

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1995 MTWCC 106

WCC No. 9509-7398

ALEXIS RAUSCH as Conservator for KEVIN RAUSCH

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

LARSON LOGGING, INCORPORATED

Employer.

ORDER LIMITING DISCOVERY

Summary: Claimant litigating proper rate for domiciliary care sought to discover rates paid by insurer statewide in individual domiciliary care cases. Claimant lived in the Missoula-Frenchtown area.

Held: Where the issue is market rate for domiciliary care in claimant's area of residence, the inquiry must be limited to claimant's geographical area. Court orders insurer to use computerized information that is readily accessible to list Missoula-Frenchtown claims in which it pays for domiciliary care, not identifying particular claimants, but noting: (1) the rate at which domiciliary care is paid; (2) whether the rate was fixed by agreement or court order; (3) the town or city where claimant resides; (4) the number of domiciliary care hours provided each day; (5) the nature of the claimant's condition; (6) any special circumstances affecting the determination of the hourly rate.

Topics:

Benefits: Domiciliary care. Where parties dispute proper rate of domiciliary care, claimant not entitled to discover information about rates paid by insurer statewide. Where claimant lives in Missoula-Frenchtown area, insurer ordered to use readily accessible computerized information to list claims in the Missoula-Frenchtown area in which it pays for domiciliary care, not identifying particular claimants, but noting: (1) the rate at which domiciliary care is paid; (2) whether the rate was fixed by agreement or court order; (3) the town or city where claimant resides; (4) the

number of domiciliary care hours provided each day; (5) the nature of the claimant's condition; (6) any special circumstances affecting the determination of the hourly rate.

Discovery: Domiciliary care. Where parties dispute proper rate of domiciliary care, claimant not entitled to discover information about rates paid by insurer statewide. Where claimant lives in Missoula-Frenchtown area, insurer ordered to use readily accessible computerized information to list claims in the Missoula-Frenchtown area in which it pays for domiciliary care, not identifying particular claimants, but noting: (1) the rate at which domiciliary care is paid; (2) whether the rate was fixed by agreement or court order; (3) the town or city where claimant resides; (4) the number of domiciliary care hours provided each day; (5) the nature of the claimant's condition; (6) any special circumstances affecting the determination of the hourly rate.

The Court conferred by telephone conference call with Mr. Lon J. Dale, attorney for petitioner, and Mr. Daniel J. Whyte, attorney for respondent. The conference call concerned discovery. The attorneys requested and arranged for the conference call.

Claimant is a quadriplegic and requires domiciliary care. His wife, who is also his conservator, has been providing that care. The petition in this case concerns the proper rate of compensation for that care.

In written discovery requests propounded upon the respondent, claimant requested information concerning domiciliary care rates being paid in other cases. The requests were not limited geographically. The specific information requested for each case was the rate per hour, the geographical area in which the claimant resides, and the name and address of any attorney representing the claimant. Respondent objected to the requests.

Mr. Dale informed the Court that the information will provide evidence concerning the market rate for domiciliary care. But the geographical market for domiciliary care in this case is the Missoula-Frenchtown area where claimant lives. Moreover, the information is of limited relevance. The amount paid in an individual case may have been negotiated and may reflect circumstances particular to the case. The Court will not allow the trial in this matter to expand into a trial of the circumstances and appropriateness of the rates paid by the insurer in other cases. Finally, according to Mr. Whyte, only computerized information dating back to 1992 is readily retrievable.

Thus, I conclude that the request is overly broad and is oppressive in light of the limited potential relevance of the information.

IT IS THEREFORE ORDERED that, using computerized information readily accessible, the respondent shall identify and provide claimant with a list of claims in the Missoula-Frenchtown area in which it is paying for domiciliary care. The list shall not disclose

information identifying the particular claimant; it is sufficient that the list refer to the claimants as A, B, C or 1, 2, 3, etc. For each claimant the respondent shall state the following information:

- 1) the rate at which domiciliary care is being paid;
- 2) whether the rate was fixed by agreement of the parties or pursuant to court order;
- 3) the town or city in which the claimant resides;
- 4) the number of hours of domiciliary care each day;
- 5) the nature of the claimant's condition, e.g., quadriplegic, paraplegic, head injury;
- 6) any special circumstances or considerations affecting the determination of the hourly rate.

If after reviewing the information the claimant's attorney believes that he is entitled to additional information, then he should file a written request identifying the additional information sought and the reasons the information is necessary, and set up a telephone conference among counsel and the Court.

If respondent encounters difficulty in compiling the information as ordered, then it may request a further conference call with the Court.

Dated in Helena, Montana, this 14th day of December, 1995.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. Lon J. Dale
Mr. Daniel J. Whyte