

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1999 MTWCC 73

WCC No. 9711-7872

LIBERTY NORTHWEST INSURANCE CORPORATION

Petitioner

vs.

NANCY PETAK

Claimant/Respondent

COMMUNITY MEDICAL CENTER

Respondent.

ORDER AWARDING COSTS

Summary: Following reversal of WCC decision on appeal, claimant's counsel filed for costs on appeal. Some respondents objected.

Held: Because medical center and not insurer was entity which disputed claimant's attorney medical lien and insisted on full payment without attorneys fees, costs on appeal to Supreme Court are appropriately billed to that entity.

Topics:

Costs: Supreme Court Costs. Because medical center and not insurer was entity which disputed claimant's attorney medical lien and insisted on full payment without attorneys fees, costs on appeal to Supreme Court are appropriately billed to that entity.

¶1 This issue presents as the result of an appeal to the Montana Supreme Court which reversed this Court and held that an attorney fee lien (codified at § 37-61-420 MCA) attaches to disputed medical benefits recovered through the efforts of the attorney in a workers' compensation case. *Lockhart v. New Hampshire Insurance* and *Liberty Northwest Insurance v. Petak*, 1999 MT 205 (decided September 1, 1999). The Supreme Court concluded:

Finally, we note that the fundamental purpose of the workers' compensation laws is to provide a fund which replaces an injured worker's lost earnings and lost earning

capacity. Given this purpose, it would be unfair for the claimant to pay a disproportionate amount of his or her attorney fees from his or her own personal resources.

¶2 On October 20, 1999, claimant's counsel, Mr. Rex Palmer, filed his Costs on Appeal in the above-entitled matter. On October 25, 1999, Mr. Don R. Herndon on behalf of New Hampshire Insurance Corporation and Labor Contractors, filed an objection to the statement of costs. On October 27, 1999, Mr. Regan Whitworth, attorney for Community Medical Center, filed an Objection to Claim of Costs on Appeal. Liberty Northwest Insurance Corporation filed its response to the claimant's request for costs on November 5, 1999, and claimant joined in Liberty's argument on November 16, 1999. The issue is submitted. The Court finds good cause to grant claimant's claim.

¶3 Initially, New Hampshire Insurance Corporation's position that it is not a party to this case is well taken. The Court file does not name New Hampshire Insurance Corporation in its caption and it does not appear that Mr. Palmer identified the company in his request for costs, and the decision in this case does not include the company.

¶4 In this case it was Community Medical Center which disputed the claimant's attorney medical lien and insisted on full payment without any deduction for attorney fees. Therefore, the attendant costs will be billed to Community Medical Center.

The Law

¶5 Appeal costs are awarded if not otherwise provided by the Montana Supreme Court in its decision. Mont.R.App.Pro. 33. Costs in Civil Cases

¶6 Workers' Compensation Court rule ARM 24.5.342 Taxation of Costs, governs the costs which can be claimed in a workers' compensation case. Section 25-10-201, MCA, does not apply. *Kloepfer v. Lumbermen's Mutual Casualty Company*. 272 Mont. 78, 899 P.2d 1081 (1995).

¶7 Costs claimed by the claimant in the amount of \$470.21 are properly taxable under ARM 24.5.342 and must be paid by Community Medical Center.

¶8 IT IS HEREBY ORDERED that the respondent, Community Medical Center, pay to the claimant's attorney, Mr. Rex Palmer, his costs in the amount of \$470.21.

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

(SEAL)

\s\ Mike McCarter

JUDGE

c: Mr. Larry W. Jones

Mr. Rex Palmer

Mr. Regan Whitworth

Submitted: November 16, 1999