IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1999 MTWCC 3

WCC No. 9806-7989

SHERRY HALL

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

BIG SKY PLUMBING & HEATING

Employer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Summary of Case: Claimant with history of childhood asthma and allergies experienced upper respiratory and sinusitis symptoms after working in office, where she handled copying, printed matters, and carbonless paper. Claimant received treatment from doctors who were not certified by the American Academy of Allergy and Immunology, which certifies "traditional" allergists, and who utilized non-traditional allergy testing and treatment practices. They diagnosed claimant with Multiple Chemical Sensitivity (MCS). Based on this diagnosis, the insurer accepted the OD claim. Subsequently, an IME physician, who was board certified in Occupational and Environmental Medicine and held a masters degree in Environmental Engineering and Environmental Health, criticized the diagnostic and treatment methods of the other physicians. The IME phsyician opined claimant had suffered physical symptoms from workplace irritants, had reached MMI on those physical symptoms, but continued to suffer from a somatoform disorder arising out of the OD.

Held: Claimant has not reached MMI on the somatoform disorder. Because she continued to suffer a total wage loss, she was entitled to continued temporary total disability benefits until reaching MMI on the somatoform disorder, a mental disorder arising out of claimant's OD. Claimant was also entitled to treatment for the mental disorder, in accordance with recommendation by the IME physician.

Topics:

Benefits: Temporary Total Benefits. Where insurer accepted OD claim on diagnosis of multiple chemical sensitivity, and persuasive medical testimony indicated claimant had reached MMI on physical symptoms arising from workplace exposure, but had not reached MMI on somatoform disorder arising from the physical exposure, claimant was entitled to TTD benefits during period of treatment of somatoform disorder.

Claims: Acceptance. Once claimant's physical condition was accepted as an OD, WCC would not enter debate about whether the diagnosis of the condition was correct. Compensability does not turn on the validity of the diagnosis, but requires only that the claimant suffer an injury or disease of some sort and be disabled as a result.

Evidence: Expert Testimony: Physicians. WCC was not persuaded by opinions of physicians treating claimant for workplace allergic-type reactions where those physicians were not certified by the American Academy of Allergy and Immunology, which certifies "traditional" allergists, and utilized non-traditional allergy testing and treatment practices criticized as non-scientific by IME physician.

Maximum Medical Improvement (MMI). Where insurer accepted OD claim on diagnosis of multiple chemical sensitivity, and persuasive medical testimony indicated claimant had reached MMI on physical symptoms arising from workplace exposure, but had not reached MMI on somatoform disorder arising from the physical exposure, claimant was entitled to TTD benefits during period of treatment of somatoform disorder.

Medical Conditions: Chemical Exposure: Multiple Chemical Sensitivity. Where insurer accepted OD claim on diagnosis of multiple chemical sensitivity, Court would not enter into debate about whether the diagnosis was correct, even though evidence from more credible physician was critical of the diagnosis. Compensability does not turn on the validity of the diagnosis. It requires only that the claimant suffer an injury of some sort and, for purposes of compensation benefits, be disabled as a result of the injury. Persuasive medical testimony indicated claimant did suffer physical effects from workplace exposure, had reached MMI on those effects, but still need treatment on somatoform disorder arising out of physical condition.

Medical Conditions: Mental Disorders. Although the 1987 legislature amended the definition of injury to exclude mental conditions arising from emotional or mental stress or non-physical stimulus or activity, when a psychological condition is caused or aggravated by a compensable workplace injury or disease, it is compensable. Somatoform disorder arising out of claimant's allergic-type reaction

to workplace chemicals was compensable and prevented claimant from having reached MMI, although physical symptoms had resolved.

Medical Conditions: Somatoform Disorder. In the DSM-IV, the common features of Somatoform Disorders include physical symptoms suggestive of a general medical condition but not explained by a general medical condition, by the direct effects of a substance, or by another mental disorder; symptoms causing clinical distress; and indication the symptoms are not under conscious control of the patient. Claimant with accepted OD arising from workplace exposure to common office chemicals, diagnosed with somatoform disorder by credible occupational medicine physician, was entitled to continued TTD benefits until she reached MMI on somatoform disorder.

