

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

**2026 MTWCC 3**

**WCC No. MSF-2026-0000003-MISC**

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**HOLLY MUNN**

**Petitioner**

**vs.**

**MONTANA STATE FUND**

**Respondent/Insurer**

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**ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY JUDGMENT**

**Summary:** The Petitioner moves for summary judgment, asserting that notwithstanding the DLI medical review panel's decision reopening her medical benefits pursuant to § 39-71-717, MCA, the Respondent has denied all treatment based on its IME physician's opinion, sought post-panel, that she is at MMI for all claim-related conditions, effectively rejecting the medical review panel's decision without following the proper appeals process. The Respondent opposes the Petitioner's motion, asserting that while the medical review panel has the authority to reopen a claimant's medical benefits, the claims examiner has the ultimate authority pursuant to § 39-71-107, MCA, to manage the claim, which includes making compensability and treatment decisions. Accordingly, the Respondent argues, the claims examiner was within her authority to require the Petitioner to attend an IME and counter the IME physician's opinion that none of her symptoms is claim-related in order to get authorization for treatment.

**Held:** The Petitioner's motion for summary judgment is granted. The material facts are not in dispute and the Petitioner is entitled to judgment as a matter of law. The decision of the medical review panel is presumed to be correct and can only be overturned by clear and convincing evidence. The medical review panel reopened the Petitioner's medical benefits, necessarily concluding that her medical condition is the direct result of her compensable injury and requires treatment to allow her to be able to return to work.

The Respondent clearly disagreed with the medical review panel's decision in whole and from the outset as it has refused to authorize the Petitioner to get any treatment. The proper way to disagree with a decision of the medical review panel is not simply to do the opposite, but, rather, to appeal the decision in accordance with § 39-71-717(10), MCA.

¶ 1 The Petitioner Holly Munn moves for summary judgment, asserting that the Department of Labor & Industry's (DLI) medical review panel (panel) reopened her medical benefits pursuant to § 39-71-717, MCA. Nevertheless, she asserts that the Respondent Montana State Fund (State Fund) has denied all treatment requests based on its independent medical evaluation (IME) physician's opinion, sought post-panel, that she is at maximum medical improvement (MMI) for all claim-related conditions.

¶ 2 State Fund opposes Ms. Munn's motion, asserting that notwithstanding the panel's authority to reopen a claimant's medical benefits, the claims examiner has the ultimate authority, pursuant to § 39-71-107, MCA, to manage the claim, which includes making compensability and treatment decisions. Accordingly, State Fund argues, the claims examiner was within her authority to require Ms. Munn to attend an IME and counter the IME physician's opinion that none of her symptoms is claim-related in order to get authorization for treatment.

¶ 3 This Court held a hearing on Ms. Munn's motion on March 11, 2026, and then held the matter in abeyance pending receipt of a subpoena response from the DLI.

¶ 4 Only State Fund submitted further briefing following receipt of the documents in question.

¶ 5 Ms. Munn's motion is now before this Court for decision.

#### UNDISPUTED FACTS

¶ 6 On March 27, 2019, Ms. Munn suffered an injury while in the course and scope of her employment with Head Start, Inc. (Head Start) in Billings, MT.

¶ 7 At the time of Ms. Munn's injury, Head Start was insured by State Fund.

¶ 8 Ms. Munn filed a claim for injury. State Fund's letter to Ms. Munn of May 10, 2019, states:

Montana State Fund has accepted your claim for benefits for acute cervical muscle spasm and acute thoracic muscle spasm occupational injury . . . .

. . . .

. . . The initial medical reports do not contain any objective medical findings of an injury or occupational disease to your bilateral shoulder. Due to lack

of objective medical evidence, Montana State Fund denies liability for your reported bilateral shoulder injury.<sup>1</sup>

¶ 9 Ms. Munn treated for her cervical issues and reached MMI and was given a full-duty release on December 4, 2019. She was instructed by Jennifer Kuhr, PA-C, with Ortho Montana, PSC, to follow up on an as-needed basis.

¶ 10 Pursuant to § 39-71-704(1)(f), MCA, Ms. Munn's medical benefits terminated on March 27, 2024, which was 60 months from the date of her industrial injury.

