

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2006 MTWCC 35

WCC No. 2005-1505

RODNEY BARNARD

Petitioner

vs.

LIBERTY NORTHWEST

Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Appealed to Supreme Court 11/13/06
Affirmed 07/22/08

Summary: Petitioner petitioned for a lump-sum conversion of his permanent total disability benefits, testifying that he would use the money for a new mobile home, driveway improvements, a newer motor vehicle, and additional cattle. Respondent responded that Petitioner's request should not be granted because his lump sum exceeds the \$20,000 limit permissible under § 39-71-741, MCA, or in the alternative, because Petitioner will not use the lump sum to obtain necessities of life.

Held: Section 39-71-741(1)(c), MCA, limits the Department of Labor and Industry to awarding lump-sum conversions in part to a total of \$20,000. However, it does not limit conversions in whole to that amount. Petitioner's planned use for the proposed lump-sum conversion meets Petitioner's necessities of life pursuant to § 39-71-741(1)(c), MCA. Furthermore, it is in his and his family's best interests and is therefore granted.

Topics:

Department of Labor and Industry: Interpretation of Statutes and Rules.

A court defers to an agency's interpretation of a statute that it administers. *Martin v. The Hartford*, 2003 MTWCC 25, ¶ 28.

Statutes and Statutory Interpretation: No Meaningless Provisions.

In construing a statute, a court must endeavor to give meaning and effect to all

statutory provisions. A construction which renders a provision meaningless is disfavored. *Groves v. Clark*, 277 Mont. 179, 184, 920 P.2d 981, 984. The Department's interpretation of § 39-71-741, MCA, gives meaning and effect to § 39-71-741(1)(c), MCA.

Benefits: Lump Sums: Generally. The Department's interpretation of § 39-71-741, MCA, gives meaning and effect to § 39-71-741(1)(c), MCA, by concluding that the legislature would not have stated that the lump-sum conversions "in part" are limited to \$20,000, while elsewhere in § 39-71-741(1), MCA, granting the Department and this Court the authority to allow lump-sum conversions "in whole or in part" with no pre-set limitation.

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-741. Section 39-71-741(1)(c), MCA, limits partial conversion transactions to a total of \$20,000. Beyond the \$20,000 limit, only conversions in whole are available, thus limiting the administrative and transactional merry-go-round.

Department of Labor and Industry: Interpretation of Statutes and Rules. The Department, with the approval of claimants and insurers alike, has employed their statutory interpretation for as long as this statute has been in existence. While this alone is not proof the Department's interpretation is correct, the fact that this interpretation has been in use for this long without dire consequences and with so little controversy further persuades this Court as to the correctness of the Department's interpretation.

Benefits: Lump Sums: Generally. If this Court were to disallow a lump-sum conversion merely because a portion of it would be used to pay the claimant's attorney pursuant to the contingent fee retainer agreement, the absurd result would be that only pro se litigants could seek lump-sum conversions since those represented by counsel would have entered into a Department-approved contingent fee retainer.

Benefits: Lump Sums: Best Interests. The claimant testified that he intended to use a lump-sum conversion of his PTD benefits to purchase a wheelchair-accessible mobile home, a motor vehicle which would be easier for him to drive, additional cattle for his ongoing business buying and selling cattle at which he has made from \$0 to \$3,000 per year, and to pay the attorney fees which he incurred in litigating this issue. The Court determined that such a lump sum would be in the claimant's best interests.

¶ 1 The trial in this matter was held on Friday, March 31, 2006, in Great Falls, Montana. Petitioner Rodney Barnard was present and represented by Richard J. Martin. Respondent Liberty Northwest was represented by Larry W. Jones.

¶ 2 Exhibits: Exhibits 1 through 8 were admitted without objection.

¶ 3 Witnesses and Depositions: Petitioner and Lola Barnard were sworn and testified. The parties agreed the deposition of Petitioner can be considered part of the record.

¶ 4 Issues Presented: The Court restates the following contested issues identified in the Pretrial Order as follows:

¶ 4a Whether Petitioner is entitled to a lump-sum conversion of his permanent total disability benefits.

¶ 4b Whether PTD lump sums are limited to \$20,000 pursuant to § 39-71-741, MCA.

