

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2004 MTWCC 59

WCC No. 2004-1058

TERESA ANDERSON

Petitioner

vs.

ALBERTSON'S, INCORPORATED

Respondent/Insurer.

ORDER DENYING SUMMARY JUDGMENT

Summary: The claimant's employer, which is self-insured, denied liability for a work-hardening program and for antidepressant medications. In a motion for summary judgment, it urges that the Court lacks jurisdiction to consider payment for the work-hardening program since it did not preapprove the expenses involved. It further contends that the medical provider is prohibited from seeking reimbursement from the claimant, therefore, the claimant lacks standing. As to the antidepressants, the employer urges that services and prescriptions for depression are not reimbursable since they were not rendered or prescribed by the claimant's treating physician.

Held: The Court has jurisdiction to determine whether the expense for work hardening is compensable. As to the treatment for depression, where the treatment is prescribed by the claimant's initial treating physician who had referred the claimant to a surgeon for surgery, and the surgeon does not treat depression, the expense is compensable. Where specialists are involved in the treatment of a claimant, the claimant may have more than one treating physician.

Topics:

Courts: Judicial Functions. Courts do not enter into "deals" to avoid appeals of their decisions.

Jurisdiction: Standing: Claimants. Since medical benefits are benefits to which a claimant is entitled under the Montana Workers' Compensation Act, a claimant has standing to pursue a claim for those benefits. An insurer's assertion that a claimant lacks standing because it believes a medical provider cannot seek payment from a claimant, even if the insurer denies payment for its services, is unreasonable.

Benefits: Medical Benefits: Treating Physician. A claimant may have more than one treating physician where his or her industrial injuries require. Thus, the fact that a surgeon does not treat depression does not preclude a claimant from obtaining benefits for antidepressant medication and treatment prescribed by another physician where the depression is due to the industrial injury.

Physicians: Treating Physicians: Who May Be the Treating Physician. A claimant may have more than one treating physician where his or her industrial injuries require.

1 The petitioner (claimant) seeks payment of medical benefits for work hardening and for treatment of depression. Respondent, Albertson's, Incorporated (hereinafter Albertson's), has moved to dismiss.

Factual Background

2 The facts upon which the motion for summary judgment is based appear from the petition and the response, and from an affidavit of Sandra Haag.

3 Initially, it is undisputed that the claimant suffered a work-related injury while working for Albertson's, which was self-insured. She injured her wrists while attempting to catch a falling mixing bowl and thereafter developed bilateral carpal tunnel syndrome (CTS), for which she has had surgery. Albertson's has accepted liability for her injury and CTS surgeries.

4 Immediately following her injury, claimant was treated by Dr. Paul A. Eodice, a family practitioner. He diagnosed CTS and referred the claimant to Dr. David B. Heetderks, an orthopedic surgeon, for CTS surgery. Dr. Heetderks subsequently performed CTS surgeries on both wrists.

5 Subsequent to the surgeries, a work-hardening program was prescribed for the claimant. The claims adjuster for Albertson's authorized the program through July 10, 2003. However, the claimant continued in the work-hardening program after that date. Albertson's has refused to pay for work hardening after July 10th, on the ground that it did not authorize the program after that date.

6 Not only did Albertson's refuse to pay for the additional work hardening, its attorney wrote to St. Peter's Hospital (St. Peter's), which provided the treatment, demanding that it cease any collection efforts against the claimant. Albertson's takes the position that since it did not authorize the additional work hardening, St. Peter's cannot charge either it or the claimant for the treatment. Its contention is extraordinary, especially in light of its failure to join St. Peter's in this proceeding to allow it to contest the contention.

7 The second issue concerns payment for antidepressant medications prescribed for the claimant by Dr. Eodice. The respondent's motion for summary judgment does not contend that the claimant's depression is unrelated to her injuries, rather it denies liability for the

antidepressant medications and Dr. Eodice's services on the ground that Dr. Heetderks, not Dr. Eodice, is claimant's treating physician.

Discussion

8 Initially, I find it disturbing that, without joining St. Peter's as a party to this controversy, Albertson's has asked this Court to find that St. Peter's is not entitled to payment for its services from either itself or the claimant. I am further disturbed by the reply of the claimant's attorney, who says that if I determine that the claimant is not personally liable for St. Peter's charges, then he will not appeal my decision.⁽¹⁾

9 It is a fundamental principal of American jurisprudence, and due process of law, that persons and entities who may be directly affected by a court judgment should be notified of the action and permitted to be heard. "[E]very person must be given an opportunity to explain, argue, and rebut any information which may lead to the deprivation of life, liberty or property." *State v. Redding*, 208 Mont. 24, 28, 675 P.2d 974, 976 (1984). Apparently, the attorneys in this action failed to recognize that principle, at least they failed to respect it.

10 I find it unnecessary to join St. Peter's prior to ruling on the motion for summary judgment because I find the respondent's argument is without merit and that St. Peter's can seek payment from the claimant in the event Albertson's is not liable for its charges. However, since there may be an appeal in this case, **I am ordering the joinder of St. Peter's so that it is a party to any appeal.**

11 On the merits, the respondent's position is tortuous and unreasonable.

12 Albertson's argues that, under rules promulgated by the Department of Labor and Industry (Department) in 1993, once an insurer accepts liability for a claim a medical provider cannot seek payment from the claimant for medical services related to an industrial injury even if the insurer is not liable for those services. It then argues that the claimant has no standing in the Workers' Compensation Court to seek payment of St. Peter's bill from Albertson's since she is not liable for St. Peter's services.