¶ 11 Notwithstanding that she had treatment involving her neck again starting in at least January of 2023, from July 28, 2020, through December of 2024, State Fund did not receive any requests for authorization of treatment associated with Ms. Munn's claim and was unaware of any treatment she had received.

¶ 12 In early 2025, Ms. Munn was experiencing pain in her neck, chest, and right shoulder. She was also dealing with the effects of an underlying diagnosis of rheumatoid arthritis. During this time, Ms. Munn was evaluated by Kevin Bruen, MD, a vascular surgeon, for her chest, followed by Steven Klepps, MD, for her shoulder.

¶ 13 Dr. Klepps' records from February 4, 2025, indicate that Dr. Bruen had diagnosed Ms. Munn with mild bilateral thoracic outlet syndrome. Dr. Klepps noted that Ms. Munn continued to have significant neck pain and loss of range of motion, and that she was scheduled to see Michael Marone, MD, PhD, a neurosurgeon, for her cervical spine later in the month. Dr. Klepps stated:

Right shoulder pain which likely represents some damage to her biceps and superior labrum. However, she continues to have symptoms that appear to be more neurologic or vascular in nature.

With her thoracic outlet study showing mild findings and her significant loss of range of motion with her cervical spine, I would lean toward this being a cervical issue and not a vascular issue. Dr. Bruen feels the same way. Therefore, I am very hopeful that she can find some answers and solutions for her cervical issues with her appointment with Dr. Marone.<sup>2</sup>

¶ 14 It is against this backdrop that on February 18, 2025, Ms. Munn, acting pro sé, filed a petition with the DLI to reopen her medical benefits as provided in § 39-71-717(5), MCA.<sup>3</sup> Her Petition to Reopen Closed Medical Benefits (Petition to Reopen) lists her

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<sup>1</sup> Aff. of A. Horne, Docket Item No. 11, Ex. 2 at 1.

<sup>2</sup> *Id.*, ¶ 12, Ex. 8 at 2.

<sup>3</sup> § 39-71-717(5), MCA states:

affected “Body Part” as “Right upper body[,] Neck, thoracic area, shoulder, right arm wrist[.]”<sup>4</sup> In the section asking her to “Describe how the reopening of medical benefits will keep you at work or return you to work,” Ms. Munn wrote:

After being injured at work in 2019 I saw specialist after specialist at Ortho Montana in hopes of being healed and resuming work and a normal life. I did a great deal of physical therapy for each of the body parts listed. The symptoms in my neck, thoracic area and shoulder got progressively worse to where I’ve been losing function in my right arm/hand. I had nerve ablation in June 2023 in my neck. I have now reached a point I will be seeing a neurosurgeon for possible neck surgery. I was advised to do this by vascular surgeon Dr. Bruen who diagnosed me two weeks ago with thoracic outlet syndrome and Dr. Klepps shoulder specialist. Both believe I’ve reached a point I need neck surgery. I cannot afford continued medical care for this injury and am hoping to reopen medical benefits in order to receive care that will make it so I can work again. . . .<sup>5</sup>

¶ 15 On February 19, 2025, the DLI sent a letter to State Fund in which it provided notice of Ms. Munn’s Petition to Reopen, requested a copy of the medical records contained in her claim file, and asked whether Ms. Munn had reached MMI.<sup>6</sup> Further, the DLI notified State Fund that any medical records or other information it submitted must be copied to the other party at the same time it was delivered to the DLI.

¶ 16 The DLI appointed a panel of physicians to review the matter.<sup>7</sup>

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A petition for reopening of medical benefits must be filed with the department within 5 years of the termination of medical benefits pursuant to 39-71-704(1)(f). A petition may not be filed more than 90 days before benefits are to terminate.

<sup>4</sup> Aff. of A. Bucy Re: Resp’t’s Supp. Br., Docket Item No. 19, attached Petition to Reopen Closed Medical Benefits at 1.

<sup>5</sup> *Id.* at 1-2.

<sup>6</sup> § 39-71-717(6), MCA, states:

Upon receipt of a petition to reopen medical benefits, the department shall request from the insurer a copy of the worker’s medical records contained in the insurer’s claim file. The worker or the insurer may submit additional information that is relevant to the petition to reopen medical benefits.