Physicians: Diagnosis. Once claimant's physical condition was accepted as an OD, WCC would not enter debate about whether the diagnosis of the condition was correct. Compensability does not turn on the validity of the diagnosis, but requires only that the claimant suffer an injury or disease of some sort and be disabled as a result.

Physicians: Qualifications. WCC was not persuaded by opinions of physicians treating claimant for workplace allergic-type reactions where those physicians were not certified by the American Academy of Allergy and Immunology, which certifies "traditional" allergists, and utilized non-traditional allergy testing and treatment practices criticized as non-scientific by IME physician.

¶1 The trial in this matter was held on November 9, 1998, in Helena, Montana. Petitioner, Sherry Hall (claimant), was present and represented by Mr. Thomas A. Budewitz. Respondent, State Compensation Insurance Fund (State Fund), was represented by Mr. Leo S. Ward. A transcript of the trial has not been made.

¶2 Exhibits: Exhibits 1 through 87 and 89 were admitted without objection. Exhibit 88 was not offered.

¶3 Witnesses and Depositions: Sherry Hall, Mary Hall, Larry Hall, and Dr. Dana Headapohl were sworn and testified. The parties agreed that the Court shall also consider the depositions of Sherry Hall, Dr. Charles Steele, Dr. Dennis W. Remington, and Shari Huth.

¶4 Issues Presented: As set forth in the Pre-trial Order, the following issues are presented for decision:

1. Whether the claimant continues to suffer from an occupational disease.

2. Whether the claimant is totally disabled as a result of her occupational disease.

3. Whether the claimant has reached maximum medical improvement (MMI).

4. Whether the claimant can return to her time-of-injury employment.

5. Whether the State Fund acted unreasonably in changing its position with respect to coverage of claimant's claim.

¶5 Having considered the Pre-trial Order, the testimony presented at trial, the demeanor and credibility of the witnesses, the depositions, the exhibits, and the parties' arguments the Court makes the following:

FINDINGS OF FACT

¶6 Claimant is 35 years old.

¶7 While working at Big Sky Plumbing & Heating (Big Sky) claimant became ill as a result of exposure to ink in the workplace.

¶8 At the time of her exposure, Big Sky was insured by the State Fund. Claimant submitted an occupational disease claim to the State Fund, which initially commenced paying temporary total disability benefits under a full reservation of rights. (Uncontested Fact 6.) Thereafter, on February 6, 1996, the State Fund accepted the claim without reservation based on a diagnosis of Multiple Chemical Sensitivity (MCS). (Uncontested Fact 9.)

¶9 The State Fund continued to pay temporary total disability benefits until February 23, 1998, when it notified claimant that it was discontinuing her benefits. (Uncontested Fact 13.)

¶10 The claimant thereafter filed her present petition seeking a reinstatement of total disability benefits. The State Fund resists the petition, contending that claimant is no longer suffering from an occupational disease, that she has reached maximum medical improvement (MMI), and that she is able to return to work.

History of Claimant's Illness

¶11 Claimant has a history of childhood asthma and allergies. Medical records indicate that she had episodes of fainting, dizziness and shortness of breath as far back as 1977. (Ex. 78 at 16-20.)

¶12 Although her asthma occasionally flared up, it never caused claimant to miss work and did not limit her daily activities. (Trial Test.) Claimant's parents confirmed that her asthma was not a significant health problem.

¶13 Claimant went to work at Big Sky as a bookkeeper/office manager in July 1991. Her duties at Big Sky included operating the copy machine, handling papers and documents written, typed or printed in ink, and handling of carbonless (NCR) paper.

¶14 Not long after she began working at Big Sky, claimant experienced upper respiratory and sinusitis symptoms. She was treated at the Hawkins-Lindstrom Clinic (the Clinic).

