IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2004 MTWCC 78

WCC No. 2003-0841

PATSY SIAPERAS

Petitioner

vs.

MONTANA STATE FUND

Respondent/Insurer.

ORDER DENYING REQUEST FOR WRIT OF EXECUTION

Summary: After this Court entered judgment and the Montana Supreme Court affirmed that judgment, the claimant's attorney requested the Court issue a Writ of Execution for attorney fees. He submitted a proposed writ.

Held: A request for a Writ of Execution is denied where the proposed writ is prolix and goes beyond the relief granted by the Court.

Topics:

> Writ of Execution. A request for a Writ of Execution is denied where the proposed writ is prolix and goes beyond the relief granted by the Court.
>
> Execution: *See* Writ of Execution.

¶1 Judgment in this matter was entered on January 15, 2004. With respect to the attorney fees due to Patsy Siaperas' (claimant) attorney, this Court held:

> ¶69 Claimant's attorney is entitled to a fee only on the additional benefits he has secured for the claimant. He secured the claimant an additional $14.77 per week. However, claimant is obligated to repay the State Fund for a substantial overpayment resulting from the award of social security disability benefits. While I make no final determination as the retrospective benefit to claimant, it is approximately $5,000.00, thus there is still an overpayment in excess of $20,000.00. Thus, there are no retrospective monies owed by the State Fund to which the lien can attach and any future payments may be reduced by the remaining offset.

> ¶70 I therefore determine that the lien applies only to future payments and authorize the State Fund to deduct $5.91 (*$14.77 x 2 x 20%*) from claimant's future biweekly benefits and send that amount directly to her attorney. Claimant's attorney will have to seek payment of his fees on the $5,000.00 directly from claimant.
>
> ¶71 In authorizing the deduction from future payments, I make no determination concerning the amount of the overpayment to claimant or the manner in which it may be recovered. As I noted earlier, the social security offset provisions permit the State Fund to cut off all benefits until the overpayment is repaid in full. If benefits are terminated to recover the overpayment, there will be nothing from which to deduct the attorney fees. The lien attaches only to future benefits actually paid.

(2004 MTWCC 4 (footnotes omitted).) My decision in this matter, including the foregoing determination, was affirmed on appeal. 2004 MT 264N. Thus, the forgoing determination regarding attorney fees is *res judicata* as to the entitlement of the claimant's attorney to attorney fees.

¶2 Post-appeal, the claimant's attorney has submitted a "Writ of Execution" which he asks the Court to issue. The proposed writ is prolix. It authorizes fees beyond what were authorized in the original decision. The Court therefore declines to issue the requested writ.

SO ORDERED.

DATED in Helena, Montana, this 3rd day of December, 2004.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Robert C. Kelleher
Mr. Charles G. Adams
Submitted: December 1, 2004