13 In effect, Albertson's is asserting that it can deny the claimant any sort of judicial review of its denial of medical benefits. In effect, it asserts that any medical provider which provides unapproved care to a claimant, no matter how reasonable and urgent, does so as a volunteer and cannot collect for its services either from the insurer or from the claimant. If I were to adopt the respondent's arguments, no medical provider, except the most altruistic, would provide medical care not approved by the insurer no matter how urgent, necessary, and reasonable the care is. The insurer would have unreviewable control over the claimant's medical care.

14 The respondent's argument has no basis in law. Section 39-71-704(1)(a), MCA (2001), requires insurers and self-insured employers to provide medical services related to

claimants' industrial injuries. Section 39-71-2905, MCA, provides in relevant part, that "(1) A claimant or an insurer who has a dispute concerning any benefits under chapter 71 of this title may petition the workers' compensation judge for a determination of the dispute . . ." The term "benefits" includes medical benefits, *Billings Deaconess Hospital v. Angel and Travelers Ins. Co.*, 219 Mont. 490, 493-94, 712 P.2d 1323, 1326 (1986), therefore, on its face, the section expressly authorizes the Workers' Compensation Court to adjudicate the issues raised in this case.

15 Regulations promulgated by the Department cannot overrule the statute. Section 2-4-305(6)(a), MCA, provides:

(6) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, an adoption, amendment, or repeal of a rule is not valid or effective unless it is:

(a) consistent and not in conflict with the statute;

Any administrative rule which engrafts additional or contradictory requirements of a statute is invalid. *Safeway, Inc. v. Montana Petroleum Release Compensation Bd.*, 281 Mont. 189, 195, 931 P.2d 1327, 1330 (1997).

16 Moreover, Albertson's has misinterpreted and misapplied the administrative rules it relies upon. The rules at issue are ARM 24.29.1401(2) and 24.29.1402(5).

17 ARM 24.29.1401(2) provides:

(2) After determination that the claim is covered under the workers' compensation or occupational disease acts, the liability for payment of the claim is the responsibility of the appropriate workers' compensation insurer.

There is nothing in this rule which addresses the right of the claimant to petition the Workers' Compensation Court in the event the insurer denies benefits after accepting liability.

18 ARM 24.29.1402(5) provides:

(5) For claims arising before July 1, 1993, no fee or charge shall be payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer.

This provision is apparently the *mother lode* of the respondent's argument. As Albertson's interprets the rule, so long as it has accepted liability for the claimant's injury, a medical provider treating the claimant's injuries must look to the insurer for payment; if the insurer denies payment, then, according to Albertson's, it is out of luck because it cannot look to the claimant for payment. Moreover, according to Albertson's, the claimant lacks standing to petition the Court to seek payment for the denied services.

19 The respondent's argument is absurd. The rules of the Department must be interpreted in light of the statute specifically granting the Workers' Compensation Court with jurisdiction to hear disputes regarding medical benefits. There is nothing in the cited rules which contradicts the plain language of section 39-71-2905, MCA.

20 Moreover, the Department's rules plainly contemplate situations where the insurer has **accepted liability for the particular medical treatment**. The "liability is accepted" language can only be interpreted as "liability accepted" for the **particular treatment**. In that circumstance, the rule precludes the provider from seeking payment from the claimant.

21 I therefore conclude that I have jurisdiction to determine whether Albertson's is liable for the claimant's work hardening after July 10, 2003. This does not mean that Albertson's is liable for those services. The claimant must still establish that the services were reasonable. My ruling does mean that if Albertson's is not liable for the services, then St. Peter's Hospital is free to seek payment for the services from claimant.

22 In summary, the Workers' Compensation Court has jurisdiction over disputes involving medical benefits. An insurer or self-insured employer cannot frustrate that jurisdiction by failing or refusing to preapprove medical treatment.

23 I now turn to the respondent's contention that it is not liable for the claimant's antidepressant medication. Albertson's asserts that it is not liable for the medication because the prescribing physician - Dr. Eodice - was not an approved treating physician. The argument is without merit.

24 Dr. Eodice was the claimant's initial treating physician. He referred the claimant to a specialist for her orthopedic problem. In her brief in opposition to the respondent's motion for summary judgment, the claimant states that Dr. Heetderks does not treat depression. While the statement is not supported by any affidavit or evidence, Albertson's has provided no evidence that Dr. Heetderks does treat depression. Absent that evidence, the respondent's motion for summary judgment regarding payment for antidepressant medication fails. In this day and age of medical specialties, it is unreasonable to expect that there will be one, and only one, treating physician for industrial injuries and I find nothing in section 39-71-704, MCA, which limits a claimant suffering multiple injuries to a single specialist. Treatment of depression is not one of the obvious specialties of an orthopedic surgeon.

ORDER

25 The respondent's motion for summary judgment is **denied**.

26 A new scheduling order resetting this matter for trial shall be issued forthwith.

DATED in Helena, Montana, this 12th day of August, 2004.

(SEAL)

\s\ Mike McCarter
JUDGE

c: Mr. Richard J. Pyfer
Mr. William O. Bronson
Mr. Gary L. Davis c/o St. Peter's Hospital - Courtesy Copy
Submitted: July 21, 2004

1. This Court does not enter into "deals" to avoid appeals of its decisions.