Clinic physicians prescribed several courses of antibiotics but her symptoms recurred when the antibiotics were stopped. (Ex. 78 at 135.)

¶15 Doctors at the Clinic then had her tested for allergies. She had "multiple, very significant, positive test results to everything from sage brush to animal danders." (*Id.*) Desensitization shots were then prescribed but they did not provide claimant with significant relief.

¶16 The Clinic then referred claimant to Dr. Charles Steele, who was trained and board certified in otolaryngology (ear, nose, and throat). (Steele Dep. at 8.) However, Dr. Steele thereafter developed an interest in allergy medicine and became board certified in environmental medicine despite a lack of formal training in either allergy or occupational and environmental medicine. He is not certified by the American Academy of Allergy and Immunology, which certifies "traditional" allergists. (Steele Dep. 44-46.)

¶17 According to Dr. Steele, the Academy of Environmental Medicine consists of 400 to 500 doctors, and approves the use of a serum dilution titration method of allergy testing, which the more traditional Academy of Allergy and Immunology does not. (Steele Dep. at 45-46; and see also Remington Dep. at 16.)

¶18 Dr. Steele first saw the claimant on October 18, 1993. (*Id*. at 9.) On October 25, 1993, he did skin testing on the claimant and concluded she is allergic to "pollens, molds, house dust, barley, cat, horse, feathers, tobacco smoke, newsprint and green mill dust." (*Id.* at 10.)

¶19 By this time, claimant was suffering from a wide range of symptoms. She reported fatigue, blurred vision, pressure in her face, tightness in her chest, and headaches. (Trial Test.) Although, claimant had suffered some of these individual symptoms in the past, she had not previously experienced this combination of symptoms and the severity of individual symptoms was worse.

¶20 When Dr. Steele began treating claimant, she was still working at Big Sky. She testified that sometime in February of 1994, she experienced a sudden, intense onset of all of her symptoms while doing photocopying at Big Sky.

¶21 Claimant reported the event to Dr. Steele and he subsequently tested her for ink allergies, concluding that the test was positive for ink allergy.

¶22 In testing claimant for ink allergies, Dr. Steele used a "Vitel" machine. When questioned about the scientific basis for the Vitel machine and how it works, Dr. Steele gave the following explanation:

> This machine checks the electrodermal[(1)] response of the patient. The patient holds a piece of brass wired up to the machine in one hand and the circuitry goes through a little volt meter, and then the other wire that comes out, you touch acupuncture

> points and take readings off them, the little meter. Depending on the reading the patient is either allergic or not allergic. You put the chemical that you are testing on a little plate that is built into the machine and so it is involved in that circuit going through the patient. I have done double blind studies with it and I know it works.

(Steele Dep. at 15.)

¶23 Dr. Remington, the doctor who trained Dr. Steele in the use of the Vitel machine, admitted that the Vitel machine is considered experimental and that its efficacy has not been proven. (Remington Dep. at 84.) Its use is accepted by no medical group other than the Academy of Environmental Medicine. (Steele Dep. at 47.)

¶24 The premise of the test is that a "chemical message" is sent to the body through the brass wire, however, neither Drs. Steele or Remington explained how a "chemical message" is created nor how it is interpreted by the body. After reading Drs. Steele's and Remington's descriptions of the machine, Dr. Dana Headapohl testified at trial that the machine is not based on sound scientific principles.

¶25 Dr. Steele did not know the kind of ink he used in testing claimant. (Steele Dep. at 48.) He merely obtained the ink from Dr. Remington. (*Id.*) He also did not know what kinds of ink the claimant had been exposed to at work. (*Id.*) Nevertheless, he diagnosed claimant as suffering from an ink allergy and prescribed desensitization treatment requiring claimant to place drops of ink under her tongue (sublingual).

¶26 Claimant administered the ink drops as prescribed. The skin in her mouth began peeling and she developed a sore, swollen mouth. She testified that in spite of this adverse reaction, the drops initially alleviated her symptoms of vertigo and blurred vision. (Trial Test.) However, within a couple of hours of returning to work all of her symptoms resurfaced.

