthly expenditures. His primary debt is an \$89,000 mortgage. He also has some credit card and other debt but, again, it is not extraordinary. His indebtedness as of the time of trial was as follows:

(1) House mortgage	\$89,000.00
(2) Conseco (loan for home furnace)	\$2,800.00
(3) MBNA (credit card)	\$3,850.00
(4) Sears (tools)	\$500.00
(5) Herbergers (retail credit card)	\$96.00
(6) Capital One (credit card - trip to Denver and Las Vegas)	\$3,154.00
(7) Wells Fargo (loan - part of cost of home furnace)	\$1,400.00
(8) Union Plus (credit card)	\$1,100.00
(9) Great Falls Clinic (medical expenses)	\$183.86
(10) Robert Coleman, DDS (dental expense)	\$33.00
(11) Front Range Healthcare (medical expenses)	\$613.00
TOTAL	\$102,729.86

¶18 Excluding the claimant's household and personal effects, his family assets are as follows:<sup>(1)</sup>

(1) Home	\$100,000.00
(2) 1995 Suburban	\$13,000.00
(3) 1990 Cadillac	\$3,000.00
(4) 1995 Dodge Shadow	\$3,000.00
(5) Powerhouse Fund	\$25,000.00
(6) Gold	\$10,000.00
(7) Boat	\$20,000.00
(8) 1988 Camper	\$2,000.00
(9) Cash value of life insurance	\$3,842.00
TOTAL	\$179,842.00

¶19 As can be seen from a quick comparison of assets and liabilities, claimant's assets exceed his liabilities by a significant amount.

¶20 Claimant testified that he anticipates a number of significant expenses, specifically \$1,900 for redoing his kitchen, \$3,500 for dental work, and \$4,000 for driveway repairs. Those expenditures are well below the \$20,000 payment claimant was to receive from his son in October 2002 to repay the loan he made to his son. It is also only \$2,400 more than the November 2003 annuity payment he will receive.

¶21 Claimant's most recent investments are in gold coins and in a Powerhouse Fund which has a 2.5% interest guarantee. He testified that after paying off his mortgage, he would put the remainder in the Powerhouse Fund.

¶22 Claimant testified that one of his purposes in seeking a lump-sum conversion is to provide for his family in the event of his death.

#### CONCLUSIONS OF LAW

¶23 This case is governed by the 1997 version of the Montana Workers' Compensation Act since that was the law in effect at the time of the claimant's industrial accident. *Buckman v. Montana Deaconess Hospital*, 224 Mont. 318, 321, 730 P.2d 380, 382 (1986).

¶24 Claimant bears the burden of proving by a preponderance of the evidence that he is entitled to the benefits he seeks. *Ricks v. Teslow Consolidated*, 162 Mont. 469, 512 P.2d 1304 (1973); *Dumont v. Wicken Bros. Construction Co.*, 183 Mont. 190, 598 P.2d 1099 (1979).

¶25 Lump summing is governed by section 39-71-741, MCA (1997). The section provides in full:

**39-71-741. Compromise settlements and lump-sum payments.** (1) By written agreement filed with the department, benefits under this chapter may be converted in whole or in part into a lump sum. An agreement is subject to department approval. If the department fails to approve or disapprove the agreement in writing within 14 days of the filing with the department, the agreement is approved. The department shall directly notify a claimant of a department order approving or disapproving a claimant's compromise or lump-sum payment. Upon approval, the agreement constitutes a compromise and release settlement and may not be reopened by the department. The department may approve an agreement to convert the following benefits to a lump sum only under the following conditions:

(a) all benefits if a claimant and an insurer dispute the initial compensability of an injury and there is a reasonable dispute over compensability;

(b) permanent partial disability benefits if an insurer has accepted initial liability for an injury. The total of any permanent partial lump-sum conversion in part that is awarded to a claimant prior to the claimant's final award may not exceed the anticipated award under 39-71-703. The department may disapprove an agreement under this subsection (1)(b) only if the department determines that the lump-sum conversion amount is inadequate.

