

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1994 MTWCC 30

WCC No. 9211-6628

HERBERT SHELLEY

Petitioner

vs.

UNITED STATES FIDELITY & GUARANTY COMPANY

Respondent/Insurer for

EAGLE BEND DEVELOPMENT, d/b/a

CROP HAIL MANAGEMENT

Employer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

The trial in this matter was held on March 2, 1994, in Kalispell, Montana. Claimant, Herbert Shelley, appeared pro sé. Respondent, United States Fidelity and Guaranty Company was represented by Robert E. Sheridan.

The proceedings in this case were conducted informally. Mr. Shelley and Linda Coombs were sworn and testified. Exhibit Nos. 1 through 10, 12, and 14 through 24 were admitted. Included among exhibits are depositions of John V. Stephens, M.D. and Phillip Blom, D.C.

FINDINGS OF FACT

1. The claimant is 41 years of age and resides near Bigfork, Montana.
2. On June 18, 1986, claimant suffered an industrial injury arising out of and in the course and scope of his employment with Eagle Bend Development, d/b/a Crop Hail Management, in Bigfork, Montana.
3. At the time of claimant's injury, Eagle Bend Development was insured by the respondent, United States Fidelity and Guaranty Company (USF&G) under Plan II of the Workers' Compensation Act.
4. The parties subsequently agreed to settle the claim and a Petition for Full and Final Compromise Settlement was submitted to the Insurance Compliance Bureau of the

Department of Labor and Industry. On November 7, 1989, the Insurance Compliance Bureau approved a full and final compromise settlement thereby resolving all issues of compensation due claimant. Future medical benefits were reserved by the claimant in both the Petition and in the Order Approving the Settlement issued by the Insurance Compliance Bureau.

5. At the time of trial, the parties, stipulated to the following terms and conditions:

- a. Respondent has agreed to reimburse Petitioner in the amount of \$187.71 for the prescription Amitriptyline which has been prescribed by Drs. Busey and Stephens;
- b. Respondent has agreed to reimburse Petitioner \$97.59 for mileage in attending physical therapy. This reimbursement includes payment for 4 trips to physical therapy in February of 1989 with reimbursement including a round trip of 51 miles at \$.21 per mile. In addition, the reimbursement includes payment of an additional 13 additional miles for 19 trips in December of 1988 and January of 1989. Respondent had previously paid Petitioner for these trips but had only reimbursed the Petitioner for 38 miles.
- c. Respondent had agreed to reimburse Petitioner the sum of \$9.66 for mileage in giving a blood test at the Kalispell Regional Hospital on July 31, 1991.
- d. Respondent has agreed to reimburse Petitioner the sum of \$44.10 which includes 210 miles at \$.21 per mile for attending an examination by Dr. Busey in Missoula on December 27, 1991.
- e. Respondent has agreed to reimburse Petitioner an additional 5 round trips for appointments with Dr. Stephens from April 28, 1992, through December 17, 1993. Reimbursement will be calculated on a round trip of 46 miles and at the rate of \$.21 per mile for a total of \$48.30. Petitioner has agreed to waive any reimbursement for 6 additional trips to Dr. Stephens beginning on June 27, 1989, and ending on August 19, 1991, on the grounds that no claim was timely filed with Respondent for mileage for these visits.

6. Claimant has requested reimbursement of a \$75.00 filing fee to the Montana Supreme Court in connection with an appeal of a previous decision of this Court. This Court is without jurisdiction to award claimant costs incurred in connection with a prior appeal to the Montana Supreme Court and accordingly **denies** that request.

7. Claimant has also requested reimbursement of a bill received from Dr. Stephens for a visit on April 12, 1991. According to Dr. Stephens, claimant's treating physician, claimant had reached maximum medical improvement (MMI) in January of 1988. Dr. Stephens so testified in a September 13, 1989 deposition he gave in a prior involving claimant in this Court. (Ex. No. 17.) At that time claimant was represented by counsel. That Petition

apparently led to a Full and Final Compromise Settlement Agreement signed by claimant on October 3, 1989, and October 5, 1989. (Ex. No. 14.) I have reviewed other exhibits identified by claimant in his Reply filed March 18, 1994. While different dates of the MMI may have been used in various correspondence and in testimony by Dr. Blom (Ex. No. 18 at 13), the MMI dates used were in 1988. Other evidence cited by claimant, while indicating that claimant continued to experience symptoms, does not overrule Dr. Stephens' testimony as to claimant reaching MMI in 1988. Dr. Stephens' office note for the April 12, 1991 visit indicates that claimant had aggravated or exacerbated his condition as the result of recent work at a recycling center. Claimant failed to carry his burden of proof in establishing that the April 12, 1991 visit was the direct result of his original industrial injury rather than a new aggravation, and claimant's request for reimbursement of this medical bill is therefore **denied**.

8. The remaining issues before the Court involve claimant's request for reimbursement for chiropractic treatments by Dr. John Francis and reimbursement for mileage expenses in attending the treatments by Dr. Francis. Claimant seeks payment for 50.8 miles for 51 trips.

9. According to the Petition, Dr. Francis gave claimant chiropractic treatments from October 31, 1989 through May 22, 1991. At the time of the claimant's treatment by Dr. Francis on October 31, 1989, he had been treating with Dr. Stephens for over two years. Claimant continued to treat with Dr. Stephens during 1988 and 1989 and on October 21, 1989, Dr. Stephens prescribed a series of two or three chiropractic treatments a week for two weeks. The prescription was dated October 31, 1989.

