

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1995 MTWCC 35

WCC No. 9502-7248

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RICHARD AHL

Petitioner

vs.

TRANSPORTATION INSURANCE CO.

Respondent.

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ORDER DENYING MOTION FOR PARTIAL SUMMARY JUDGMENT

**Summary:** Pro se claimant sought summary judgment based on his contention that settlement agreement reserving medical benefits to him required insurer to pay for all medical treatment claimed in his prior petition for hearing, without regard to existing statutory and medical provider rules.

**Held:** Where petitioner has failed to identify specific medical bills that he believes must be paid, and it is impossible for the Court to determine whether those bills relate to the industrial injury, the motion for summary judgment is denied.

**Topics:**

**Summary Judgment: Generally.** Where petitioner has failed to identify specific medical bills that he believes must be paid following settlement reserving medical benefits to him, it is impossible for the Court to determine whether those bills relate to the industrial injury, requiring denial of claimant's motion for summary judgment. Claimant's contention that all medical bills must be paid without regard to statutory and medical provider rules has no legal foundation.

**Benefits: Medical Benefits: Generally.** Where petitioner has failed to identify specific medical bills that he believes must be paid following settlement reserving medical benefits to him, it is impossible for the Court to determine whether those bills relate to the industrial injury, requiring denial of claimant's motion for summary

judgment. Claimant's contention that all medical bills must be paid without regard to statutory and medical provider rules has no legal foundation.

**Settlements: Medical Benefits.** Where petitioner has failed to identify specific medical bills that he believes must be paid following settlement reserving medical benefits to him, it is impossible for the Court to determine whether those bills relate to the industrial injury, requiring denial of claimant's motion for summary judgment. Claimant's contention that all medical bills must be paid without regard to statutory and medical provider rules has no legal foundation.

Petitioner has requested that the Court issue a partial summary judgment finding:

1. The carrier contracted to pay for all medical and hospital charges accruing after the compromise settlement date of January 25, 1988 and the Division Order Approving Settlement reserved all future medical.
2. The carrier agreed to pay for all medical and hospital incurred in future and at time it was aware that this would include injuries to eye, head, neck and back and any psychological injury as was alleged by claimant in his Amended Petition of June 30, 1987.

In support of his motion petitioner attached his AFFIDAVIT and numerous exhibits. Respondent's brief in opposition and affidavit were filed on May 2, 1995.

The rules of this Court contain no specific provision for summary judgment motions. However, the Court has in previous decisions borrowed Rule 56, Mont.R.Civ.P., and will continue to do so. *Murer v. State Compensation Mutual Insurance Fund*, 257 Mont. 434, 436, 849 P.2d 1036 (1993); *Moen v. Peter Kiewit & Sons' Co.*, 201 Mont. 425, 434 655 P.2d 482 (1982).

Summary judgment must be based on sworn, admissible evidence, although it may be presented by way of affidavit, deposition and answers to written discovery. Rule 56, Mont.R.Civ.P. The Court cannot consider representations of the parties which are not rooted in the sworn evidence. *B.M. by Berger v. State*, 215 Mont. 175, 179, 698 P.2d 399 (1985); *Prairie State Bank v. IRS of Treasury Dept.*, 745 P.2d 966 (Ariz. 1990). It is also not bound by the parties' characterization of evidence.

Summary judgment will be granted only if the uncontroverted material facts entitle the moving party to judgment as a matter of law. *First Security Bank v. Vander Pas*, 250 Mont. 148, 152, 818 P.2d 384 (1991). Every factual link in the chain of elements necessary to entitle a party to judgment must be uncontroverted. *Bickler v. Racquet Club H&S*

*Assoc.*, 50 St. Rep. 409, 410 (Mont. 1993); *Tippens v. Celotex Corp.*, 805 F.2d 949, rehearing denied 815 F.2d 66 (Ga. Ct. App.)

Petitioner argues that all medical and hospital bills which he has incurred since January 25, 1988, must be paid by the insurer for the reason that the full and final compromise settlement reserved future medical and hospital benefits. However, the petitioner failed to identify the specific bills which he believes must be paid by the insurer and it is impossible for the Court to make a determination of whether the bill(s) are for conditions and/or treatment which are the result of the industrial injury. The proposition that all medical bills must be paid without an insurer being able to apply the existing statutes and medical provider rules is without legal foundation, therefore,

IT IS HEREBY ORDERED that petitioner's MOTION FOR A PARTIAL SUMMARY JUDGMENT is **denied** since there are material issues of disputed fact.

DATED in Helena, Montana, this 11th day of May, 1995.

(SEAL)

/s/ Timothy W. Reardon  
JUDGE

c: Mr. Richard Ahl - Certified Mail  
Mr. Todd A. Hammer