¶ 4c Whether the use to which Petitioner will put his lump sum meets the necessities of life test under § 39-71-741, MCA.¹

FINDINGS OF FACT

¶ 5 Petitioner is 61 years old and lives near Vaughn, Cascade County, Montana.²

¶ 6 Petitioner was injured in Helena, Montana, on June 22, 2004, as an employee of Molerway Freight Lines.³

¶ 7 On June 22, 2004, Molerway Freight Lines was insured by Respondent.⁴

¶ 8 Respondent has accepted liability for Petitioner's injury and agreed to convert Petitioner's benefits to permanent total disability (PTD) benefits effective May 9, 2005.⁵

¹ Pretrial Order at 2.

² Trial Test.

³ Pretrial Order, Uncontested Fact, ¶¶ 1, 4.

⁴ *Id.*, ¶ 2.

⁵ *Id.*, ¶¶ 3, 5.

¶ 9 The discounted present value of Petitioner's PTD benefits is \$82,311.02 as of April 1, 2006. This includes assumed cost-of-living increases of 3% per year, a discount rate of 4.27%, and Social Security offset and benefits paid to Petitioner's age of retirement on his 66th birthday. There is a Social Security Disability overpayment of \$4,525.93, of which \$2,022.90 has been recovered from Petitioner by Respondent. In addition, Respondent owes Petitioner \$1,085.44 for underpaid temporary total disability benefits which resulted from a recalculation of Petitioner's average weekly wage. As of March 26, 2006, the net of all of these figures is \$80,893.43.⁶

¶ 10 Petitioner was a witness at trial and the Court finds his testimony credible.

¶ 11 Lola Barnard, Petitioner's wife, was a witness at trial and the Court finds her testimony credible.

¶ 12 Petitioner has a limited ability to walk. He uses a cane or wheelchair for mobility.⁷

¶ 13 Petitioner and his wife live on 120 acres west of Great Falls. Their residence is a 12- by -56-foot 1966 Pontiac mobile home. While Petitioner considers the condition of the home to be livable, he has been unable to obtain insurance on it because of its age.⁸

¶ 14 The mobile home is on blocks instead of a foundation and there are about three steps Petitioner must climb to get inside. It has a hallway which is approximately 30.5-inches wide. The bathroom is about 8-feet deep and 33-inches wide. Petitioner has difficulty navigating the hallway and bathroom because they are too narrow to accommodate his wheelchair. Petitioner also has difficulty stepping up into the bathtub.⁹

¶ 15 In addition to the residence, Petitioner's property has a 32- by 24-foot shop. Petitioner walks from the residence to the shop, where he transfers to his wheelchair.¹⁰

¶ 16 Petitioner testified that he would use part of a lump-sum conversion to purchase a new home. Petitioner located a specially-built mobile home at a local dealership which had wide hallways and doorways and a shower, all of which would help him navigate more easily inside the home. The home, which has since been sold, was available for \$35,000.

⁶ Pretrial Order at 2.

⁷ Trial Test.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

Petitioner believes he will not be able to find another ready-made home, but would have to have one custom-built, which would likely cost more.¹¹

¶ 17 Petitioner's property has a half-mile-long driveway which has a gumbo shale surface. It has a steep grade and is difficult to navigate in bad weather. Petitioner testified that he would also use some of a lump-sum conversion to have gravel put over the driveway so that he would not have to take chains on and off his vehicle or walk from the road in the winter.¹²

¶ 18 Petitioner and his wife own five motor vehicles, the newest of which is a 2001 Subaru, which they purchased used and which Mrs. Barnard uses to drive to and from work. They also own a 1987 Mazda pick-up truck, which has approximately 200,000 miles on it; a 1994 Chevrolet diesel pick-up truck, which they use for towing stock trailers; a four-wheel drive, unlicensed 1986 "S-10," which they use as a farm vehicle; and an older Mazda pick-up truck, which no longer runs. Petitioner testified that he would use approximately \$15,000–\$20,000 of a lump-sum conversion to buy a reliable vehicle that would be easier for him to get in and out of than their current vehicles.¹³

¶ 19 Petitioner receives slightly under \$900 in workers' compensation benefits and \$1,232 in Social Security disability benefits each month. Mrs. Barnard has worked for the past 17 years as a housekeeper at a nursing home in Great Falls. She works an average of 37 hours per week for \$9.30 per hour and makes approximately \$12,000 to \$15,000 annually.¹⁴

