IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2002 MTWCC 31

WCC No. 2001-0453

TRAVELERS PROPERTY CASUALTY

Appellant

vs.

STEVEN M. MARTINI, M.D., P.C.

Respondent.

DECISION ON APPEAL

Summary: The insurer appeals a determination by the Department of Labor and Industry finding that it is liable for services of a nurse practitioner who was employed by and working under the direct supervision of a medical doctor who had been approved to treat the claimant. It argues that the nurse practitioner is the *de facto* treating physician and that she is ineligible for reimbursement.

Held: The insurer's argument is without merit. Section 39-71-116(36), MCA, defines treating physician as the medical provider "primarily responsible for treatment of a worker's compensable injury." A medical doctor was primarily responsible for the treatment and maintained supervision and control over the nurse practitioner's services, therefore he was the treating physician and is entitled to reimbursement for the nurse practitioner's services.

Topics:

> **Constitutions, Statutes, Regulations and Rules: Montana Code Annotated: Section 39-71-116(36), MCA (1997-2001).** Section 39-71-116(36), MCA, defines treating physician as the medical provider "primarily responsible for treatment of a worker's compensable injury." A medical doctor who is primarily responsible for the treatment and maintained supervision and control over the nurse practitioner's services is entitled to reimbursement for the nurse practitioner's services.
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> **Benefits: Medical Benefits: Treating Physician.** Section 39-71-116(36), MCA, defines treating physician as the medical provider "primarily responsible for treatment of a worker's compensable injury." A medical doctor who is primarily responsible for the treatment and maintained supervision and control over the

nurse practitioner's services is entitled to reimbursement for the nurse practitioner's services.

Physicians: Treating Physicians: Who may be a treating physician. Section 39-71-116(36), MCA, defines treating physician as the medical provider "primarily responsible for treatment of a worker's compensable injury." A medical doctor who is primarily responsible for the treatment and maintained supervision and control over the nurse practitioner's services is entitled to reimbursement for the nurse practitioner's services.

¶1 This is an appeal from a Department of Labor and Industry decision finding Travelers Property Casualty (Travelers) liable for medical services provided by a nurse practitioner employed and working under direct, actual supervision of Steven Martini, M.D., who was authorized to treat claimant. The appeal is without merit and the decision below is **affirmed**.

Discussion

¶2 This case involves treatment of Tamise Hill (Hill). Travelers does not dispute liability for Hill's claim and agrees that it authorized Dr. Martini to treat her. However, it has refused payment for services provided by Christine McGuire (McGuire), a nurse practitioner employed by, supervised by, and working under Dr. Martini. Its ground for refusing payment are technical: it alleges that McGuire was a treating physician; that it did not approve her as a treating physician; and that, in any event, her services were not authorized by statute. It urges that the hearing officer's findings are not supported by substantial evidence and are erroneous as a matter of law.

¶3 The facts found by the hearing officer in the proceeding below are straightforward and brief. I therefore repeat them here in full:

> ¶3a Travelers Property Casualty authorized Dr. Martini as treating physician for Tamise Hill and to implement the treatment plan as outlined by Stanford Medical Center when she was seen for followup in April 2000.
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> ¶3b Dr. Martini conveyed his treatment plan for Hill to Travelers in his letter dated June 14, 2000. He anticipated that his treatment of Hill would consist primarily of pain management in terms of medications for disorders associated with her chronic pain syndrome (depression/anxiety, and so on).
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> ¶3c Dr. Martini personally treated Hill during office calls from the time he was authorized as treating physician until November 2000. He hired family nurse practitioner, Christine McGuire, about that same time to assist him in his practice. McGuire is licensed through the nursing board.

