

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1994 MTWCC 37

WCC No. 9309-6889

PATRICIA SULLIVAN

Petitioner

vs.

AETNA LIFE & CASUALTY

Respondent/Insurer for

ST. JAMES COMMUNITY HOSPITAL

Employer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

The trial in this matter was held on February 17, 1994, in Butte, Montana, the Honorable Mike McCarter, Judge of the Workers' Compensation Court, presiding. Petitioner, Patricia Sullivan (claimant), was present and represented by Mr. Bernard J. "Ben" Everett. Respondent, Aetna Life & Casualty (Aetna), was represented by Mr. Brendon J. Rohan.

Claimant and her mother (Agnes Sullivan) testified. Exhibit Nos. 1 through No. 6 and Exhibit Nos. 8 and 9 were admitted into evidence. Exhibit No. 7 was withdrawn.

Having considered the Pretrial Order, the testimony presented at trial, the demeanor of the witnesses and the exhibits, the Court makes the following:

FINDINGS OF FACT

1. Claimant injured her neck on October 5, 1983, in the course and scope of her employment as a radiological technician for St. James Community Hospital.
2. The employer and its insurer, Aetna Life and Casualty (Aetna), accepted liability for the claimant's industrial accident.
3. Since the date of her injury the insurer has continuously paid claimant total disability benefits. Both parties consider her permanently totally disabled.
4. Claimant is presently 48 years old. Despite numerous surgeries, she suffers severe pain in her neck, arms and hands. She also suffers severe headaches.

5. Claimant seeks a lump sum advance against permanent partial disability benefits which she would otherwise begin receiving upon conversion of her social security disability benefits to retirement benefits.⁽¹⁾

6. The purpose of the lump sum request is to pay off indebtedness totalling \$36,582.14, itemized as follows:

Norwest Bank (motor home loan)	\$23,101.89
Norwest Bank (Loan to repay Agnes Sullivan for home mortgage loan)	5,058.93
AT&T Credit Card	<u>8,753.11</u>
	36,913.93
Less	<u>-331.69</u>
TOTAL SOUGHT	\$36,582.29

7. In addition, claimant seeks a \$5,000 advance to repair two motor vehicles. One vehicle is a 1978 pickup truck and the other a 1985 van. According to claimant, the truck needs a new engine and body; the van needs body work and may require engine work. No itemization of work was provided. Claimant did not explain why she needs two vehicles and did not provide a market value for either vehicle.

8. Claimant initially sought \$54,243.90 to pay indebtedness. However, \$7,661.76 of that amount was to repay an overpayment by Aetna which resulted from claimant's receipt of social security disability benefits. Aetna is not presently requesting repayment, so that amount is not at issue in the present case.⁽²⁾

9. The original request was further reduced when, at the time of trial, Aetna tendered \$10,000 to claimant to pay off debts owed by claimant to Agnes Sullivan (\$3,930.00), Norwest Bank (\$3,635.00) and Discover (\$2,434.08). The \$331.69 left over after payment of those debts is to be applied by claimant to reduce her other indebtedness. Aetna agreed to the \$10,000 lump sum advance on January 10, 1994. (Ex. No. 7.) On the day of trial it delivered actual checks totalling that amount.

10. The claimant's monthly income is \$1,662.56, consisting of social security disability benefits of \$732 and workers' compensation benefits of \$930.56⁽³⁾ Thus, claimant's annual income, which is **tax free**, is \$19,950.72.

11. In a statement dated April 28, 1993, claimant reported her monthly expenses as follows:

Utility	70.00
Water	24.55

Telephone	25.00
Cable	42.54
Paper	11.28
Groceries	280.00
Rent	175.00
Gasoline	100.00
Vetrenarian [sic]	25.00
Dentist	50.00
Optometrist	25.00
Physician	40.25
Prescriptions	30.00
Personal Care Items	100.00
Donations to Church	25.00
Loan #1 [Motor Home]	466.07
Loan #2 [Norwest Bank - Loan to repay Agnes Sullivan for Home Mortgage loan]	169.25
Loan #3 [Note to Agnes Sullivan]	<u>130.30</u>
TOTAL	\$1,789.24