¶ 20 Petitioner and his wife raise cattle on their property. Each year they buy and sell cattle, keeping the profits, if any, in a separate account which they then use to purchase cattle the following year. Although in some years they have not made a profit, in 2005 they made \$4,058.53 from the sale of cattle. Currently, the cattle account contains approximately \$11,000, which will purchase ten head of cattle. Petitioner testified that if he had the money to do so, he would purchase 25 head instead of ten.¹⁵

¶ 21 Aside from the items described above, Petitioner and his wife have no other assets. They also have no debts and owe nothing on their property, residence, or vehicles.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

Petitioner testified that he does not believe in borrowing money, particularly since he is on a fixed-income.¹⁶

¶ 22 Petitioner testified that he does not want to sell his property and move to town because he pays lower taxes on his current property and has the ability to earn income by buying and selling cattle.¹⁷ In many respects, such a move may well prove counterproductive to Petitioner's long history of fiscal responsibility.

¶ 23 Petitioner testified that he was aware of this Court's Order in *Satterlee*,¹⁸ and that if a lump sum were granted, he would be foreclosing lifetime benefits to which he might otherwise be entitled, depending on the ultimate outcome of *Satterlee*.

CONCLUSIONS OF LAW

¶ 24 This case is governed by the 2003 version of the Montana Workers' Compensation Act since that was the law in effect at the time of Petitioner's industrial accident.¹⁹

¶ 25 Petitioner bears the burden of proving his case by a preponderance of the evidence.²⁰

¶ 26 The best interests of the Petitioner, the Petitioner's family, and the general public are the primary factors to consider when evaluating lump-sum settlements.²¹

¶ 27 At issue in this case is not only whether this particular Petitioner is entitled to a lump-sum conversion of his PTD benefits, but also whether this Court may award lump-sum conversions which exceed \$20,000. Pursuant to § 39-71-741(1)(c), MCA, the Department of Labor and Industry (Department) or this Court may approve an agreement to convert PTD benefits to a lump sum "if the total of all lump-sum conversions in part that are awarded to a claimant do not exceed \$20,000."

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Satterlee v. Lumberman's Mut. Cas. Co.*, 2005 MTWCC 55.

¹⁹ *Buckman v. Montana Deaconess Hosp.*, 224 Mont. 318, 321, 730 P.2d 380, 382 (1986). Any reference to statutes cited from the Montana Code will employ the language from the 2003 version.

²⁰ *Ricks v. Teslow Consol.*, 162 Mont. 469, 512 P.2d 1304 (1973); *Dumont v. Wickens Bros. Constr. Co.*, 183 Mont. 190, 598 P.2d 1099 (1979).

²¹ *Miller v. Sears*, 2005 MTWCC 54, ¶ 21 (citing *Sullivan v. Aetna Life & Casualty*, 271 Mont. 12, 894 P.2d 278 (1995)).

¶ 28 The Montana Supreme Court has noted that § 39-71-741(1)(c), MCA, “appears to limit lump sum distributions for permanent total disability benefits to \$20,000.”²² However, the Supreme Court, also noting that the Department interprets § 39-71-741(1)(c), MCA, as allowing lump-sum awards in excess of \$20,000, did not ultimately reach the issue because the issue was not briefed or argued at trial.²³

¶ 29 In *Martin v. The Hartford*, this Court interpreted § 39-71-741(1)(c), MCA, as “allowing only one or more **partial** lump-sum conversions [of PTD benefits] up to a total of \$20,000”²⁴ At the same time, this Court also recognized that the Department interprets § 39-71-741(1)(c), MCA, as allowing for either partial lump-sum advances up to \$20,000 or a total lump-sum conversion of all future benefits.²⁵ Ultimately, though, this Court decided that the petitioner in *Martin* was not entitled to a total lump-sum conversion on other grounds. Therefore, the Court did not address the legal issue of whether § 39-71-741, MCA, allowed for a total lump-sum conversion.

¶ 30 For purposes of this Court’s analysis, Section 39-71-741, MCA, states in pertinent part:

(1) By written agreement filed with the department, benefits under this chapter may be converted **in whole or in part** into a lump sum. . . . The department may approve an agreement to convert the following benefits to a lump sum only under the following conditions:

. . . .
(c) permanent total disability benefits if the total of all lump-sum conversions **in part** that are awarded to a claimant do not exceed \$20,000. The approval or award of a lump-sum permanent total disability payment **in whole or in part** by the department or court must be the exception. . . .

(Emphasis added.)

