IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2002 MTWCC 17

WCC No. 2000-0260

ALOHA SHORTMAN

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

T and J ENTERPRISES, INCORPORATED

Employer

and

RANDI LYNN SHORTMAN

Party/Respondent.

ORDER REGARDING PAYMENT OF DEATH BENEFITS

Summary: The insurer paying death benefits to the mother and spouse of a deceased worker requests a determination whether all death benefits should continue to be paid to the mother upon her natural child reaching the age of 18 or whether the child's portion of the benefits should be directly paid to the child.

Held: Under the plain language of section 39-71-723, MCA (1997), payment of death benefits must continue to be paid to the surviving parent even though the child is entitled to a one-half share of the benefits, at least so long as the child is living at home and/or being supported by the parent. If the child leaves home, continues school, and is not being supported by the parent, the child may request the Court to consider her entitlement to benefits.

Topics:

> **Constitutions, Statutes, Regulations and Rules: Montana Code Annotated: Section 39-71-723, MCA (1997).** Even though a child is statutorily entitled to one-half of death benefits payable on account of her father's death, while her mother is entitled to the other half, section 39-71-723, MCA, expressly requires that both the

mother's and daughter's shares be paid to the mother even though the child is now 18 years of age and considered an adult. Whether the daughter would be entitled to some sort of relief should she leave home but continue her schooling without assistance from the mother is a matter that does not need to be considered where the daughter is residing at home and being supported by her mother.

Benefits: Death Benefits: Natural Children. Even though a child is statutorily entitled to one-half of death benefits payable on account of her father's death, while her mother is entitled to the other half, section 39-71-723, MCA, expressly requires that both the mother's and daughter's shares be paid to the mother even though the child is now 18 years of age and considered an adult. Whether the daughter would be entitled to some sort of relief should she leave home but continue her schooling without assistance from the mother is a matter that does not need to be considered where the daughter is residing at home and being supported by her mother.

Benefits: Death Benefits: To Whom Paid. Even though a child is statutorily entitled to one-half of death benefits payable on account of her father's death, while her mother is entitled to the other half, section 39-71-723, MCA, expressly requires that both the mother's and daughter's shares be paid to the mother even though the child is now 18 years of age and considered an adult. Whether the daughter would be entitled to some sort of relief should she leave home but continue her schooling without assistance from the mother is a matter that does not need to be considered where the daughter is residing at home and being supported by her mother.

¶1 This matter began as a petition to determine whether Aloha Shortman (Aloha) was the common-law wife and beneficiary of Wade Gardipee (Wade), who was killed in a work-related accident. After trial, the State Compensation Insurance Fund, with good cause, conceded Aloha's common-law marital status, thus resolving the matter.

¶2 Randi Lynn Shortman (Randi) is Wade's and Aloha's daughter. At the time of the resolution of the original position, Randi was a minor child, thus both Randi's and Aloha's benefits were thereafter paid to Aloha. Subsequently, Randi turned 18 years of age. Upon her doing so, the State Fund and Aloha entered into a stipulation asking that the Court determine whether all benefits, including those due Randi, should continue to be paid to Aloha. Randi was provided with a copy of the stipulation and filed an acknowledgment stating that she received it.

¶3 Rather than open a new file, the Court has deemed the stipulation to be a continuation of the previous matter but raising a new issue. After reviewing the stipulation and the statutes at issue, I scheduled a conference with the parties and their counsel, asking that Aloha and Randi both be personally present. The conference was held on March 11, 2002, at the offices of Mr. Howard F. Strause at 10:00 a.m., among myself, Mr. Strause, Mr. Thomas E. Martello, representing the State Fund, Aloha and Randi.

¶4 During the conference I ascertained that Randi is still living at home and attending high school. I advised her about the controversy and told her she had a right to secure an attorney, to object to the continuation of payment of all benefits to her mother, and to argue that her benefits should be paid directly to her. I also advised her that if I ordered that all benefits continue to be paid to her mother and she thereafter left home, or the circumstances otherwise changed, she could notify the Court and request a determination as to whether she would then be entitled to directly receive her share of the benefits. She told me she did not wish to obtain counsel and desired that the benefits continue to be paid directly to her mother.

¶5 After considering the desires of both Aloha and Randi, as well as the statutes, I find and conclude that Randi's benefits, as well as her mother's benefits, should continue to be paid to Aloha and that monies currently being held in trust by Mr. Strause pending resolution of the issue should forthwith be distributed to Aloha. My determination is based on a reading of the statutes governing benefits. While Randi is entitled to half of the death benefits pursuant to sections 39-71-721(2) and -116(5), MCA (1997), section 39-71-723, MCA (1997), provides,

> **Compensation that is due to beneficiaries must be paid to the surviving spouse**, if any, or if none, divided equally among or for the benefit of the children. In cases in which beneficiaries are a surviving spouse and stepchildren of the spouse, the compensation must be divided equally among all beneficiaries. Compensation that is due to beneficiaries, as defined in 39-71-116(5)(3) and (5)(f), if there is more than one, must be divided equitably among them. [Emphasis added.]

The bolded language is applicable to the present case since there is a surviving spouse and Randi is her natural child. The language is plain on its face and must therefore be followed.

¶6 Payment to the surviving spouse and parent of other beneficiaries makes sense in most cases because the children in most cases will be minors living with the parent. Thus, as with child support, the benefits will be used in supporting the minor child and therefore applied to their benefit. A possible conflict between the provision for benefits for a child and the provision for payment of those benefits to the parent arises only where the child does not reside with and is not supported by the parent. Whether or not some sort of trust may arise in those cases, I need not answer since that is not the situation here. If Randi continues her schooling and such a situation should arise, she may request the Court to determine her equitable entitlement to continued benefits at that time.

SO ORDERED.

DATED in Helena, Montana, this 13th day of March, 2002.

(SEAL)

\s\ Mike McCarter
JUDGE

c: Mr. Howard F. Strause
Mr. Donald R. Marble
Mr. Thomas E. Martello
Mr. Richard J. Martin
Submitted: February 13, 2002