10. United States Fidelity and Guaranty Company received a bill from Dr. Francis in November of 1989 for four treatments. The bill was paid. While claimant identified correspondence from the chiropractor in which the chiropractor claims to have sent "monthly bills" to USF&G (Ex. No. 2 at 7), Linda Coombs, an adjuster for USF&G, testified credibly that USF&G received no further billings from Dr. Francis until May of 1990. At that time, Ms. Coombs notified Dr. Francis that she would not pay for the additional treatment since it was not authorized. The Coombs letter denying liability for the chiropractic treatments was sent to Dr. Francis on June 4, 1990. (See Ex. No. 4 at 18.)

11. Thereafter, Ms. Coombs retained the services of Dr. Phillip Blom to do a chiropractic review of the Herbert Shelley file. Dr. Blom indicated that Mr. Shelley had reached maximum medical improvement and the treatment received from Dr. Francis was maintenance rather than therapeutic in nature.

12. On July 26, 1990, Linda Coombs again wrote to Dr. Francis and advised him that based upon the file review by Dr. Blom, USF&G could not accept liability for the additional treatment. Furthermore, Ms. Coombs advised Dr. Francis that claimant had not obtained authorization to change physicians.

13. Dr. Stephens' office notes of February 8, 1990 and June 27, 1990 indicate approval of chiropractic treatments "a couple of times a month." However, he did not write a prescription for such treatment until June 27, 1990. (Ex. No. 12.) No approval or authorization was ever obtained from USF&G. Moreover, the chiropractic treatments billed to USF&G were more than "a couple of times a month." In 1990, claimant had four treatments in January, four in February, four in March, four in April, three in May and three in June.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over this proceeding pursuant to section 39-71-2905, MCA.

2. It is apparent from a review of the evidence presented in this case, including the deposition and office notes of Dr. John Stephens, that Dr. Stephens was the claimant's treating physician at the time Dr. Francis began chiropractic treatments in late October of 1989.

At the time of claimant's chiropractic treatments, the Department of Labor's service rules provided:

(1) Treatment of an injured worker is permitted without specific authorization for a period not to exceed 30 days, provided the injured worker is not under the care of another doctor.

ARM 24.29.2001 (repealed effective April 1, 1993.) It is apparent that at the time Dr. Francis began treating claimant, Dr. Stephens was already the primary treating physician. It is clear that no authorization was ever obtained from USF&G prior to the commencement of the chiropractic treatment, although USF&G did pay for the initial four visits with Dr. Francis pursuant to the prescription given by Dr. Stephens. Finally, it is clear that "specific authorization" for claimant's chiropractic treatments was required under the rule.

Where the claimant fails to comply with the rule which requires authorization to change physicians, or seeks care from a chiropractor when he is already being treated by another physician, the insurer can not be charged for the services of the second physician or chiropractor. See **Weaver v. Buttrey Food and Drug**, 255 Mont. 90, 98, 841 P.2d 476 (1992); **Garland v. The Anaconda Co.**, 177 Mont. 240, 581 P.2d (1978); **Wood v. Aetna Casualty & Surety Co.**, WCC No. 9102-6094 (August 6, 1991).

There is also a second basis for the denial of claimant's request for reimbursement for the chiropractic treatments by Dr. Francis. The Administrative Rules of Montana, ARM 24.29.2004, provide that workers' compensation insurers are not liable for maintenance chiropractic care. Maintenance care is defined as "regime designed to provide the optimum state of health while minimizing reoccurrence of the clinical status."

The testimony of Dr. Blom indicated that the treatments by Dr. Francis were maintenance treatments. Dr. Blom further felt that the reports of Dr. Francis lacked the essential

information to establish a need for ongoing chiropractic care. Dr. Blom characterized Dr. Francis' reports as "boiler plated" by which he meant they all contained virtually the same information which was insufficient to support continuous and repetitive chiropractic treatments.

The claimant's requests for payment for chiropractic care and for travel in connection with that care are **denied**.

3. Claimant's request for payment for an April 12, 1991 visit to Dr. Stephens' is also **denied**. Dr. Stephens' office notes indicate that claimant was seen because he had suffered an aggravation while working for a recycling center. Dr. Stephens' prior deposition testimony established that claimant had reached maximum medical improvement in 1988. Claimant has failed to carry his burden of proof by establishing that the treatment on April 12, 1991, was due to his original injury rather than to some new aggravation.

JUDGMENT

1. This Court has jurisdiction over this matter pursuant to section 39-71-2905, MCA.

2. Pursuant to the stipulation of the parties as set forth in the Findings of Fact, respondent shall reimburse claimant the sum of \$381.36 for mileage reimbursement and for prescriptions.

3. Claimant's request for reimbursement of Dr. Stephens' bill for an examination on April 12, 1991 is **denied**. The evidence fails to establish that this visit was the direct result of the injury sustained by the claimant on June 18, 1986.

4. Claimant's request for reimbursement of his filing fees with the Montana Supreme Court is **denied**. This Court is without jurisdiction to order repayment of costs incurred in proceedings before the Supreme Court.

5. Claimant's request for reimbursement for chiropractic treatment by Dr. Francis, together with mileage expenses incurred in traveling to those treatments is **denied**. Claimant failed to obtain authorization of the insurer before proceeding with the treatments. Respondent is also not liable for chiropractic treatments which are solely for maintenance care. The evidence presented to this Court indicates that the treatments by Dr. Francis were of a maintenance nature rather than therapeutic.

6. The JUDGMENT herein is certified as final for purposes of appeal pursuant to ARM 24.5.348.

7. Any party to this dispute may have 20 days in which to request a rehearing from these Findings of Fact and Conclusions of Law and Judgment.

DATED in Helena, Montana, this 18th day of March, 1994.

(SEAL)

/S/ Mike McCarter

JUDGE

c: Mr. Herbert Shelley - Certified
Mr. Robert E. Sheridan