<sup>7</sup> § 39-71-717, MCA, provides, in pertinent part:

- (3) A review of a petition to reopen medical benefits must be conducted by a medical review panel as provided in subsection (4) or, if stipulated by the worker and the insurer, solely by the department’s medical director.
- (4) The medical review panel must be composed of the department’s medical director and two additional physicians who are licensed to practice medicine in Montana and who have expertise and experience in the area of medicine that is relevant to the worker’s condition. The department’s medical director shall serve as the presiding officer of the medical review panel. . . .

¶ 17 The Record of the panel proceeding, as well as all correspondence and emails related to the proceeding, include the following materials:

- State Fund's FROI Summary Report.
- Ms. Munn's Petition to Reopen.
- Letter from Administrative Officer Celeste Ackerman to State Fund, dated February 19, 2025, requesting medical records in Ms. Munn's claim file and asking whether she had reached MMI.
- Letter from Administrative Officer Celeste Ackerman to Ms. Munn, dated February 19, 2025, indicating that her Petition to Reopen had been received, etc. (c: State Fund).
- Panel Member Review Form 1.
- Panel Member Review Form 2.
- Medical Director Review/Report.
- Letter from Administrative Officer Celeste Ackerman to Ms. Munn, dated April 18, 2025, reporting the decision of the panel to reopen her medical benefits (c: State Fund).
- The medical records from Ms. Munn's claim file, from June 13, 2018, through February 4, 2025.
- Ms. Munn's Impairment Rating, dated July 28, 2020.
- Letter from State Fund to Ms. Munn, dated August 11, 2020, indicating that she had reached MMI, and notifying her of her impairment rating and that her benefits would be terminating.
- Cover letter from Claims Examiner Ashley Horne to Medical Director, dated February 20, 2025, indicating that she had enclosed information by State Fund regarding Ms. Munn's Petition to Reopen.

¶ 18 On April 18, 2025, the panel granted Ms. Munn's Petition to Reopen.<sup>8</sup> The decision states:

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<sup>8</sup> § 39-71-717(8), MCA, states:

Within 60 days of the submission of a petition to reopen medical benefits, the medical review panel or the department's medical director shall issue a report. The report must provide the rationale for the decision reached. A report issued by the medical review panel must be supported by a majority of the panel members. If the report concludes that medical benefits must be reopened, the report must state the extent to which the benefits must be reopened consistent with the utilization and treatment guidelines. Benefits reopened pursuant to this section remain open for 2 years or until maximum medical improvement is achieved following surgery or the recommended medical treatment, whichever occurs first. . . .

[I]t is the consensus of the medical panel to “reopen” medical benefits. One reviewer opined “reopen” benefits, citing the Montana Utilization and Treatment Guidelines.<sup>9</sup> Another reviewer opined “do not reopen” benefits, citing that the individual has been out of work since 2019 and lack of a work plan in the medical notes.<sup>10</sup> Another reviewer opined “reopen” benefits, citing the recent medical note from 02/04/25 documenting a referral for cervical spine evaluation.<sup>11</sup> As outlined in 39-71-717 MCA, benefits may be reopened when medical treatment is required for return to work. The circumstances of this case meet the criteria outlined in 39-71-717 MCA for reopening medical benefits.<sup>12</sup>

¶ 19 After the panel’s decision, Ms. Munn was unable to get an appointment with Dr. Marone as she had planned. However, on July 18, 2025, State Fund approved a one-time consultation with Benjamin Braun, MD, an orthopedic spine surgeon, under a reservation of rights.

¶ 20 On July 22, 2025, State Fund had Donald Ericksen, MD, perform an IME of Ms. Munn. Dr. Ericksen opined that Ms. Munn is at MMI for the claim-related diagnoses and that none of her current symptoms is the direct result of the compensable injury.<sup>13</sup>

¶ 21 In a letter dated August 15, 2025, State Fund sent Dr. Ericksen’s IME report to Dr. Braun and asked him to review it and answer several questions after his upcoming consultation with Ms. Munn. The letter was returned to State Fund on an undetermined date with a handwritten note, reading, “Dr. Braun will not fill out. Defer to PCP or Occ Health. Thank you.”<sup>14</sup>

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<sup>9</sup> This reviewer listed the Part of Body Injured as “right upper body,” the Primary Diagnosis as “soft tissue sprain,” and Subsequent Diagnosis as “cervical radiculopathy.” Aff. of A. Bucy Re: Resp’t’s Supp. Br., Docket Item No. 19, attached Panel Member Review completed 3/14/2025 at 1.

