

**IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA**

**1994 MTWCC 90**

**WCC No. 9404-7040**

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**SOUND ADVICE HEARING,**

**Appellant,**

**vs.**

**CIGNA,**

**Respondent.**

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**DECISION AND ORDER ON APPEAL**

Petitioner, Sound Advice Hearing (Sound Advice), appeals from findings of fact, conclusions of law, and order entered by the Montana Department of Labor and Industry (Department) on March 11, 1994. The order dismissed Sound Advice's request for a contested case hearing based on a lack of jurisdiction.

Factual and Procedural Background

Sound Advice is a business licensed to dispense hearing aids. It apparently dispensed hearing aids to workers' compensation claimants employed, or previously employed, by Atlantic Richfield, which is apparently insured by CIGNA. The Court uses the word "apparently" because the proceeding below was commenced through sketchy correspondence. No formal pleadings were filed and no hearing was ever held.

A dispute arose between Sound Advice and CIGNA concerning payment for hearing aids. Following a prehearing conference, a hearing examiner formulated the following issues to be addressed at a hearing:

1. Can the Insurer require three estimates following advice from an insured or provider indicating an insured's need for a hearing aid?
2. Does claimant at this time owe the petitioner [Sound Advice] for any hearing aides [sic] provided claimants insured by the Insurer?
3. Has the Insurer's claim processing been inappropriate?

(Notice of Hearing (January 11, 1994). )

On February 7, 1994, the matter came on for hearing before a Department hearing examiner. At the commencement of the hearing CIGNA moved to dismiss for lack of jurisdiction and lack of standing. The hearing was cancelled and the parties were provided an opportunity to brief the jurisdictional issue.

Both parties submitted briefs. Thereafter, on March 11, 1994, the hearing examiner entered the order dismissing the proceeding. The hearing examiner determined that Sound Advice is not a "medical provider" and that the Department therefore lacked jurisdiction over the dispute. Sound Advice then appealed to this Court.

### Discussion

The sole issue before this Court is whether the Department has jurisdiction to hear the dispute between Sound Advice and CIGNA.

This Court's own jurisdiction in this matter is pursuant to section 39-71-204(3), MCA, which provides for an appeal to the Workers' Compensation Judge from any order of the Department. The section provides, "If a party is aggrieved by a department order, the party may appeal the dispute to the workers' compensation judge." Section 39-71-2401(3), MCA, also authorizes this Court to hear this appeal. It provides that "[a]n appeal from a department order may be made to the workers' compensation court."

The scope of judicial review applicable in this case is plenary. The hearing examiner determined, as a matter of law, that the Department lacks jurisdiction over the controversy. Legal conclusions of an administrative agency are reviewable on appeal to determine if they are correct. *Steer, Inc. v. Department of Revenue*, 245 Mont. 470, 474, 803 P.2d 601, 603 (1990).

While the Workers' Compensation Court has original jurisdiction over many matters arising under the Worker's Compensation Act, its original jurisdiction is not all encompassing: the legislature conferred original jurisdiction in the Department over some matters that arise under the Act. As relevant to this case, the legislature provided in section 39-71-704(6), MCA that:

Disputes between an insurer and a medical service provider regarding the amount of a fee for medical services must be resolved by a hearing before the department upon written application of a party to the dispute.

The section has been implemented by the Department through ARM 24.29.1404(1), which provides in relevant part:

(1) Disputes arising over the following issues are resolved by a hearing before the department upon written application of a party to the dispute or the injured worker:

(a) Amounts payable to medical providers, when benefits available directly to claimants are not an issue,

(b) Access to medical records,

(c) Timeliness of payments to medical providers. All other disputes arising over medical claims, including travel expense reimbursement to injured workers, shall be brought before a department mediator as provided in part 24 of the Workers' Compensation Act.

The case initiated by Sound Advice involves a dispute over payment and timeliness of payment. However, based on ARM 24.29.1504(7), the Department concluded that a hearing aid dispenser does not meet the definition of a "medical provider" and that the Department therefore lacks jurisdiction over the controversy. ARM 24.29.1504(7) provides:

(7) "Provider" means any health care provider, unless the context in another rule clearly indicates otherwise. "Provider" does not include pharmacists nor does it include a supplier of medical equipment who is not a health care provider.