> ¶3d McGuire is a full time hourly employee for Dr. Martini and works in his office and under his supervision. She performs services as authorized under her license and as directed by Dr. Martini. In performing services as directed by Dr. Martini, she began taking a number of office calls with Hill beginning in November 2000.
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> ¶3e Dr. Martini's patient ledger reveals that Hill consulted with McGuire on various occasions beginning November 21, 2000. Basically, all of the office calls managed by McGuire consisted of consultation with Hill about her chronic pain problems and addressing appropriate medical prescriptions. The ledger shows that McGuire consulted with Hill on 13 occasions between November 21, 2000 and July 27, 2001.
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> ¶3f With few exceptions, the office notes of McGuire indicate that she consulted with Dr. Martini concerning each of her contacts with Hill. Dr. Martini and McGuire sometimes discussed Hill's situation before her appointment and other times following what were essentially interviews with Hill about how well she was coping with her pain syndrome. Dr. Martini's initials appeared on almost every call handled by McGuire, and he consulted with her about Hill's pain treatment throughout the time periods in question.
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> ¶3g Dr. Martini never relinquished his treating physician status and nothing in the record indicates that Hill ever requested a change in treating physicians. He continued to supervise and manage Hill's case during the time periods in question.
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> ¶3h Travelers informed Dr. Martini that it was denying payment for certain services provided to Hill through McGuire. Specifically, Travelers wrote letters to Dr. Martini on January 22, March 2 and 28, 2001, indicating that it was refusing to pay. Travelers indicated to Dr. Martini that it believed he had delegated the responsibility of treating physician to McGuire without prior authorization.

(Findings of Fact; Conclusions of Law; And Order at 2-3.) Based on these findings, the hearing officer concluded that Dr. Martini at all times was claimant's treating physician and that he is entitled to payment for the services provided by McGuire.

¶4 Travelers does not challenge any of the specific findings made by the hearing officer. Indeed, its brief on appeal cites page and verse showing that Dr. Martini reviewed and approved McGuire's evaluations and prescriptions for treatment in most cases. It points out, however, that McGuire's services were billed under her own name, not Dr. Martini's name. It also notes that Dr. Martini saw claimant six times while McGuire saw her eight times.

¶5 Travelers acknowledges that Dr. Martini testified that McGuire was an employee paid on an hourly basis. (Appellant's Brief at 6.) It cites no contrary evidence, although it argues that it was an error to characterize McGuire as an employee in light of her role in treating the claimant.

¶6 Travelers proffers three arguments for reversal of the hearing. First, it argues that it is not liable for McGuire's services because a nurse practitioner cannot be a treating physician under section 39-17-116(36), MCA. Second, it argues that McGuire was claimant's *de facto* treating physician and therefore is ineligible for payment under section 39-71-116(36), MCA. Finally, it argues that it did not approve of a change of treating physicians, therefore it is not liable for McGuire's services.

¶7 All three of Travelers' arguments are premised upon the applicability of treating physician definition to McGuire's services. The parties have not identified the version of the Workers' Compensation Act (WCA) which applies to the services provided in this matter. They cite section 39-71-116, MCA, but not the year of the provision. Based on the exhibits it appears that the 1999 version applies. In any event, it makes no difference whether the 1997, 1999, or 2001 version of the WCA applies as the provisions applicable in this case are the same for all years.

¶8 Section 39-71-116(36), MCA (1997-2001) provides in relevant part:

(36) "Treating physician" means a person who is primarily responsible for the treatment of a worker's compensable injury and is:

> (a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting privileges to practice in one or more hospitals, if any, in the area where the physician is located;
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> . . . .
>
> (g) an advanced practice registered nurse licensed by the state of Montana under Title 37, chapter 8, recognized by the board of nursing as a nurse practitioner or a clinical nurse specialist, and practicing in consultation with a physician licensed under Title 37, chapter 3, if there is not a treating physician, as provided for in subsection (36)(a), in the area in which the advanced practice registered nurse is located.

Initially, the section defines the treating physician as the "person **primarily responsible for treatment of a worker's compensable injury."** Subsection (g) permits a nurse practitioner to be a treating physician under some circumstances but the subsection applies if and **only if** the nurse practitioner is "**primarily responsible for treatment of a worker's compensable injury**." Travelers' arguments overlook the highlighted language. Under the facts found by the hearing officer, and supported by the testimony and exhibits, Dr. Martini was "primarily responsible for treatment" of the claimant's condition. McGuire was an employee of Dr. Martini. She acted under his actual supervision. Her services are compensable as a part of his services.

ORDER

¶9 The decision below is **affirmed**.

¶10 This Decision on Appeal is certified as final for purposes of appeal.

¶11 Any party to this dispute may have 20 days in which to request an amendment or reconsideration from this Decision on Appeal.

DATED in Helena, Montana, this 6th day of June, 2002.

(SEAL)

\s\ Mike McCarter
JUDGE

c: Ms. Anna F. Creed
Mr. Milton Datsopoulos
Submitted: February 27, 2002