¶27 Dr. Steele reduced the dosage of the drops but claimant gained no relief and she continued to suffer a sore mouth. Dr. Steele then referred claimant to Dr. Remington, who practices in Provo, Utah. He made the referral because he felt Dr. Remington was an expert in the field of MCS and because he had received his training in the use of the Vitel machine from Dr. Remington. (Steele Dep. at 11, 19-20.)

¶28 Dr. Remington completed medical school and an internship. (Remington Dep. at 4.) He began an opthalmology residency but abandoned it within a year and went into a family practice. (*Id*. at 5.) He is not board certified in family practice or any other medical specialty. He has no training in occupational medicine. However, he specializes in diagnosing and treating MCS. Like Dr. Steele he was at one time a member of the Academy of Environmental Medicine.

¶29 Dr. Remington performed a broad range of testing, which included use of the Vitel machine, on the claimant and eventually diagnosed her condition as MCS caused by exposure to chemicals at Big Sky. (Remington Dep. at 37.)

¶30 Dr. Remington also attempted treating claimant with sublingual drops of ink. She experienced the same adverse reaction as with Dr. Steele's treatment and her symptoms did not improve. Because claimant was not improving and she reported feeling better when she was away from work, Dr. Remington recommended that she quit her job.

¶31 Following his advice, claimant quit her job at Big Sky in October 1994.

¶32 Upon quitting her job, claimant's symptoms did not abate. Claimant testified that she has never been free of her symptoms since starting work at Big Sky in 1991.

¶33 In February 1995 Dr. Remington tried an experimental treatment called Enzyme Potentiated Desensitization (EPD). (Remington Dep. at 33-34.) The treatment involved an injection of enzymes into the skin. The treatment made claimant violently ill and did not alleviate her symptoms.

¶34 Attributing claimant's adverse reaction to a "bad inversion" in Provo at the time claimant received the EPD injection (Remington Dep. at 34), Dr. Remington administered another EPD shot to claimant in April 1995. Again, claimant became ill.

¶35 Because his treatment has been unsuccessful, Dr. Remington recommends that claimant be treated at the Environmental Health Center (Dallas Center) in Dallas, Texas. (Remington Dep. at 121.) Dr. Remington testified that the Dallas Center is the world leader in treating individuals diagnosed with MCS. (*Id.*)

Claimant's Present Condition

¶36 Claimant continues to suffer fatigue, vertigo, headaches, poor memory and concentration, and blurred vision. She has not driven since September 1993. She does not leave her house to socialize. She testified that she does not read because she reacts to the ink and she does not watch television because it affects her vision. She limits her shopping because she finds that she has increased reactions in areas like grocery stores.

¶37 Claimant moved from her apartment into an older home. In an attempt to create a "safe house" free from irritating chemicals, her father completely remodeled the home, stripping out the insulation in the walls, applying natural texture to the sheetrock, and putting ceramic tile in the kitchen. The interior of the house is unpainted and there is no carpet or linoleum in the house. The only furniture is an organic bed, a wooden bench, and two metal chairs.

Testimony of Dr. Dana Headapohl

¶38 Dr. Dana Headapohl performed an independent medical examination (IME) on August 5, 1996. Dr. Headapohl is board certified in Occupational and Environmental Medicine. She also has a masters degree in Environmental Engineering and a Masters of Public Health in Environmental Health.

¶39 During the IME, claimant described her current symptoms as "headaches, blurred vision, vertigo, fatigue, memory loss, difficulty thinking, ringing in her ears, hearing loss, sinus pain and pressure, and facial swelling." (Ex. 78 at 2.) Dr. Headapohl testified that most of claimant's symptoms were subjective in nature. While she believes that claimant's symptoms are real, she does not feel they are of an organic origin. She opined that claimant suffers from a somatoform disorder involving the physical symptoms produced by psychological factors.[(2)] Dr. Headapohl characterized the disorder as a product of claimant's "coping style" triggered by claimant's initial illness from her exposure to chemical irritants at Big Sky.