¶ 31 As this Court has noted previously, a court defers to an agency’s interpretation of a statute that it administers.²⁶ Moreover, in construing a statute, a court must endeavor to

²² *Martin v. The Hartford*, 2004 MT 57, ¶ 6, 320 Mont. 206, 86 P.3d 569 (“*Martin Appeal*”).

²³ *Martin Appeal*, n.1.

²⁴ *Martin v. The Hartford*, 2003 MTWCC 25, ¶ 27 (“*Martin*”) (emphasis added).

²⁵ *Id.*

²⁶ *Martin*, ¶ 28 (citing *Waste Management Partners of Bozeman, Ltd. v. Montana Dep’t of Pub. Serv. Regulation*, 284 Mont. 245, 249, 944 P.2d 210, 213 (1997)).

give meaning and effect to **all** statutory provisions. A construction which renders a provision meaningless is disfavored.²⁷ The Department's interpretation of this statute gives meaning and effect to the statutory provision of § 39-71-741(1)(c), MCA, by concluding that the legislature would not have stated that the lump-sum conversions "in part" are limited to \$20,000, while elsewhere in § 39-71-741(1), MCA, granting the Department and this Court the authority to allow lump-sum conversions "in whole or in part" with no pre-set limitation. Conversely, an interpretation that would disallow a full lump-sum conversion would render the "in whole" language in the statute meaningless.

¶ 32 Although this Court has previously questioned the rationale for limiting partial lump-sum conversions to a total of \$20,000 while authorizing a full lump sum of all future benefits,²⁸ an examination of the Department's procedures and the purposes of lump-sum conversions as set forth elsewhere in § 39-71-741, MCA, sheds light upon what may have been the legislature's logic in crafting this statutory scheme. Lump-sum conversions may be approved or awarded only in limited circumstances, as enumerated at § 39-71-741(1)(c)(i)-(ii). A claimant's circumstances may be such that a claimant must come to the Department for approval of a partial lump sum conversion more than once.²⁹ When a partial lump-sum conversion is awarded, a claimant's biweekly benefits are accordingly adjusted downwards.³⁰

¶ 33 It is foreseeable that some claimants may repeatedly request partial lump-sum conversions throughout their benefits period because of various life necessities, self-employment ventures, or other financial hardships brought on by the claimant's reduced income. Each of these partial conversions would, in turn, result in administrative process and burden borne by both the Department and the insurer. Section § 39-71-741(1)(c), MCA, limits these partial conversion transactions to a total of \$20,000. Beyond the \$20,000 limit, only conversions **in whole** are available, thus limiting the administrative and transactional merry-go-round.

¶ 34 The Court is mindful that, as a matter of public record, the Department, with the approval of claimants and insurers alike, has employed this statutory interpretation for, essentially, as long as this statute has been in existence. While this alone is not proof the Department's interpretation is correct, the fact that this interpretation has been in use for

²⁷ *Groves v. Clark*, 277 Mont. 179, 184, 920 P.2d 981, 984 (cited by this Court in *Montana Schools Group Workers' Compensation v. Department of Labor & Indus.*, 1998 MTWCC 31, ¶ 15).

²⁸ *Martin*, ¶ 34.

²⁹ See, *Bennett v. State Compensation. Ins. Fund*, 1998 MTWCC 33, ¶ 13.

³⁰ § 39-71-741(3), MCA.

this long without dire consequences and with so little controversy further persuades this Court as to the correctness of the Department's interpretation of the statute.

¶ 35 Having determined that the authority exists for this Court to award Petitioner his lump-sum conversion, the Court turns to Respondent's argument that Petitioner's request does not meet the necessities of life under § 39-71-741(1)(c)(i), MCA. Respondent argues that the intended purposes for these funds – purchase of a new mobile home, buying a motor vehicle, paying his attorney's fees, and purchasing additional cattle – do not constitute the necessities of life as contemplated by the statute. Respondent further argues that Petitioner could borrow these funds instead of taking a lump-sum conversion. Petitioner argues that these items are all necessities and that he is opposed to borrowing money and has lived his life accordingly.

¶ 36 Addressing the issue of Petitioner's attorney fees, in *Siaperas v. Montana State Fund*,³¹ this Court correctly held that attorney fees are not "necessities of life" for which lump-sum conversions may be made. In *Siaperas*, this Court noted: "The only justification [Petitioner] advances in support of her requests [for a lump-sum conversion] is that her attorney wants his fees in a lump sum and she has had an uneven relationship with the State Fund."³² In that regard, the petitioner in *Siaperas* argued that the attorney fees, themselves, constituted a "necessity of life."³³ This Court rejected this argument.