<sup>10</sup> This reviewer listed the Part of Body Injured as “right upper body,” the Primary Diagnosis as “soft tissue sprain,” and Subsequent Diagnosis as “cervical radiculopathy.” *Id.*, attached Panel Member Review completed 3/16/2025 at 1.

<sup>11</sup> This reviewer listed the Part of Body Injured as “right shoulder, neck,” the Primary Diagnosis as “Right shoulder sprain,” and left the Subsequent Diagnosis blank. Aff. of A. Bucy Re: Resp’t’s Supp. Br., Docket Item No. 19, attached Panel Member Review completed 4/18/2025 at 1.

<sup>12</sup> Br. in Supp. of Summ. J., Docket Item No. 3, Ex. A at 1. Section 39-71-717, MCA, provides, in pertinent part:

- (2) Medical benefits may be reopened only if the worker’s medical condition is a direct result of the compensable injury or occupational disease and requires medical treatment in order to allow the worker to continue to work or return to work. . . .

. . . .

- (7) The proof necessary to support reopening of medical benefits must be a preponderance of the evidence.

<sup>13</sup> Aff. of A. Horne Re Br. in Opp’n to Pet’r’s Mot. for Summ. J., Docket Item No. 11, Ex. 12 at 10-11.

<sup>14</sup> *Id.*, Ex. 13 at 1.

¶ 22 Dr. Braun saw Ms. Munn on October 2, 2025. He noted that she presented for evaluation of cervicalgia. After examination, Dr. Braun’s assessment was that Ms. Munn’s neck pain was: “Likely due to a combination of factors: previous work injury, thoracic outlet syndrome, tendinosis, and a torn bicep tendon.”<sup>15</sup> His plan included: “Referral to Dr. Tyler Clark at the University of Utah for further evaluation and potential repeat RFA at C2-3. If not feasible, referral to Dr. Healy or Dr. Idean at Billings Clinic for the procedure.”<sup>16</sup>

¶ 23 On October 15, 2025, State Fund denied that referral and any further medical benefits by e-mail, explaining:

Without a response from Dr. Braun indicating that her current symptoms and treatment plan are, on a more probable than not basis, a direct result of her work related injury, I cannot review further treatment requests for approval.

As it stands currently, Dr. Ericksen has opined that she is at MMI for her claim related diagnoses and her current complaints are due to a natural progression of her underlying degenerative changes with no identified causal relationship to the reported work incident.

I have sent Dr. Braun’s office a fax advising them that I have denied the referral to Utah . . . .<sup>17</sup>

¶ 24 Ms. Munn mediated the issue of State Fund’s alleged refusal to honor the panel’s decision reopening her medical benefits before filing a claim in this Court.

¶ 25 State Fund has neither mediated nor appealed any issue related to the panel’s decision.

### LAW

¶ 26 To prevail on a motion for summary judgment, the moving party must meet its initial burden of showing the “absence of a genuine issue of material fact and entitlement to judgment as a matter of law.”<sup>18</sup> “[I]f the moving party meets its initial burden to show the absence of a genuine issue of fact and entitlement to judgment, the burden shifts to the

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<sup>15</sup> *Id.*, Ex. 14 at page count 13.

<sup>16</sup> *Id.*

<sup>17</sup> Br. in Supp. of Mot. for Summ. J., Docket Item No. 3, Ex. B at 1.

<sup>18</sup> *Begger v. Mont. Health Network WC Ins. Trust*, 2019 MTWCC 7, ¶ 15 (citation omitted).

party opposing summary judgment either to show a triable issue of fact or to show why the undisputed facts do not entitle the moving party to judgment.”<sup>19</sup>

¶ 27 Section 39-71-704(1), MCA, provides, in pertinent part:

(a) After the happening of a compensable injury or occupational disease and subject to other provisions of this chapter, the insurer shall furnish reasonable primary medical services, including prescription drugs for conditions that are a direct result of the compensable injury or occupational disease, for those periods specified in this section.

.....