¶40 In Dr. Headapohl's opinion, claimant's physical symptoms while working at Big Sky were related to chemical irritants in the workplace. She noted that individuals with allergies and asthma often react to low doses of certain airborne chemicals such as formaldehyde, which is found in particle board, and those found in NCR paper. However, she testified that the effects of work-related exposure were short-term. They should have resolved when claimant ceased working at Big Sky, with no long-term permanent consequences.

¶41 Dr. Headapohl testified that claimant had reached MMI with respect to her physical, work-related reaction by the time of the IME and probably shortly after she stopped working. However, she went on to testify that claimant had not reached MMI with respect to her somatoform disorder.

¶42 Dr. Headapohl testified that the best course of treatment for claimant is a team approach to address claimant's somatoform disorder and further diagnose and treat her allergies and other symptoms. In her opinion claimant should be further examined by an allergist, an otolaryngologist, and opthamologist. She believes that claimant will also benefit from cognitive therapy, which should involve her family, and antidepressant medication. A treatment team can be assembled in Montana.

¶43 Dr. Headapohl did not agree with or accept the diagnosis of MCS. She testified that it is a vague, all-encompassing diagnosis that has no scientific basis. She was familiar with the MCS clinic in Dallas and testified that many of its procedures and treatments are ill-founded and unscientific. The clinic has failed to provide outcome studies despite requests that it do so.

¶44 Dr. Headapohl vehemently disagreed with Drs. Steele's and Remington's treatment of claimant. She invoked the fundamental oath of physicians that they "first do no harm." (Trial Test.) It was her opinion that the treatment by Drs. Steele and Remington harmed claimant.

Resolution

¶45 The Court finds Dr. Headapohl's testimony persuasive. Whatever case may be made for an MCS regime of treatment, Drs. Steele and Remington did not make the case and, indeed, appear poorly qualified to make the case. Their approach to testing and treatment was unscientific and medically unsound.

¶46 The Court adopts Dr. Headapohl's opinion that claimant's somatoform disorder was triggered by the irritant exposure at Big Sky and finds that claimant has not reached MMI with respect to the disorder.

¶47 Dr. Headapohl's testimony establishes that claimant can benefit from further treatment. She has therefore not reached MMI with respect to her somatoform disorder or her industrial exposure.

¶48 The State Fund's termination of temporary total disability benefits was not unreasonable. Dr. Headapohl had provided the State Fund with opinions that claimant was no longer suffering any physical effects from her work exposure and had reached maximum healing.

CONCLUSIONS OF LAW

¶49 The 1993 version of the Workers' Compensation Act applies in this case as it is the law which was in effect at the time of claimant's February 16, 1994 occupational disease. *Buckman v. Montana Deaconess Hospital,* 224 Mont. 318, 321, 730 P.2d 380, 382 (1986).

¶50 Claimant has the burden of proving that she is entitled to occupational disease benefits by a preponderance of the probative, credible evidence. *Ricks v. Teslow Consolidated,* 162 Mont. 469, 512 P.2d 1304 (1973); *Dumont v. Wicken Bros. Construction Co.,* 183 Mont. 190, 598 P.2d 1099 (1979).

¶51 The claim in this case was accepted by the State Fund. Thus, it is uncontested that claimant suffered from an occupational disease arising out of her exposure to irritants at Big Sky.

¶52 The Court need not determine whether MCS is a valid diagnosis. The State Fund accepted claimant's physical condition as a compensable occupational disease. Claimant continues to suffer from the physical symptoms she suffered at the time of the State Fund's acceptance. I have previously held that once an insurer accepts a physical condition, the Court will not enter into a debate regarding whether the diagnosis is medically correct. "Compensability does not turn on the validity of the diagnosis. It requires only that the claimant suffer an injury of some sort and, for purposes of compensation benefits, be disabled as a result of the injury." *Klein v. Liberty Northwest Insurance Corporation*, WCC No. 9608-7591, Findings of Fact, Conclusions of Law and Judgment (March 4, 1997) at 15.