¶ 37 *Siaperas*, however, is readily distinguishable from the present case. Unlike the petitioner in *Siaperas*, Petitioner is not seeking a lump-sum conversion **in order to** pay his attorney fees. Rather, the attorney fees are merely incidental to obtaining the lump-sum conversion for other necessities of life. They are the percentage to which Petitioner's attorney would be entitled as a result of having to litigate this very issue. If this Court were to disallow a lump-sum conversion merely because a portion of it would be used to pay the claimant's attorney pursuant to the contingent fee retainer agreement, the absurd result would be that only pro sé litigants could seek lump-sum conversions since those represented by counsel would have entered into a Department-approved contingent fee retainer.

¶ 38 Respondent has argued that Petitioner's plan to purchase additional cattle "for a ranching operation that loses money most years"³⁴ should likewise not be considered a

³¹ 2004 MTWCC 4 (*aff'd*, 2004 MT 264N).

³² *Id.*, ¶ 36.

³³ *Id.*, ¶ 45.

³⁴ Pretrial Memorandum at 1.

necessity. Petitioner testified that he has been purchasing and reselling cattle for years, and that most years he has made between \$0 and \$3,000 profit.³⁵ Petitioner testified that a “bad year” is a year in which he made no profit, and that this has happened “a couple of years.”³⁶ The record does not support Respondent’s assertion that the operation “loses money most years.” In fact, the record shows that Petitioner has cautiously and conservatively run this business, setting aside each year’s profits to reinvest the following year.

¶ 39 Finally, the bulk of Petitioner’s lump-sum conversion would go towards the purchase of a new mobile home, or possibly on-site construction of a home, on property which Petitioner and his wife already own. Petitioner requires the periodic use of a wheelchair which he cannot use in his current residence because of the narrow hallways. Moreover, Petitioner cannot insure his current residence because of its age. Petitioner presented evidence that the value of his lump-sum conversion is sufficient to purchase or build a dwelling which would allow him increased mobility within the residence. Petitioner further testified that he would use part of the funds to purchase a motor vehicle which would be more comfortable for him and easier for him to drive, to place a layer of gravel over his driveway to eliminate the need to take chains on and off his vehicle to traverse the driveway in inclement weather, and to purchase additional cattle.

¶ 40 With respect to Respondent’s argument that a lump-sum conversion is not necessary because Petitioner can borrow the money necessary to build a home that will accommodate his disabilities, the Court is unpersuaded. Petitioner has demonstrated a pressing need for the lump-sum conversion he seeks. Specifically, he is living in a forty-year-old uninsurable mobile home in which he cannot get around in his wheelchair. It has been well-established that in determining whether a lump-sum conversion is called for, “the claimant’s best interest is the primary factor to be considered”³⁷ The Court is hard-pressed to accept that it is in the best interest of a permanently totally disabled individual living on a fixed-income to abandon his long-standing practice of fiscal responsibility in favor of incurring debt.

¶ 41 Petitioner has only a few years remaining on his PTD benefits. His financial history demonstrates that he is capable of managing his affairs in a responsible fashion and, in fact, has managed to this point not to incur any indebtedness. The lump-sum conversion of Petitioner’s PTD benefits is clearly in Petitioner’s best interests. The Court, therefore,

³⁵ Barnard Dep. 13:21 - 15:2.

³⁶ Barnard Dep. 14:22-24.

³⁷ *Sullivan v. Aetna Life & Casualty*, 271 Mont. 12, 17, 894 P.2d 278, 281.

awards Petitioner a lump-sum conversion of his PTD benefits, pursuant to § 39-71-741, MCA.

JUDGMENT

¶ 42 This Court has jurisdiction over this matter pursuant to § 39-71-2905, MCA.

¶ 43 Petitioner's request for a lump-sum conversion of his PTD benefits is **GRANTED**.

¶ 44 This JUDGMENT is certified as final for purposes of appeal.

¶ 45 Any party to this dispute may have twenty days in which to request reconsideration from these FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT.

DATED in Helena, Montana, this 20th day of October, 2006.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Richard J. Martin
Larry W. Jones
Submitted: March 31, 2006