Sound Advice contends that not only was the rule misconstrued by the hearing examiner but that it does not apply at all.

Initially, the appeal raises a substantial issue regarding the Department's interpretation and application of its own rules. An appellate court may review an administrative agency's interpretation of its own rules. **Call v. Heckler**, 647 F.Supp. 560, 563 (D.Mont. 1986). Although this Court must give deference to an administrative agency's fact-finding and policy-making, it must be " particularly vigilant and must hold agencies ... to a strict adherence to both the letter and the spirit of their own rules and regulations [citation omitted]". **Id.**

ARM 24.29.1504 is part of *subchapter 15* of the Department's regulations. The rule which authorizes review of disputes between insurers and medical providers is part of *subchapter 14*. The subchapter difference is important since the first sentence of ARM 24.29.1504 reads:

24.29.1504. DEFINITIONS As used in **this subchapter**, the following definitions apply: (Underlining in original; bold added.) On its face, the definitions set out in that rule (including the definition of "provider") apply only to subchapter 15. That subchapter sets forth rules concerning utilization and cost containment measures and was adopted pursuant to subsection (2) of section 39-71-704, MCA. The definition of provider found in subsection (7) of the rule is linked to subchapter 15 and has no application to disputes arising under ARM 24.29.1404.

Moreover, the Department's interpretation of ARM 24.29.1404 must be examined to determine if it is consistent with the Department's statutory mandate regarding disputes between medical service providers and insurers. As already noted, ARM 24.29.1404

implements subsection (6) of section 39-71-704, MCA. It must therefore conform to that subsection:

Administrative rules must be strictly confined within the applicable legislative guidelines. Indeed, it is axiomatic in Montana law that a statute cannot be changed by administrative regulation. We look to the statutes to determine whether there is a legislative grant of authority... It [a valid rule] must not engraft additional and contradictory requirements on the statute, and it must not engraft additional non-contradictory requirements on the statute which were not contemplated by the legislature. [Citations omitted.]

**Bick v. State Dept. of Justice**, 224 Mont. 455, 457 and 458, 730 P.2d 418 (1986).

Subsection (6) is part of an overall provision found in section 39-71-704, MCA, for payment of "medical, hospital and related services." The title of the section is "**Payment of medical, hospital and related services -- fee schedules and hospital rates -- fee limitation.**"

Subsection (1)(a) provides that "the insurer shall furnish reasonable primary medical services for conditions resulting from the injury . . . ." "Medical services" must be given their ordinary and usual meaning unless the context of the statute requires otherwise. **Jones v. Burns**, 138 Mont. 268, 288, 357 P.2d 22 (1960). "Medical services" in an ordinary and usual sense encompasses diagnosis and correction of hearing defects. There is nothing in section 39-71-704, MCA, indicating that the legislature intended any narrower meaning of the term. Subsection (1)(c) specifically provides that "[t]he insurer shall replace or repair prescription eyeglasses, prescription contact lenses, **prescription hearing aids**, and dentures that are damaged or lost as a result of an injury . . . ." (Emphasis added.) Hearing aid dispensers are licensed to test hearing and fit hearing aids, § 37-16-404, MCA, as well as sell hearing aids. In the context of section 39-71-704, MCA, they must be deemed "medical service providers." Subsection (6) is therefore applicable to disputes involving hearing aid dispensers.

ARM 24.29.1404 must be interpreted consistently with section 39-71-704(6), MCA.

Consequently, it was error to interpret the section as excluding hearing aid dispensers from its provisions. The decision of the hearing examiner is therefore **reversed** and this matter is **remanded** to the Department for further proceedings.

#### ORDER

The Department's determination that it does not have jurisdiction under ARM 24.29.1404 to resolve a dispute between a hearing aid dispenser and an insurer concerning payments for hearing aids is **reversed**. This matter is **remanded** for further proceedings.

Pursuant to Rule 24.5.348 of this Court, this order is certified as final for purposes of appeal.

Dated in Helena, Montana, this 26th day of September, 1994.

(SEAL)

/s/ Mike McCarter  
JUDGE

c: Mr. Chris R. Young  
Mr. Thomas A. Marra  
Ms. Melanie A. Symons