(f)(i) The benefits provided for in this section terminate 60 months from the date of injury or diagnosis of an occupational disease. A worker may request reopening of medical benefits that were terminated under this subsection (1)(f) as provided in 39-71-717.<sup>20</sup>

Thus, under § 39-71-704(1)(f)(i), MCA, an injured worker’s medical benefits terminate 60 months from the date of injury and the process to request their reopening thereafter is set forth in § 39-71-717, MCA.

¶ 28 Under § 39-71-717(6), MCA, the process begins with the injured worker submitting a petition to reopen medical benefits to the DLI. Upon its receipt, the DLI shall request a copy of the worker’s medical records from the insurer’s claim file. The rule provides that “[t]he worker or the insurer may submit additional information that is relevant to the petition to reopen medical benefits.”<sup>21</sup>

¶ 29 Pursuant to § 39-71-717(2), MCA, medical benefits may be reopened only if “the worker’s medical condition is a direct result of the compensable injury or occupational disease **and** requires medical treatment in order to allow the worker to continue to work or return to work.”<sup>22</sup> And, under § 39-71-717(7), “[t]he proof necessary to support reopening of medical benefits must be a preponderance of the evidence.”<sup>23</sup>

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<sup>19</sup> *Richardson v. Indem. Ins. Co. of N. Am.*, 2018 MTWCC 16, ¶ 24 (alteration added) (citation omitted), *aff’d*, 2019 MT 160, 396 Mont. 325, 444 P.3d 1019.

<sup>20</sup> § 39-71-704(1)(f)(ii), MCA, provides:

Subsection (1)(f)(i) does not apply to a worker who is permanently totally disabled as a result of a compensable injury or occupational disease or for the repair or replacement of a prosthesis furnished as a direct result of a compensable injury or occupational disease.

<sup>21</sup> § 39-71-717(6), MCA (alteration added).

<sup>22</sup> Emphases added.

<sup>23</sup> Alteration added.

¶ 30 Under § 39-71-717(8), MCA, the panel shall issue a report within 60 days of the submission of a petition to reopen medical benefits. The report must comply with the following requirements:

The report must provide the rationale for the decision reached. A report issued by the medical review panel must be supported by a majority of the panel members. If the report concludes that medical benefits must be reopened, the report must state the extent to which the benefits must be reopened consistent with the utilization and treatment guidelines.<sup>24</sup>

Unless the panel specifically approves treatment for longer, “[b]enefits reopened pursuant to this section remain open for 2 years or until maximum medical improvement is achieved following surgery or the recommended medical treatment, whichever occurs first.”<sup>25</sup>

¶ 31 Finally, pursuant to § 39-71-717(10), MCA, upon reviewing the report:

A party aggrieved by a decision of the department’s medical director or medical review panel may, after satisfying the dispute resolution requirements provided in this chapter, file a petition with the workers’ compensation court.

However,

[t]he report of the department’s medical director or the medical review panel is presumed to be correct and may be overcome only by clear and convincing evidence.<sup>26</sup>

### ARGUMENTS<sup>27</sup>

¶ 32 Ms. Munn argues that the Legislature purposely put the panel process into place for the purpose of adjudicating whether to reopen an injured worker’s medical benefits.<sup>28</sup> She suggests the following syllogism: if the insurer can decide something different than the panel, then the panel is meaningless; there is a presumption that the legislature (which

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<sup>24</sup> § 39-71-717(8), MCA.

<sup>25</sup> § 39-71-717(8), MCA (alteration added).

<sup>26</sup> § 39-71-717(10), MCA (alteration added).

<sup>27</sup> State Fund argues that this Court should summarily deny, or decline to consider, Ms. Munn’s Motion for Summary Judgment based upon her failure to satisfy the procedural requirements of ARM 24.5.329(3). Ms. Munn alleges that she complied with the rule. This Court reviewed both parties’ briefs at the time they were filed and determined that they were sufficiently compliant with Workers’ Compensation Court Rule 329. Moreover, under Workers’ Compensation Court Rule 349, “the court may, in its discretion and in the interests of justice, waive irregularities and noncompliance with any of the provisions of these rules.” Therefore, this Court will not further analyze the issue of compliance here.