(Ex. No. 6.) The claimant also listed the additional 1991 expenses which were not included in the basic list set out above. Those expenses were:

Van Repair	622.95
Truck Repair	120.75
Taxes on Property	259.00
License Plates: 1978 Truck	48.25
1985 Van	83.25
1989 R.V. [Motor Home]	226.75
Vehicle Insurance: 1978 Truck	173.24
1985 Van	286.48
1989 R.V. [Motor Home]	464.00
House repair:	
Water pipes installed with shower	600.00
Insulate water pipes	<u>65.00</u>
TOTAL	\$2,949.67

(Ex. No. 6.) These additional expenditures amount to \$245.81 monthly. Thus, according to the April 28, 1993 statement, claimant's total monthly expenses were \$2,035.05, while her monthly income was only \$1,662.56, a shortfall of \$372.49.

12. Claimant's sister prepared the April 28, 1992, financial statement.

13. During her testimony, claimant had difficulty in explaining many of her expenses and debts. This was due in part to her emotional fragility (she broke down and cried). However, it was also clear to the Court that she does not have a good understanding of her own financial affairs.

14. The April 28, 1993 statement did not take into account a new loan taken out by claimant from Norwest Bank later in 1993. This new loan, which has a balance of \$5,058.93, has a monthly payment of \$130.37. According to claimant, she borrowed this money to pay back her mother, Agnes Sullivan, for loans her mother had made to her to pay for car repairs, insurance, tires and other expenses. No documentation or further specifics concerning her mother's loans was offered at trial.

15. The April 28, 1993 statement also did not include amounts owed by claimant on two credit cards. At the time of trial, claimant owed \$8,753.11 on her AT&T Universal Card and \$2,102.39 on a Discover Card. She is making minimum monthly payments of \$100 for each card.

16. When the monthly obligations for the new Norwest Bank loan and the credit cards are added to claimant's earlier itemization of monthly expenses, her total monthly expenses amount to \$2,365.42, leaving her with a monthly shortfall of \$702.86.

17. The \$10,000 advance made on the day of trial reduced claimant's monthly expenses by \$399.25, eliminating \$130.00 she was paying to her mother; a \$169.25 payment to Norwest Bank (Loan #2 on claimant's April 28, 1993 financial statement); and a \$100.00 credit card payment to Discover Card.

18. The following is a summary of the claimant's **current** monthly financial situation as **initially presented**:

MONTHLY EXPENSES:

Utility	70.00
Water	24.55
Telephone	25.00
Cable	42.54
Paper	11.28
Groceries	280.00

Rent	175.00
Gasoline	100.00
Vetrenarian [sic]	25.00
Dentist	50.00
Optometrist	25.00
Physician	40.25
Prescriptions	30.00
Personal Care Items	100.00
Donations to Church	25.00
Loan #1 [Motor Home]	466.07
Unbudgeted expenses for insurance, vehicle maintenance, vehicle registrations, etc.	245.81
Loan #4 (New Loan to repay mother)	130.37
AT&T Universal Card	<u>100.00</u>
TOTAL MONTHLY EXPENSES	1,965.87
<u>MONTHLY INCOME</u>	1,662.56
<u>DIFFERENCE (SHORTFALL)</u>	<u>\$303.31</u>

19. Claimant lives with her parents in her parents' home. Her mother is 76 and her father is 84. Both are on fixed incomes consisting of social security benefits.

20. Claimant is paying her parents \$175 a month in rent.⁽⁴⁾ However, she is part-owner of the home and has incurred substantial expenses for maintenance and improvement of the home. In her compilation of additional expenses in 1992, she includes \$665 for new water pipes. Loan #2 on claimant's financial statement, which was a loan from Norwest Bank with a principal balance of \$3,635.92, was taken out by claimant to repay her mother for new windows and doors for the house. The \$3,930 owed by claimant to her mother and paid off with proceeds from the \$10,000 advance, was for aluminum siding on the house. The Court also notes that in the incomplete list of checks written by claimant in 1992, one written on August 31, 1992 was to her mother for \$2,000. (Ex. No. 5.) Claimant also pays a monthly utility bill (apparently electricity and gas since other utilities are separately itemized) of \$70.00, a monthly television cable bill of \$42.54, and gasoline of \$100.00 amounts which suggest that they are for the entire household and not merely for claimant's share.