Temporary Total Disability

¶53 Section 39-72-701, MCA (1993), of the Occupational Disease Act (ODA), governs compensation for total disability due to an occupational disease. Subsection (1) provides:

> **39-72-701. Compensation for total disability or death due to occupational disease other than pneumoconiosis.** (1) The compensation to which an employee temporarily totally disabled or permanently totally disabled by an occupational disease other than pneumoconiosis, or the beneficiaries and dependents of the employee in the case of death caused by an occupational disease other than pneumoconiosis, are entitled under this chapter shall be the same payments which are payable to an injured employee, and such payments shall be made for the same period of time as is provided in cases of temporary total disability, permanent total disability, and in cases of injuries causing death under the Workers' Compensation Act.

Thus, to determine whether or not claimant is entitled to reinstatement of temporary total disability benefits due to her occupational disease, the Court must look to the Workers' Compensation statutes for guidance.

¶54 Section 39-71-701, MCA (1993), subsections (1) and (2) provide for when an injured worker is entitled to temporary total disability benefits.

> **39-71-701 Compensation for temporary total disability - exception.** (1) Subject to the limitation in 39-71-736 and subsection (4) of this section, a worker is eligible for temporary total disability benefits when the worker suffers a total loss of wages as a result of an injury and until the worker reaches maximum healing.

(2) The determination of temporary total disability must be supported by a preponderance of medical evidence.

¶55 Claimant has not been employed since she left Big Sky in October of 1994 and is still suffering a total wage loss. Therefore, the questions the Court must answer is whether that loss is due to her occupational exposure and whether she has reached maximum healing.

¶56 Credible, persuasive medical evidence in this case shows that the claimant's chemical exposure at Big Sky had no long term effect and is not causing her current, disabling symptoms. However, the exposure and the physical illness it produced did trigger the disabling somatoform disorder from which claimant currently suffers.

¶57 Mental conditions caused by mental stress or trauma are not compensable under the Workers' Compensation Act . § 39-71-119(3), MCA (1993); *Stratemeyer v. Lincoln County*, 259 Mont. 147, 855 P.2d 506 (1993). In *Yarborough v. Montana Municipal Insurance Authority*, WCC No. 9505-7309, Findings of Fact, Conclusions of Law and Judgment (June 28, 1996), *aff'd.* 282 Mont. 475, 483, 938 P.2d 679, 684 (1997), this Court found that a

firefighter's Post-traumatic Stress Disorder (PTSD) was not compensable where it was caused by the mental shock of an explosion and was unrelated to minor burns he suffered on his face.

¶58 However, this Court has also held that where a psychological condition is caused or aggravated by **physical injuries** suffered in an industrial accident, it is not subject to the exclusion and is compensable. In *Mark Allen Peterson v. State Compensation Ins. Fund,* WCC No. 9312-6970, Findings of Fact, Conclusions of Law and Judgment (November 23, 1994) at 10-11, I wrote:

> In 1987 the Montana Legislature amended the definition of injury to exclude mental conditions "arising from: (a) emotional or mental stress; or (b) a non physical stimulus or activity." Section 39-71-119, MCA (1987). The exclusion was in effect on the date of claimant's injury. Claimant alleges, however, that he suffers from a disabling psychological condition that arises from, or was aggravated by, the physical injuries he suffered on January 22, 1990.
>
> Under pre-1987 law, a psychological condition caused or aggravated by a work-related physical injury was compensable. In *O'Neil v. Industrial Accident Board, 107 Mont. 176, 183, 81 P.2d 688 (1938),* the Supreme Court held that "neurosis resulting from a physical injury suffered in an industrial accident is compensable." In *Schumacher v. Empire Steel Manufacturing, 175 Mont. 411, 574 P.2d 987 (1977)*, it held that there was coverage for psychological conditions aggravated by work-related physical injuries. In *McMahon v. Anaconda Company, 208 Mont. 482, 486, 678 P.2d 661 (1984)*, the Court, citing *Schumacher,* said, "This Court has held that psychological disability stemming from a work-related injury is compensable under the Workers' Compensation Act." In *O'Neil* the claimant suffered a physical injury to his back. After his healing period ended he continued to suffer pain, but his physicians could find no physical cause for the pain and attributed it to post-traumatic psychoneurosis. In *Schumacher* the claimant suffered physical injuries to his neck, shoulder and arm. The injuries healed but claimant continued to suffer pain. Finding no physical basis for his continued pain, claimant's physicians attributed it to hypochondriacal neurosis. In each of the Supreme Court cases the psychological condition was a direct consequence of a compensable physical injury.