<sup>28</sup> Br. in Supp. of Summ. J., Docket Item No. 3 at 7 (quoting *Johnson v. Hartford Accident & Indem. Co.*, 2020 MTWCC 20, ¶ 16).

put the panel process in place) does not pass meaningless legislation;<sup>29</sup> therefore, the insurer cannot decide something different than the panel and the panel decision is binding.<sup>30</sup> As such, Ms. Munn argues that the State Fund has only two options: honor the decision or appeal it. According to Ms. Munn, when State Fund did not appeal the panel decision but denied Ms. Munn's referrals and medical treatment based on Dr. Ericksen's contrary medical opinion, before Ms. Munn received any treatment, State Fund did not honor the panel's decision either; it basically vetoed it without authority to do so.

¶ 33 State Fund denies that it rejected the panel's decision.<sup>31</sup> Instead, it argues that regardless of the authority § 39-71-717, MCA, gives the panel for the purpose of deciding whether to reopen an injured worker's medical benefits, the panel's decision cannot be understood as an acceptance of previously denied body parts or a blanket authorization for all treatment requested during the extended period. State Fund contends that determinations as to coverage of body parts, compensability of conditions, as well as the necessity and authorization of treatment are ultimately within the realm of claims management and therefore the prerogative of claims examiners under § 39-71-107(2), MCA, which states:

All workers' compensation and occupational disease claims filed pursuant to the Workers' Compensation Act must be examined by a claims examiner in Montana. For a claim to be considered as examined by a claims examiner in Montana, the claims examiner examining the claim is required to determine the entitlement to benefits, authorize payment of all benefits due, manage the claim, have authority to settle the claim, maintain an office located in Montana, and examine Montana claims from that office. . . .

Thus, according to State Fund, the claims examiner was within her authority to deny further treatment when and how she did.

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<sup>29</sup> *Id.* at 6 (quoting Justice Nelson's dissent in *Eisenmenger v. Ethicon, Inc.*, 264 Mont. 393, 411, 871 P.2d 1313, 1324).

<sup>30</sup> In the absence of an appeal, Ms. Munn contends State Fund should also be bound by the panel decision under the principle of *res judicata*, the criteria of which are met. Br. in Supp. of Summ. J., Docket Item No. 3 at 6 (citing *Baltrusch v. Baltrusch*, 2006 MT 51, ¶ 16, 331 Mont. 281, 130 P.3d 1267):

- 1) The parties or their privies are the same;
- 2) The subject matter of the action is the same;
- 3) The issues related to the subject matter are the same; and
- 4) The capacities of the person are the same in reference to the subject matter and the issues between them.

<sup>31</sup> State Fund's argument that it has paid \$15,309.85 on Ms. Munn's claim to date is misleading as State Fund well knows that the relevant information is whether and how much it has paid on medical treatment for Ms. Munn after the panel reopened her medical benefits. According to Affidavit of A. Horne Re Br. in Opp. to Pet'r's Mot. for Summ. J., Docket Item No. 11, Ex. 15 at 1-4, post-panel "claim costs," as opposed to "loss adjustment expenses," total only \$771.11. The Court admonishes State Fund not to waste everyone's time with specious arguments.

¶ 34 Further, State Fund argues that the panel does not have enough of a factual basis to make an informed decision as to causation and that it makes no sense and cuts against the policy underlying the Workers' Compensation Act to require an insurer to present evidence and litigate the issue of reopening of medical benefits before the panel. The better reasoned view, it contends, and the one that helps expedite injured workers receiving medical treatment is for the panel to reopen medical benefits, followed by the insurer assessing the causal relationship between requested treatment and the work-related injury.

¶ 35 Ms. Munn responds that there is no conflict between the authority of the panel to make reopening decisions and the requirement that claims be managed by claims examiners. She argues that claims examiners must simply follow the law of the case, which, in her case, includes the panel's decision that her medical condition is a direct result of the compensable condition. However, to the extent that there is any conflict between § 39-71-107, MCA, and § 39-71-717, MCA, she asserts that canons of statutory interpretation would provide that where effect could not be given to both, the specific statute – giving the panel authority over reopening – would control over the general – requirement for an in-state claims examiner.<sup>32</sup>

¶ 36 Ms. Munn contends that she is not currently seeking medical treatment for her shoulder, only her neck, and that her cervical spine is an accepted part of her claim. She points to the fact that the panel did not mention her shoulder, one panelist mentioned a referral for cervical spine evaluation, and after her one-time consultation with Dr. Braun, he referred her for further neck evaluation. She also argues that she never sought a blanket authorization of all treatment. To the contrary, she asserts it was her request for one referral that prompted State Fund to issue its blanket denial of all referrals and further treatment.