(c) permanent total disability benefits if the total of all lump-sum conversions in part that are awarded to a claimant do not exceed \$20,000. The approval or award of a lump-sum permanent total disability payment in whole or in part by the department or court must be the exception. It may be given only if the worker has demonstrated financial need that:

(i) relates to:

(A) the necessities of life;

(B) an accumulation of debt incurred prior to the injury; or

(C) a self-employment venture that is considered feasible under criteria set forth by the department; or

(ii) arises subsequent to the date of injury or arises because of reduced income as a result of the injury; or

(d) except as otherwise provided in this chapter, all other compromise settlements and lump-sum payments agreed to by a claimant and insurer.

(2) Any lump-sum conversion of benefits under this section must be converted to present value using the rate prescribed under subsection (3)(b).

(3) (a) An insurer may recoup any lump-sum payment amortized at the rate established by the department, prorated biweekly over the projected duration of the compensation period.

(b) The rate adopted by the department must be based on the average rate for United States 10-year treasury bills in the previous calendar year.

(c) If the projected compensation period is the claimant's lifetime, the life expectancy must be determined by using the most recent table of life expectancy as published by the United States national center for health statistics.

(4) A dispute between a claimant and an insurer regarding the conversion of biweekly payments into a lump-sum is considered a dispute for which a mediator and the workers' compensation court have jurisdiction to make a determination. If an insurer and a claimant agree to a compromise and release settlement or a lump-sum payment but the department disapproves the agreement, the parties may request the workers' compensation court to review the department's decision.

¶26 As an initial matter, section 39-71-741(1)(c), MCA (1997), expressly provides for lump-sum advances on permanent total disability benefits but limits the total of those advances to \$20,000 in total. Claimant does not request a partial lump sum, thus I must consider his entitlement to a lump-sum conversion of the entire amount of his future benefits. Even discounted, a lump sum would exceed \$100,000.<sup>(2)</sup> Subsection (1)(c) does not on its face authorize total lump-sum conversion, nor does any other provision of 39-71-741, MCA.

¶27 When I initially read section 39-71-741, MCA, I interpreted the section as allowing only one or more partial lump-sum conversions up to a total of \$20,000, and not as authorizing a lump-sum conversion of all future benefits. However, counsel in this case indicated that the Department interprets the section as allowing total conversions. Although not recorded, counsel and myself discussed the matter with a Department representative and learned that indeed the Department reads the section as allowing for either partial lump-sum advances up to \$20,000 or a total lump-sum conversion of all future benefits. Based on that interpretation, the Department has approved total lump-sum conversions.

¶28 The Department's interpretation is apparently based on (1) the general provision in the subsection permitting benefits to "be converted in whole or in part into a lump sum," (2) the reference in subsection (1)(c) to "lump-sum conversions in part," and (3) the lack of any specific prohibition on a total lump-sum conversion. Given the fact that the Department has primary responsibility for administering section 39-71-741, MCA, its interpretation is entitled to some deference. "The Court defers to an agency's interpretation of a statute that it administers." *Waste Management Partners of Bozeman, Ltd. v. Montana Dept. of Public Service Regulation*, 284 Mont. 245, 249, 944 P.2d 210, 213 (1997).

¶29 Deference to an agency's interpretation of a statute, however, is not absolute or unqualified. In *Bay v. State, Dept. of Admin., Public Employee's Retirement Div.*, 212 Mont. 258, 265, 688 P.2d 1, 4, (1984), the Supreme Court noted:

Although we give deference to the interpretation given a statute by the officers or agency charged with its administration, *Dept. of Rev. v. Puget Sound Power and Light Company* (1978), 179 Mont. 255, 587 P.2d 1282, this does not mean that courts must rubberstamp any interpretation the agencies may give a statute. Rules of statutory construction have no application if the language of the statute is clear and unambiguous. *State ex rel. Swart v. Casne* (1977), 172 Mont. 302, 564 P.2d 983. It has always been our rule that it is the province of courts to construe and apply the law as they find it and to maintain its

integrity as it has been written by a coordinate branch of the state government. When the terms of the statute are plain, unambiguous, direct and certain, it speaks for itself and there is no room for construction. *Chmielewska v. Butte and Superior Mining Company* (1927), 81 Mont. 36, 261 P. 616.