21. During cross-examination the claimant testified that she pays one-half of the household expenses but then conceded that some of the household expenses listed as monthly expenditures were total household amounts rather than just her share. She gave the grocery expense as an example. Groceries were listed at \$280 a month. If claimant's

share of groceries is one half, or \$140 a month, then this item alone would pare the gap between her expenses and income to \$163.31 monthly.

22. Claimant purchased a 1989 motor home for \$40,000. She currently pays \$466.07 a month to amortize the \$23,000 balance remaining on a loan she took out to finance the purchase. Annually, she also pays \$226.75 to register the motor home and \$464.00 to insure it. Thus, on an annual basis, claimant is paying \$6,283.59, or \$523.63 monthly for the motor home. This amounts to 26.6% of claimant's current monthly expenditures as itemized in Finding No. 18.

23. The motor home provides claimant with recreation and relaxation. She uses it only in the summer, taking it out into the country, and occasionally will sleep or read in it when it is parked at home.

24. Assuming that claimant uses the motor home for a full six months every year, her monthly cost for that use exceeds \$1000 a month.

25. Claimant testified that she hasn't sold the motor home because she can't "get value out of it." She also testified that she can't rent a motor home "because of the insurance." However, she provided no basis for those conclusions. There was no indication that she has seriously attempted to determine the value of the motor home or find a buyer for it, or that she has seriously looked into periodically renting a motor home for her summer excursions.

26. Claimant testified that she has difficulty handling her money. That difficulty was apparent from her testimony and her inability to provide explanations for many items. Some of claimant's testimony was contradictory; much of it was incomplete.

27. Claimant's difficulty in managing her money is further demonstrated by her testimony concerning a settlement she received in 1990 in a personal injury action. She could not recall the amount of the settlement, although counsel for respondent suggested to her that it was \$40,000. Claimant could not recall the amount she actually received after attorney fees, and was confused as to how she spent the money. She initially testified that she paid off the loan for her van but on cross-examination said that her mother had paid off that loan.

28. The claimant's income should be sufficient to provide claimant a comfortable living. Even if the lump sum advance requested by her were made, the Court is persuaded that there is a likelihood that claimant would incur new debts and a few years hence will be in the same position she is in now.

29. The evidence suggests that claimant is paying a disproportionate share of house expenses and improvements, or has reported the full amount of those expenses rather than just her half. The claimant has failed to persuade the Court by a preponderance of the

evidence that all of her monthly expenses are for her own personal maintenance, or that she cannot make ends meet if she properly manages her money and pays only her share of household expenses.

30. A further lump sum advance is not in the claimant's best interests.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of this matter pursuant to section 39-71-2905, MCA.
2. Analysis of claimant's request for a lump sum advance is governed by the following guidelines:

Lump sum settlements are granted in situations in which outstanding indebtedness exists, a pressing need is shown, or the best interests of the claimant, his family and the general public will be served.

Generally, the best interests of the claimant are served by compensating the claimant in regular periodic installments; lump sum conversions of periodic benefits are the exception rather than the rule. However, if the best interests of the parties will be served by lump sum conversions, the Workers' Compensation Court should award them without hesitation.

Stanley Structures, v. Scribner, 253 Mont. 236, 240-1, 833 P.2d 166 (1992) (citations omitted). The burden is on the claimant to prove that a lump sum is in her best interests. ***Phelps v. Hillhaven Corp.***, 231 Mont. 245, 252, 752 P.2d 737, 742 (1988). Claimant herein has not sustained her burden.

Initially, the claimant has not persuaded the Court that all of the monthly expenses she has listed are for her own care. Claimant testified that she splits household expenses in half with her parents. She acknowledged that some of the amounts listed on her financial statement represented *total* household expenses rather than her half. She specifically identified groceries as one of those items. As noted in Finding of Fact No. 22, groceries were listed at \$280 a month. If claimant's share is only one-half, or \$140 a month, then this item alone would pare the gap between her expenses and income to \$163.31 monthly. Claimant did not specifically identify other items which were for the household amount rather than her proportionate share. Claimant demonstrated little understanding or recall concerning basic financial information. Because of her emotional state during trial, she was difficult to question. In examining her financial statements, the monthly amounts listed for "utility," which is apparently gas and electricity, and for cable television suggest that those items may also reflect household totals rather than claimant's share, or that claimant is paying a disproportionate share of these expenses.

