IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1999 MTWCC 24

WCC No. 9812- 8118

EDDIE PARHAM

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

TAMARACK PROPERTIES

Employer.

ORDER GRANTING PARTIAL JUDGMENT AND ORDER REQUESTING COOPERATION FROM DEPARTMENT OF CORRECTIONS

Summary: Claimant injured his spine at work during 1997 and received spine surgery from Dr. John Moseley on January 30, 1998. Claimant's symptoms initially improved, then returned, along with new symptoms. Dr. Mosely recommended a second surgery, but the insurer disputed that another surgery was a reasonable medical benefit.

Held: While there was conflicting evidence on the need for a second surgery, the WCC credited Dr. Mosely's explanation of the need for surgery, including that claimant's spine is now vulnerable to more serious injury. The insurer is liable for the second surgery as a reasonable primary medical service within sections 39-71-116(26) and -704(1)(a), MCA (1997).

Topics:

Constitutions, Statutes, Regulations and Rules: Montana Code: section 39-71-704, MCA (1997). While there was conflicting evidence on the need for a second surgery to claimant's spine, the WCC credited Dr. Mosely's explanation of the need for surgery, including that claimant's spine is now vulnerable to more serious injury. The insurer is liable for the second surgery as a reasonable primary medical service within sections 39-71-116(26) and -704(1)(a), MCA (1997).

Benefits: Medical Benefits: Surgery. While there was conflicting evidence on the need for a second surgery to claimant's spine, the WCC credited Dr. Mosely's

explanation of the need for surgery, including that claimant's spine is now vulnerable to more serious injury. The insurer is liable for the second surgery as a reasonable primary medical service within sections 39-71-116(26) and -704(1)(a), MCA (1997).

¶1 The parties in this Emergency Petition case filed a Pretrial Order on or about March 11, 1999. The parties agreed to bifurcate the issues in this case, trying first the issue of whether the State Compensation Insurance Fund (State Fund) is liable for a second cervical spine surgery for Eddie Parham, (claimant), and leaving for the regular Billings Trial Docket (April 26, 1999) the remaining issues of liability for attorney fees and the 20% penalty.

¶2 Trial on the issue of liability for a second neck surgery was commenced on March 15, 1999, in the Conference Room of the Billings Clinic, where Dr. Eugen Dolan, neurosurgeon, testified. Trial resumed on March 16, 1999, in the conference room of Dr. John Moseley, neurosurgeon. Present for the sworn testimony of Dr. Dolan and Dr. Moseley were Mr. Patrick R. Sheehy, counsel for claimant and Mr. Greg E. Overturf, counsel for respondent. Claimant could not be present due to his present incarceration in the Montana State Prison. The court reporter for the testimony of Dr. Dolan was Mr. Richard Mattson. The court reporter for the testimony of Dr. Moseley was Ms. Becky Orozco. The parties rested their cases following the testimony of Dr. Moseley and affirmed to the Court that the bifurcated issue of liability for a second cervical spine operation was ready for determination by the Court based on the exhibits stipulated into evidence and the testimony of Drs. Dolan and Moseley.

FINDINGS OF FACT

¶3 Claimant injured his cervical spine while lifting a five gallon bucket of paint on or about October 3, 1997. Liability was ultimately accepted by respondent and medical and wage compensation benefits were paid.

¶4 Claimant's treating physician is Dr. John Moseley. An MRI done on October 29, 1997, showed significant pathology in claimant's cervical spine. It is established that claimant has nerve root compression of the C4, C5, and C6 nerve roots, all on the right side. The compression is bony in origin, rather than caused by any soft tissue, such as extruded disk. The diagnosis for this condition is called neural foraminal stenosis, right, at the C3-4, C4-5 and C5-6 levels of claimant's spine. In addition, claimant also has a congenitally small canal, through which the spinal cord passes. The small canal has further narrowed, creating in a condition diagnosed as spinal stenosis or canal stenosis. At C3-4 and C5-6, it was established that bulging disks minimally contact the cord, while at C4-5, the stenosis was less severe in that it does not contact the cord, but it compresses cerebrospinal fluid (CSF) sac, or dura, at that level.