It is thus clear that if a statute is clear on its face, the clear language trumps any agency interpretation. Deference is given agency interpretation only if there is ambiguity in the statute.

¶30 Where there is ambiguity, other rules of statutory interpretation also come into play. Whether they are sufficient to overcome the deference to be given an agency construction is a question I need not address here since I only point out that I have reservations and questions about the Department's interpretation. I reach no final conclusion concerning its correctness.

¶31 I do note, however, my concerns. Initially, rules of statutory interpretation require that a specific provision of a statute must be interpreted in conjunction with other provisions: it cannot be read in isolation but must be read in conjunction with the entire statute so as to give effect to the whole statute. *Montco v. Simonich*, 285 Mont. 280, 287, 947 P.2d 1047, 1051 (1997). The nature of statutory construction was recently described by the Montana Supreme Court as follows:

¶ 13 Statutory interpretation is a "holistic endeavor" that must consider the statute's text, language, structure, and object. See *S.L.H. v. State Compensation Mut. Ins. Fund*, 2000 MT 362, ¶ 16, 303 Mont. 364, ¶ 16, 15 P.3d 948, ¶ 16 (citing *United States Nat'l Bank v. Independent Ins. Agents of Am., Inc.* (1993) 508 U.S. 439, 455, 113 S.Ct. 2173, 2182, 124 L.Ed.2d 402, 418 (quotations omitted)). When construing a statute, our goal is to ascertain and give effect to the [310 Mont. 102] legislative intent. See § 1-2-102, MCA; *S.L.H.*, ¶ 16. If the words of the statute are clear and plain, we discern the intent of the legislature from the text of the statute. See *S.L.H.*, ¶ 17; *Western Energy Co. v. State, Dep't of Revenue*, 1999 MT 289, ¶ 11, 297 Mont. 55, ¶ 11, 990 P.2d 767, ¶ 11. We will also read and construe the statute as a whole to avoid an absurd result and to give effect to a statute's purpose. See *S.L.H.*, ¶ 17; *Skinner Enters. v. Lewis & Clark County Bd. of Health* (1997), 286 Mont. 256, 276, 950 P.2d 733, 745.

*Fliehler v. Uninsured Employers' Fund*, 2002 MT 125, ¶ 13, 310 Mont. 99, 48 P.3d 746.

¶32 Looking at section 39-71-74, MCA, as a whole, and attempting to coordinate all of its provisions, there are significant arguments for construing the section as precluding a full lump-sum conversion of permanent total disability benefits. While generally referring to the conversion of benefits "in whole or in part," the section goes on to make specific provisions for lump summing. The fact that the preamble in subsection (1) refers to lump sums "in whole" does not necessarily indicate an intention to allow total conversion of permanent total disability benefits: the reference to "whole" may merely refer to the "whole" conversions allowed under subsections (1) and (2). No violence is thus done to the sentence by construing the section as not permitting "whole" lump sums of permanent total disability benefits.

¶33 Moreover, subsection (1)(c) specifically governs conversions of "permanent total disability benefits." Arguably by referring to "total of all lump-sum conversions in part" the subsection is referring only to partial lump sums, but even if that were so, there is no provision expressly authorizing a full lump-sum

advance. That failure may implicate the rule of statutory construction which provides, " In determining legislative intent, an express mention of a certain power or authority implies the exclusion of nondescribed powers." *State ex rel. Jones v. Giles*, 168 Mont. 130, 132, 541 P.2d 355, 357 (1975).