The claimant's financial statement also lists a \$175 expenditure for "rent." She testified on cross-examination that this amount was for rent. However, on redirect she said that the

\$175 was to compensate her mother for cooking and caring for her. If the payment is for cooking and care rather than rent, then claimant failed to establish her inability to cook or otherwise care for herself; if for rent, then claimant failed to show any basis for a rental payment -- she is part-owner of the house and has underwritten substantial amounts expended for home repairs and improvements. The amount of so-called rent is greater than the monthly shortfall remaining after groceries are reduced to reflect her share only.

The need for repairs to two vehicles is unsubstantiated for two reasons. First, there is no itemization of repair costs, only claimant's statement that total repair costs will amount to \$5,000. Second, claimant has not shown why she needs two vehicles. One reasonable alternative to repairing both vehicles is to sell one and apply the sale proceeds. Sale of one of the vehicles would also eliminate registration and insurance costs.

Finally, the motor home is not an essential item; keeping and maintaining it does not outweigh claimant's possible future needs. While the Court is sympathetic with the diversion the motor home provides claimant, the cost of the motor home constitutes 26% of her monthly expenses, and exceeds \$6,000 a year. Claimant did not present any evidence which would demonstrate that she cannot recoup the amount owed the bank by selling the motor home. Other less costly substitutes may also be available to her. While claimant testified that she could not rent a motor home because of insurance costs, no foundation was provided to that testimony and there is no record of any efforts by claimant to find less costly alternatives which would get her away from home during the summer.

Moreover, the cost of the motor home must be balanced against claimant's possible future needs. She is only 48 years old; 17 years remain until she reaches normal retirement age. In those 17 years more urgent needs may arise. She could, for example, incur substantial future medical expenses not covered by workers' compensation. Upon reaching age 65, her social security benefits may prove inadequate to sustain her, and she may need the supplemental income provided by the payment of biweekly permanent partial disability benefits.

Claimant has failed to carry her burden of proof. She did not establish by a preponderance of credible evidence that the lump sum advance she requests is in her best interest. The request must therefore be denied.

3. Claimant is not entitled to attorney fees or costs.

JUDGMENT

1. This Court has jurisdiction of this matter pursuant to section 39-72-2905, MCA.

2. Claimant's request for a lump sum advance is **denied**.

3. Claimant is not entitled to an award of attorney fees or costs.

4. This JUDGMENT shall be certified as final for purposes of appeal pursuant to ARM 24.5.348.

5. Pursuant to ARM 24.5.344, any request for rehearing or for amendment of the Court's decision shall be filed within 20 days.

DATED in Helena, Montana, this 21st day of April, 1994.

(SEAL)

/S/ Mike McCarter

JUDGE

c: Mr. Bernard J. Everett

Mr. Brendon J. Rohan

1. Section 39-71-510, MCA (1985). While no evidence was presented which would show that claimant is eligible for social security retirement benefits upon reaching retirement age, the insurer does not dispute claimant's assertion that she will be entitled to 500 weeks of permanent partial disability benefits commencing at age 65. It opposes the requested advance solely on the ground that it is not in the best interest of the claimant.

2. While Aetna is not currently pursuing repayment it is not waiving its right to recover the overpayment at some future time.

3. In her April 28, 1993 financial statement claimant listed her monthly income from workers' compensation as \$856.68, and total monthly income as \$1,573.68. (Ex. No. 6.) However, in their proposed findings both parties agree that claimant's monthly workers' compensation is \$930.56 and total monthly income is \$1,662.56. (Claimant's Proposed Finding of Fact No. 4; Respondent's Proposed Finding of Fact no. 3.)

4. In redirect examination the claimant testified that she gave her mother the \$175 a month because her mother cooks and takes care of her. However, no evidence was presented which would show that claimant is incapable of cooking or otherwise caring for herself.