

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2018 MTWCC 12

WCC No. 2017-4042

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CHRISTOPHER SIMPSON

Petitioner

vs.

MONTANA MUNICIPAL INTERLOCAL AUTHORITY

Respondent/Insurer

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ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT AND  
DENYING PETITIONER'S MOTION FOR SUMMARY JUDGMENT

**Summary:** Respondent moved for summary judgment, arguing that Petitioner's claim for medical benefits is time-barred under the two-year statute of limitations at § 39-71-2905(2), MCA. In the alternative, Respondent asserts that Petitioner's medical benefits terminated under § 39-71-704(1)(f), MCA (2005), because he did not use them for 60 consecutive months. Petitioner moved for summary judgment, arguing that his claim is timely, and that there was not a 60-month period of time in which he did not use his medical benefits.

**Held:** This Court granted summary judgment for Respondent. Petitioner's claim is time-barred under the two-year statute of limitations in § 39-71-2905(2), MCA. Respondent denied liability for all further medical treatment on Petitioner's right knee in 2009, but Petitioner did not petition this Court to decide the dispute until 2017, approximately six years after the statute of limitations ran.

¶ 1 Petitioner Christopher Simpson and Respondent Montana Municipal Interlocal Authority (MMIA) filed an Agreed Statement of Facts and 15 exhibits. They also filed cross motions for summary judgment. The parties dispute whether MMIA is liable for medical benefits for Simpson's right knee. Because this Court rules that Simpson's claim for medical benefits for his right knee is time-barred by the statute of limitations at

§ 39-71-2905(2), MCA, it does not address the issue of whether Simpson's medical benefits terminated under § 39-71-704(1)(f), MCA (2005).

### FACTS

¶ 2 Simpson is a longtime Officer with the Billings Police Department. In the spring of 2006, Simpson injured his right knee in the course of his employment. MMIA, the insurer for the City of Billings, accepted liability.

¶ 3 On April 19, 2006, Scott Ross, MD, performed an arthroscopy with removal of loose body and microfracture technique of the lateral femoral condyle at the patellofemoral joint of Simpson's right knee. Following the procedure, Dr. Ross concluded that Simpson was at maximum medical improvement (MMI) for his right-knee injury with a 0% impairment rating and released him to return to work with no restrictions. No future medical appointments or procedures were scheduled.

¶ 4 On February 27, 2007, MMIA sent Simpson a letter informing him that due to the inactivity in medical treatment his file was being closed, but that his medical benefits remained open. MMIA also informed Simpson that pursuant to § 39-71-704(1)(f), MCA (2005), his medical benefits would terminate if they were not used for 60 consecutive months. Lastly, MMIA clarified that any further medical treatment would require prior authorization.

¶ 5 On January 13, 2009, Simpson met with Michael Willis, MD, after experiencing pain and swelling in his right knee after jogging. Dr. Willis' impression was: "Right knee pain with history of patellofemoral degeneration, likely representing loose body." Dr. Willis recommended Simpson undergo an MRI of his right knee "to evaluate for loose body."

¶ 6 MMIA paid for the January doctor's visit because it had been authorized. However, via a letter dated March 17, 2009, MMIA notified Simpson that because Dr. Willis' records from January 13, 2009, stated that he began experiencing pain and swelling after jogging, it did not appear that his current injury was related to his work-related injury and MMIA was therefore "not liable for any future treatment directly or indirectly related to the diagnosis of right knee pain." MMIA's letter also stated, "no further treatment regarding your right knee pain is authorized." MMIA's letter concluded with instructions that if Simpson disagreed with its decision, he could petition the Department of Labor & Industry's Employment Relations Division for mediation.

¶ 7 Simpson testified that after receiving this letter, he understood that MMIA was "trying to" deny further liability for his right-knee injury. He also testified that he "believed" that MMIA was not going to authorize any further treatment for his right knee. When asked if he thought "there was any treatment that MMIA would offer . . . after you received this letter," Simpson answered: "Not without having to sue them."

¶ 8 On March 26, 2009, Dr. Willis sent a letter to MMIA stating that he thought Simpson's current symptoms were related to his original work injury and surgery.