¶34 Yet a further problem arises. Another rule of statutory construction cautions that a statute should be construed as a whole to avoid *absurd results*. "Neither statutory nor constitutional construction should lead to absurd results, if reasonable construction will avoid it." *Grossman v. State, Dept. of Natural Resources*, 209 Mont. 427, 451, 682 P.2d 1319, 1339 (1984). The clear and express language of subsection (1)(c) on its face limits partial lump sums to a total of \$20,000. If the statute is interpreted as authorizing, in addition, a full lump sum of all future benefits, then what is the rationale for denying claimants who otherwise meet the statutory criteria in subsection (1)(c) from partial lump sums greater than \$20,000 but less than a full conversion? Off hand, I am at a loss to find a rational justification for excluding those claimants. If there is no rational justification for excluding them, then equal protection issues may be raised, implicating yet another rule of statutory interpretation, to wit: "All statutes carry with them a presumption of constitutionality and it is the duty of the courts to, if possible, construe statutes narrowly to avoid an unconstitutional interpretation." *State v. Stanko*, 1998 MT 323, ¶ 54, 292 Mont. 214, 974 P.2d 1139.

¶35 The Department may well have answers to my concerns and further support for its interpretation of section 39-71-741, MCA. It has not been provided an opportunity to offer its arguments. If it were necessary to definitively determine whether the section permits a full lump-sum conversion of permanent total disability benefits, I would provide it with that opportunity.

¶36 However, assuming a full lump sum is permitted, claimant has failed to show that he meets either the criteria for subsection (1)(c) or the traditional best interests test. Assuming it applies, subsection (1)(c) expressly provides that a lump sum may be he given only if the claimant has demonstrated financial need. He has failed to do so. His monthly income exceeds his monthly expenses. That surplus could be even greater with better money management. While he anticipates some extraordinary expenses, he also anticipates receipt of additional sums which far exceed those expenses.

¶37 If the criteria of subsection (1)(c) do not apply, the Court must fall back on the traditional best interests test. In *Willoughby v. Arthur G. McKee & Co.*, 187 Mont. 253, 257, 609 P.2d 700, 702 (1980), the Montana Supreme Court recognized that lump-sum settlements may be granted in cases of outstanding indebtedness or pressing need, or where the best interest of petitioner, her family, and the general public will be served. The "best interest" test is the "primary criterion." *Sullivan v. Aetna Life & Cas.*, 271 Mont. 12, 16, 894 P.2d 278, 280 (1995). Even under traditional analysis, however, biweekly payments "are the rule rather than the exception." *Id.* at 17, 894 P.2d at 281.

¶38 Claimant and his family are not merely surviving financially with biweekly benefits, their monthly income actually exceeds their monthly expenses. They have sufficient funds to help out their adult children and have taken an expensive vacation to Denver and Las Vegas. They have purchased gold and invested. While they have need for some further home improvements and dental work, they will be

receiving monies which far exceed those expenses. In short, they are doing just fine with the biweekly benefits. Claimant has not demonstrated the need to pay off indebtedness or any pressing need. He has not demonstrated that a lump sum is in his best interest. Obtaining money for investment and building an estate does not provide justification for lump summing. *LaVe v. School Dist. No. 2*, 220 Mont. 52, 55, 713 P.2d 546, 548 (1986).

#### JUDGMENT

¶39 Claimant is not entitled to a lump-sum conversion of his future permanent total disability benefits. His petition is **dismissed with prejudice**.

¶40 This JUDGMENT is certified as final for purposes of appeal.

¶41 Any party to this dispute may have twenty days in which to request a rehearing from these Findings of Fact, Conclusions of Law and Judgment.

DATED in Helena, Montana, this 4<sup>th</sup> day of April, 2003.

(SEAL)

\s\ Mike McCarter

JUDGE

c: Mr. Richard J. Martin

Mr. William O. Bronson

Submitted: January 23, 2003

1. Excluded is the \$100,000 invested in the annuity since the annuity produces income which has previously been listed.
2. Based on the correspondence between the parties, it does not appear they agree on the amount available to the claimant if converted to a lump sum. (Exhibits 21 to 24.)