¶5 On January 30, 1998, Dr. Moseley performed partial laminectomies at C3-4, C4-5, and C5-6, all on the right side only, in order to get his instruments into the neural foraminal spaces at these levels. With a drill and Kerrison rongeur he performed foraminotomies (removed bone around the foramen) at these three levels in an attempt to widen the foramen and relieve the nerve root compression he found there. It is customary operating protocol to investigate the disks in the area where he performed the foraminotomies. He did not see any soft tissue disk material causing compression of the cord or nerve roots at any of the three operating levels, on the other hand he could visualize very little of the anterior disk due to his approach to the operative sites.

¶6 Claimant's nerve root compression symptoms seemed to improve in the six months or so following Dr. Moseley's surgery. But, by September 2, 1998, claimant was complaining of bilateral arm and shoulder numbness and weakness, whereas previously, his symptoms had been chiefly on the right side where the MRI and operative findings had shown the nerve root compression. Dr. Moseley ordered another MRI to investigate claimant's condition.

¶7 The second MRI, done September 28, 1998, shows claimant's spine to be in much the same condition as it was when the first MRI images were done 11 months earlier. There is still right side nerve root compression of the C4, C5 and C6 nerve roots. In addition, Dr. Moseley feels that the spinal canal is a little narrower. Dr. Moseley opines that claimant's cervical spine has further "settled", causing the canal to get narrower and the neural foramen to narrow as well. It is also possible that the claimant has laid on more bone in the neural foramen where the previous surgeries were done.

¶8 While there was conflicting evidence on the need for a second surgery, I find Dr. Moseley's explanation of the need for a second surgery to be persuasive. Dr. Moseley stated that claimant's spinal cord is in the early stages of being pinched at one or more of the three levels. Claimant now has bilateral shoulder, arm, and hand numbness, especially on flexion and extension of the neck, symptoms which are indicative of spinal cord compression due to spinal stenosis. This condition makes claimant's spinal cord more vulnerable to injury. A minor auto collision with whiplash, an assault or a fall could cause quadriplegia because claimant's spinal cord is already constricted. Dr. Moseley recommends surgery on a speedy basis, and the Court agrees with and adopts his recommendation. Until surgery is performed, claimant will remain at significantly higher risk for catastrophic spinal cord injury triggered by even minor trauma.

¶9 Dr. Moseley proposes to do laminectomies at C3-4, C4-5 and C5-6 of claimant's cervical spine. This surgery will decompress claimant's spinal canal and allow more room for the spinal cord. The decompression will significantly reduce the risk of claimant sustaining a catastrophic spinal cord injury. Dr. Moseley's will also inspect the previously

operated neural foramen. If there is nerve root compression, he will enhance the foraminotomies done in the first surgery to relieve pressure on the nerve roots.

¶10 Based on the medical evidence before me, I find that the second cervical spine surgery proposed by Dr. Moseley is a "reasonable primary medical service" for a condition resulting from claimant's injury as that term is defined in section 39-71-116(26), MCA. I further find that the respondent is liable for payment for the second surgery proposed by Dr. Moseley and other reasonable incidental medical expenses associated with the surgery, subject to the provisions of section 39-71-704(1)(a), MCA.

¶11 This case is somewhat unusual in that claimant is presently serving time in the Montana State Prison. Due to the emergency nature of claimant's condition, I am requesting that the Department of Corrections expedite whatever arrangements are necessary to transport claimant from the prison to Billings for the surgery and make whatever accommodation they can for the surgical treatment and recovery.

CONCLUSIONS OF LAW

¶12 The second cervical spine surgery proposed by Dr. Moseley is a reasonable primary medical service under section 39-71-116(26), MCA. The respondent is liable for payment of medical expenses reasonably related to the second surgery as provided by section 39-71-704(1)(a), MCA.

¶13 Respondent is further liable for costs for transporting claimant to and from Billings for surgery.

PARTIAL JUDGMENT

¶14 1. The respondent, State Fund, is liable for payment of medical expenses reasonably related to the second surgery as provided by section 39-71-704(1)(a), MCA.

¶15 2. Respondent, State Fund, is further liable for costs in transporting claimant to and from Billings for surgery.

¶16 3. The remaining issues in this case shall be tried before the Court in Billings during the regularly scheduled trial docket for Billings during the week of April 26, 1999.

DATED in Helena, Montana this 17th day of March, 1999.

\s\ Mike McCarter
JUDGE

c: Mr. Patrick R. Sheehy
Mr. Greg E. Overturf
Warden Mike Mahoney - Courtesy Copy
Submitted: March 16, 1999