¶ 9 On April 17, 2009, MMIA sent a letter to Dr. Willis denying his request for authorization for an MRI of Simpson's right knee. MMIA highlighted that Simpson had previously been placed at MMI and that it appeared that Simpson's current right-knee pain was related to Simpson's jogging. As authority for its denial of authorization, MMIA cited § 39-71-407(6), MCA, which states: "If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury to the same part of the body, the workers' compensation insurer is not liable for any compensation or medical benefits caused by the subsequent nonwork-related injury." MMIA sent Simpson a copy of this letter.

¶ 10 In 2012, Simpson suffered a left-knee injury while working for the City of Billings. During the course of that claim, Simpson saw Joseph Erpelding, MD. On September 14, 2016, Simpson saw Dr. Erpelding, this time for follow up for his right-knee injury. Dr. Erpelding concluded that Simpson's pain in his right knee was likely due to the expiration of the lifecycle of his 2006 operation. Dr. Erpelding referred Simpson to Guy R. Schmidt, MD, for surgical consultation.

¶ 11 On October 25, 2016, MMIA sent Simpson's doctors a letter denying liability for the September 14, 2016, office visit bill because Simpson had not sought medical treatment on his right knee for 60 consecutive months and because the claim was in "denied status."

¶ 12 On November 29, 2016, Simpson petitioned for mediation regarding the denial of liability for treatment of his right knee. A Mediation Report and Recommendation was issued on February 13, 2017.

¶ 13 Simpson filed his Petition for Hearing on June 19, 2017, and an Amended Petition for Hearing on July 17, 2017, in which he asserted that in 2006 he suffered "extensive injury to the right side of his body, including his right knee." He prayed for an order directing MMIA to pay medical benefits for his right-knee injury.

¶ 14 In its Response to Petition for Hearing, MMIA raised the affirmative defenses of statute of limitations, citing the two-year statute of limitations at § 39-71-2905(2), MCA, and termination of medical benefits for failure to use them for a period of 60 consecutive months, citing § 39-71-704(1)(f), MCA (2005).

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## LAW AND ANALYSIS

¶ 15 This case is governed by the 2005 version of the Montana Workers' Compensation Act (WCA) because that was the law in effect at the time of Simpson's right-knee injury.<sup>1</sup>

¶ 16 Summary judgment is only appropriate when the moving party establishes no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law.<sup>2</sup>

¶ 17 Section 39-71-2905(2), MCA, states: "A petition for hearing before the workers' compensation judge must be filed within 2 years after benefits are denied."

¶ 18 Here, MMIA is correct that Simpson's claim is time-barred under § 39-71-2905(2), MCA. MMIA's denial letter to Simpson dated March 17, 2009, firmly established a denial of further liability for medical benefits for his right knee.<sup>3</sup> MMIA stated it was "not liable for *any* treatment directly or indirectly related to the diagnoses of right knee pain" and that "*no* further treatment regarding your right knee pain is authorized."<sup>4</sup> Indeed, Simpson testified that he understood the effect of MMIA's 2009 denial; he testified that he was aware MMIA was denying further liability for treatment of his right-knee injury and that his only remedy lay through litigation. Nevertheless, Simpson did not petition this Court to decide the dispute over further liability for treatment of his right knee until June 19, 2017, which was more than eight years after MMIA's denial. Although the statute of limitations is tolled during the pendency of the mandatory mediation process,<sup>5</sup> Simpson did not petition for mediation until after the statute of limitations ran.

¶ 19 Simpson raises two arguments in support of his position that his claim is timely, but neither is persuasive. First, Simpson argues that an insurer's denial of liability for one procedure does not start the statute of limitations for all medical benefits under § 39-71-704, MCA. Thus, he argues that while MMIA denied liability for the MRI of his right knee that Dr. Willis recommended in 2009, that denial did not trigger the statute of limitations for other medical benefits. He maintains that MMIA remains liable for treatment that Dr. Erpelding and Dr. Schmidt recommend.

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<sup>1</sup> *Ford v. Sentry Cas. Co.*, 2012 MT 156, ¶ 32, 365 Mont. 405, 282 P.3d 687 (citation omitted); § 1-2-201, MCA.