¶ 37 As to the medical review process itself, Ms. Munn states that the legislature explicitly tasked the panel with deciding “if the worker’s medical condition is a direct result of the compensable injury or occupational disease and requires medical treatment in order to allow the worker to continue to work or return to work.”<sup>33</sup> She argues that it is not the role of the parties or this Court to question the wisdom of the legislature. Moreover, as to the evidence before the panel, Ms. Munn points out that under § 39-71-717(6), MCA, State Fund had an opportunity to submit evidence or argument, and that State Fund can challenge the sufficiency of the evidence or the panel’s procedure by appealing, but that if it chooses not to do so, it must abide by the panel’s decision.

¶ 38 Ms. Munn also argues that State Fund’s decision neither to appeal the panel’s decision nor honor it is unreasonable. As a result, Ms. Munn contends that she has been

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<sup>32</sup> Reply Br. in Supp. of Summ. J., Docket Item No. 13 at 6 (quoting *Mont. Sports Shooting Ass'n vs. Mont. Dep't of Fish, Wildlife, and Parks*, 2008 MT 190, ¶ 41, 344 Mont. 1, 185 P.3d 1003).

<sup>33</sup> § 39-71-717(2), MCA.

unable to get the treatment to which the panel determined she was entitled for more than half of the two-year period. Moreover, she asserts that she was forced to hire counsel to litigate an issue she had already won pro sé. For these reasons, Ms. Munn argues that this Court should impose costs, attorney fees, and a penalty.

### ANALYSIS

¶ 39 The panel’s decision to reopen Ms. Munn’s medical benefits is binding. If the State Fund was concerned that the panel did not have a sufficient evidentiary foundation to decide the reopening question, it could have submitted additional information that was relevant to the petition to reopen under § 39-71-717(6), MCA. But once the panel rendered its decision, if the State Fund disagrees, its only lawful option is to appeal. The process by which an aggrieved party may appeal the panel’s decision is plainly set forth at § 39-71-717(10), MCA. Besides securing a reversal from this Court through the appeals process, any other means to **completely** deny Ms. Munn the medical treatment the panel determined she required to return to work is inappropriate and unlawful.

¶ 40 It defies logic to argue that the Legislature purposely put into place a scheme by which the state pays a panel to render a decision, which – if it reopens medical benefits – the insurer can effectively reverse immediately thereafter, without following the appeals process the Legislature specifically drafted for parties aggrieved by panel decisions, and deny **all** post-panel medical treatment before **any** is rendered. The plain meaning of § 39-71-717, MCA, is clear on its face; the panel is explicitly tasked with determining whether to reopen the injured worker’s medical benefits and could do so here only if Ms. Munn’s medical condition was the direct result of her compensable injury and required medical treatment in order to allow her to return to work. A panel decision reopening medical benefits does not operate as a blanket pre-authorization for all medical treatment. Nor can it “reopen” medical benefits that were never open to begin with. And Ms. Munn seeks neither.

¶ 41 Although Ms. Munn is correct as to the canons of statutory interpretation when two statutes conflict, the panel and claims examiner processes can work together in harmony. Indeed, § 39-71-717(8), MCA, -- “[b]enefits reopened pursuant to this section remain open for 2 years or until **maximum medical improvement is achieved following surgery or the recommended medical treatment**, whichever occurs first”<sup>34</sup> – contemplates post-panel claims management by the claims examiner, including administering medical benefits through the recommended treatment or surgery, and depending on how long that treatment or surgery takes, facilitating the determination of whether the worker has reached MMI following that treatment or surgery.<sup>35</sup> So long as

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<sup>34</sup> Emphases added.