The 1987 amendment of the injury definition does not exclude mental conditions caused or aggravated by physical injuries which otherwise meet the injury definition. The pre-1987 cases therefore control the decision in this case.

¶59 In this case, the Court has adopted Dr. Headapohl's opinion that claimant's somatoform disorder was triggered by her occupational disease. Unlike *Yarborough*, the

claimant's psychological condition does not stem from the mental or emotional shock of an event at work but rather from the physical illness she suffered.

¶60 The evidence demonstrates that further treatment is necessary to enable claimant to return to work and the Court has found as a matter of fact that claimant has not reached MMI in relation to her somatoform disorder. She is therefore still entitled to TTD benefits.

Further Treatment

¶61 The State Fund has an obligation to provide reasonable medical care to enable claimant to reach MMI. Claimant on her part has an obligation to cooperate in a reasonable treatment program. It is clear to the Court that the claimant wants to improve her health and return to a normal, productive life. The treatment recommended by Dr. Remington is not reasonable and the Court has little confidence that it would succeed. On the other hand, Dr. Headapohl has laid out a reasonable and promising approach to care involving both medical and psychological assistance. With claimant's cooperation and a positive attitude on her and her families' part, the Court is confident that the approach can and should return claimant to a more healthy, productive life.

Costs and Attorney Fees

¶62 Because claimant has prevailed she is entitled to her costs.

¶63 Attorney fees and a penalty may be awarded only if the insurer's conduct is unreasonable. §§ 39-71-612 and -2907, MCA. In this case the State Fund's position is not unreasonable. Claimant is therefore not entitled to attorney fees or a penalty.

JUDGMENT

¶64 1. The State Fund shall reinstate temporary total disability benefits retroactive to the date claimant's benefits were terminated.

¶65 2. The State Fund and claimant should cooperate in establishing and carrying out a reasonable treatment program under Dr. Headapohl's guidelines.

¶66 3. Petitioner is entitled to costs in an amount to be determined by the Court.

¶67 4. Claimant is not entitled to attorney fees or a penalty.

¶68 5. This JUDGMENT is certified as final for purposes of appeal pursuant to ARM 24.5.348.

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

DATED in Helena, Montana, this 13th day of January, 1999.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Thomas A. Budewitz
Mr. Leo S. Ward
Date Submitted: November 24, 1998

1. Dr. Steele later testified that electrodermal means the electrical potential in the body. (Steele Dep. at 56.)

2. The DSM IV describes somatoform disorders in the following general terms:

The common feature of the Somatoform Disorders is the presence of physical symptoms that suggest a general medical condition (hence, the term *somatoform*) and are not fully explained by a general medical condition, by the direct effects of a substance, or by another mental disorder (e.g., Panic Disorder). The symptoms must cause clinically significant distress or impairment in social, occupational, or other areas of functioning. In contrast to Factitious Disorders and Malingering, the physical symptoms are not intentional (i.e., under voluntary control). Somatoform Disorders differ from Psychological Factors Affecting Medical Condition in that there is no diagnosable general medical conditions to fully account for the physical symptoms. The grouping of these disorders in a single section is based on clinical utility (i.e., the need to exclude occult general medical conditions or substance-induced etiologies for the bodily symptoms) rather than on assumptions regarding shared etiology or mechanism. These disorders are often encountered in general medical settings.