<sup>2</sup> ARM 24.5.329; *Farmers Union Mut. Ins. Co. v. Horton*, 2003 MT 79, ¶ 10, 315 Mont. 43, 67 P.3d 285.

<sup>3</sup> See *Boyd v. Zurich Am. Ins. Co.*, 2010 MT 52, ¶ 20, 355 Mont. 336, 227 P.3d 1026 (holding that the 2-year statute of limitations in § 39-71-2905(2), MCA, was triggered when the insurer sent a letter explicitly denying coverage for the claimant's shoulder injury claims, as the letter "firmly established a denial of benefits and the existence of a 'dispute over liability' "), *overruled in part on other grounds in Ford v. Sentry Cas. Co.*, 2012 MT 156, ¶¶ 44-49, 365 Mont 405, 282 P.3d 687.

<sup>4</sup> (Emphases added).

<sup>5</sup> *Hardie v. Mont. State Fund*, 2012 MTWCC 2, ¶ 21 (citing *Preston v. Transp. Ins. Co.*, 2004 MT 339, ¶¶ 35, 37, 324 Mont. 225, 102 P.3d 527 and *Fleming v. Int'l Paper Co.*, 2005 MTWCC 34, ¶ 24).

¶ 20 This Court agrees that when an insurer denies liability for a particular treatment it does not start the statute of limitations for other medical benefits, or for the entire claim.<sup>6</sup> But that is not what occurred in this case. To be sure, MMIA's letter to Dr. Willis dated April 17, 2009, was ambiguous, as it can be narrowly read as only denying liability for an MRI of Simpson's right knee or broadly read as denying all liability for Simpson's right knee. However, MMIA's letter to Simpson dated March 17, 2009, was unambiguous; as Simpson understood, MMIA's letter denied *all* further liability for the treatment of his right knee, a position that arguably had merit under § 39-71-407(6), MCA, since he had reached MMI and might have suffered a nonwork-related injury while jogging. Thus, he had two years to petition this Court to decide whether he suffered a nonwork-related injury.

¶ 21 Second, Simpson argues that the policy of the WCA, as set forth in § 39-71-105(1), MCA, is to provide medical benefits to injured workers and that under the WCA, medical benefits can be closed in only three ways: (1) by not using them for 60 consecutive months, as set forth in § 39-71-704(1)(f), MCA (2005); (2) by a subsequent nonwork-related injury to the same part of the body after the claimant reached MMI, as set forth in § 39-71-407(6), MCA, or (3) by entering a valid settlement agreement with the insurer, as set forth in § 39-71-741, MCA.

¶ 22 However, medical benefits are also effectively closed when a claim is barred by the statute of limitations in § 39-71-2905(2), MCA; i.e., if the claimant does not petition this Court within two years of the insurer's denial of medical benefits, the insurer is not liable for the medical benefits.<sup>7</sup>

¶ 23 Accordingly, this Court enters the following:

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<sup>6</sup> See *Bell v. Mont. State Fund*, 2011 MTWCC 23, ¶¶ 16-22 (ruling that when insurer denied liability for a particular treatment, it did not trigger the statute of limitations in § 39-71-2905(2), MCA, for other treatments or benefits, or claimant's claim in general); *Nelson v. Mont. Schs. Grp. Ins. Auth.*, 2014 MTWCC 1, ¶¶ 30-37 (ruling that an insurer's denial of a claimant's request to change treating physicians did not trigger the statute of limitations for treatments recommended by another physician).

<sup>7</sup> See, e.g., *Boyd*, ¶ 20 (holding that the insurer was not liable for the claimant's shoulder injury, including medical benefits, because the claimant did not petition this Court to decide the dispute within two years after the insurer denied liability for his shoulder injury, as required by § 39-71-2905(2), MCA).

ORDER

¶ 24 MMIA's Motion for Summary Judgment is **granted** and Simpson's Motion for Summary Judgment is **denied**.

¶ 25 Pursuant to ARM 24.5.348(2), this Order is certified as final and, for purposes of appeal, shall be considered as a notice of entry of judgment

DATED this 30th day of July, 2018.

(SEAL)

/s/ DAVID M. SANDLER  
JUDGE

c: R. Russell Plath  
Morgan M. Weber

Submitted: May 11, 2018