<sup>35</sup> Aff. of A. Horne Re Br. in Opp. to Pet’r’s Mot. for Summ. J., Docket Item No. 11, Ex. 16 at 8 (DLI’s 5-Year Reopening Questions from Training): Participant Question 53: “If the benefits are decided to be reopened by the panel, will the insurer be ordered to pay benefits while they challenge the panel’s decision?” Department Response 53: “The reopening of medical benefits is not a specific order of the department for the insurer to provide (pay) specific benefits.

the worker's medical benefits are open, i.e., the worker is eligible to receive them, the claims examiner may properly adjust and manage the day-to-day claim issues that arise as intended by § 39-71-107, MCA.

¶ 42 But that is not what happened here. After the panel reopened Ms. Munn's medical benefits, State Fund sent her for an IME, not treatment. The IME physician opined that none of her medical conditions is claim-related. After that, State Fund required Ms. Munn to provide an expert opinion to counter the IME physician's even though the panel already determined that her medical condition is the direct result of her compensable injury and requires medical treatment in order to allow her to return to work. As Ms. Munn points out, State Fund did not consider and deny a particular treatment; its e-mail of October 15, 2025, makes clear that it refuses to authorize *all* further referrals and treatments for her neck condition – even though she has yet to receive *any* post-panel treatment. If State Fund refuses to allow her to get any treatment for her neck condition, her medical benefits are as good as closed. That is not the panel and claims management processes working in harmony; that is the insurer causing those processes to conflict, or more accurately, the insurer using the claims management process to subvert the panel process.

¶ 43 Whether State Fund's conduct has been unreasonable in preventing Ms. Munn from getting the treatment to which the panel determined she was entitled, neither attorney fees nor a penalty are appropriate because of the procedural posture of this case. Under § 39-71-611, MCA,

- (1) The insurer shall pay reasonable costs and attorney fees as established by the workers' compensation court if:
  - (a) the insurer denies liability for a claim for compensation or terminates compensation benefits;
  - (b) ***the claim is later adjudged compensable by the workers' compensation court***; and
  - (c) in the case of attorney fees, the workers' compensation court determines that the insurer's actions in denying liability or terminating benefits were unreasonable.<sup>36</sup>

This claim is not being adjudged compensable by the workers' compensation court. The issue before this Court is not whether Ms. Munn is entitled to medical benefits. The issue before this Court is whether State Fund is bound by the panel's decision until or unless it appeals that decision following the lawful process outlined by statute. Therefore, Ms. Munn's claim for costs and attorney fees is denied.

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The insurer will need to continue to appropriately adjust the claim during the pendency of any dispute resolution process." This Court notes that if the insurer "will need to continue to appropriately adjust the claim during the pendency of any dispute resolution process," it certainly "will need to continue to appropriately adjust the claim" if it decides not to appeal.

<sup>36</sup> Emphases added.

¶ 44 Under § 39-71-2907, MCA,

(1) ***The workers' compensation judge may increase by 20% the full amount of benefits due*** a claimant during the period of delay or refusal to pay, when:

(a) the insurer agrees to pay benefits but unreasonably delays or refuses to make the agreed-upon payments to the claimant; or

(b) prior or subsequent to the issuance of an order by the workers' compensation judge granting a claimant benefits, the insurer unreasonably delays or refuses to make the payments.<sup>37</sup>

Again, the issue before this Court is not whether benefits are due Ms. Munn. Without first determining that benefits are due, this Court cannot increase the amount of benefits due for unreasonable delay or refusal to pay. Thus, Ms. Munn's request for a penalty is denied.

¶ 45 Accordingly, this Court enters the following:

ORDER

¶ 46 Petitioner's Motion for Summary Judgment is **granted**.

¶ 47 State Fund is ordered to reopen medical benefits for Ms. Munn and adjust her claim according to the panel's determinations that her medical condition is the direct result of her compensable injury and requires treatment to allow her to return to work.

¶ 48 Petitioner's request for costs, attorney fees, and a penalty is **denied**.

¶ 49 Pursuant to Workers' Compensation Court Rule 348(2), this Order is certified as final and, for purposes of appeal, shall be considered as a notice of entry of judgment.

DATED this 18<sup>th</sup> day of May, 2026.

(SEAL)

/s/ Lee Bruner  
Judge Lee Bruner

c: Lucas A. Wallace  
Mark D. Meyer

Submitted: April 13, 2026

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<sup>37</sup> Emphases added.