IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2004 MTWCC 63

WCC No. 2004-1065

DONALD C. SMITH

Petitioner

vs.

HIGHLANDS INSURANCE GROUP

Respondent/Insurer.

ORDER DENYING MOTION TO DISMISS

Summary: Insurer moves to dismiss a petition seeking medical benefits, arguing that the Court lacks jurisdiction over the dispute.

Held: Where payment for medical treatment has been denied or authorization refused, the Court has jurisdiction to adjudicate the dispute.

Topics:

Jurisdiction: Medical Benefits. Where payment or authorization for medical treatment has been denied, the Court has jurisdiction to adjudicate the dispute. § 39-71-2905, MCA (1997).

Jurisdiction: Medical Benefits. Section 39-71-704(6), MCA (1997-2003), and ARM 24.29.1404(1)(a) (2003) apply only to disputes over the amount of payment due a medical provider. They do not divest the Workers' Compensation Court of jurisdiction to adjudicate disputes where payment has been denied.

Constitutions, Statutes, Rules, and Regulations: Section 39-71-704(6), MCA (1997-2003). Section 39-71-704(6), MCA (1997-2003), and ARM 24.29.1404(1)(a) (2003), apply only to disputes over the amount of payment due a medical provider. They do not divest the Workers' Compensation Court of jurisdiction to adjudicate disputes where payment has been denied.

Constitutions, Statutes, Rules, and Regulations: Section 39-71-2905, MCA (1997-2003). Where payment for medical treatment has been denied or authorization refused, the Court has jurisdiction to adjudicate the dispute. § 39-71-2905, MCA (1997-2003).

¶1 The petition in the present case alleges that claimant was injured in an industrial accident and that his employer was insured by respondent, Highlands Insurance Group (Highlands). Petitioner further alleges that Highlands has refused to pay for medical services rendered by two medical providers and seeks an order requiring Highlands to pay for the services.

¶2 Highlands moves to dismiss for lack of jurisdiction. The motion is not only without merit, it is frivolous.

Discussion

¶3 This is the second time in the last two months that the Court has received a motion arguing that the Court does not have jurisdiction to adjudicate disputes involving medical benefits. The prior case is reported at *Anderson v. Albertson's Inc.,* 2004 MTWCC 59. These motions fly in the face of both statutory and case law.

¶4 Initially, medical benefits are "benefits" to which a claimant is entitled under the Workers' Compensation Act. Section 39-71-704(1), MCA (1997), provides, "(1) In addition to the compensation provided under this chapter and **as an additional benefit** separate and apart from compensation benefits actually provided, the following must be furnished . . . ." (Emphasis added.) Section 39-71-2905, MCA (1997), gives the Workers' Compensation Court jurisdiction over all disputes concerning benefits. It provides in relevant part,

> (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 after satisfying dispute resolution requirements otherwise provided in this chapter. . . . [Emphasis added.]

Moreover, almost twenty years ago, the Montana Supreme Court expressly held that medical benefits are "benefits" over which the Workers' Compensation Court has exclusive jurisdiction. *Billings Deaconess Hosp., Inc.* v. *Angel*, 219 Mont. 490, 712 P.2d 1323 (1986). The statutes and the Supreme Court decision are plain and clear. Why two insurers have now chosen to challenge the jurisdiction of the Court is a mystery, especially in light of the fact that a substantial part of the Court's docket deals with controversies over medical payments.

¶5 In its brief, Highland's says,

> The Workers' Compensation Act provides that a hearing regarding a dispute between an insurer and a medical provider over medical fees will only occur "upon written application of a party to the dispute. . . ." Mont. Code Ann. § 39-71-704(6) (2003).

(Respondent Highland Insurance Group's Motion to Dismiss and Brief in Support at 3.) It then argues that the claimant lacks standing under this section because he is not a medical provider. That argument misreads the section. The actual section reads:

> (6) Disputes between an insurer and a medical service provider regarding the **amount** of a fee for medical services must be resolved by a hearing before the department upon written application of a party to the dispute.

§ 39-71-704(6) (1997-2003) (emphasis added). On its face, subsection (6) applies only where there is a dispute over the **amount** of the fee due the medical provider: It has no application to an outright denial of treatment or care such as alleged in this case. It thus dovetails with the Department of Labor & Industry's (Department) authority to establish fees for medical services. § 39-71-704(2)-(4), MCA.

¶6 Highlands also cites a Department regulation which it construes as barring this Court from hearing the present petition. If I did not make it clear enough in my recent decision in *Anderson v. Albertson's Inc.,* 2004 MTWCC 59, let me repeat here that the Department cannot strip this Court of its statutory jurisdiction. Any rule which attempts to do so is null and void. *See* § 2-4-305(6)(a), MCA (2003) *and Safeway, Inc. v. Montana Petroleum Release Comp. Bd.,* 281 Mont. 189, 195, 931 P.2d 1327, 1330 (1997).

¶7 Moreover, ARM 24.29.1404 (1993), which is cited by Highlands does not support its contention. The portion of the rule quoted by the respondent provides:

> 24.29.1404 DISPUTED MEDICAL CLAIMS (1) Disputes arising over the following issues are resolved by a hearing before the department upon written application of a party to the dispute or the injured worker:
>
> (a) **Amounts** payable to medical providers, when benefits available directly to claimants are not an issue . . . . [Emphasis added.]

On its face, the subsection applies to disputes over the amounts of payments due medical providers, not to a denial of payment for medical services. The section does nothing more than implement section 39-71-704(6), MCA (1997-2003).

¶8 In summary, section 39-71-704(1), MCA, places a duty on the insurer to furnish claimant medical services; claimant is entitled to enforce that duty by petitioning the Workers' Compensation Court. Thus, where payment is denied for any medical service, this Court has jurisdiction to adjudicate the dispute. Only where the insurer admits liability for a medical service but disputes the providers fees, or where the medical provider disputes the amounts paid by the insurer, do section 39-71-704(6), MCA (1997-2003) and subjacent regulations give the Department jurisdiction over the dispute.

ORDER

¶9 The motion to dismiss is **denied**.

DATED in Helena, Montana, this 31st day of August, 2004.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Douglas W. Marshall
Mr. Kelly M. Wills
Submitted: August 25, 2004