

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2001 MTWCC 24

WCC No. 2000-0222

**FILED**

MAY 18 2001

OFFICE OF  
WORKER'S COMPENSATION JUDGE  
HELENA, MONTANA

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ROBERT FLYNN

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

SALISH KOOTENAI COLLEGE

Employer.

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DECISION AND JUDGMENT

**Summary:** Claimant requests that the offset for social security disability (SSD) benefits he receives be reduced by the amount of attorney fees he expended in obtaining the SSD benefits. After frustrating the insurer from securing any recoupment of an overpayment due to his receipt of retroactive SSD benefits, he also seeks a penalty because the insurer recently reduced his biweekly benefits on account of the overpayment, arguing that he must agree to any reduction.

**Held:** The statutes concerning the social security offset are clear and do not allow attorney fees to be considered. The common fund doctrine adopted in *Murer v. State Fund*, 282 Mont. 210, 942 P.2d 69 (1997), is inapplicable and does not overrule *Stahl v. Ramsey Const. Co.*, 248 Mont. 271, 274-276, 811 P.2d 546, 547 (1991). A claimant cannot frustrate recoupment of a social security disability (SSD) overpayment by refusing to agree to a reduction in biweekly benefits. There is nothing in the offset statutes precluding the insurer from reasonably reducing benefits to recoup an SSD overpayment. A subsequent statute authorizing termination of **all** benefits to effect recoupment is not inconsistent with this holding.

## Topics:

**Benefits: Social Security Offset.** The social security offset is not reduced by the attorney fees claimant has paid to secure social security disability benefits. §§ 39-71-701(5) and 39-71-702(4), MCA (1991); *Stahl v. Ramsey Const. Co.*, 248 Mont. 271, 274-276, 811 P.2d 546, 547 (1991). *Murer v. State Fund*, 282 Mont. 210, 942 P.2d 69 (1997), does not overrule *Stahl* or the statutes and is inapposite.

**Benefits: Social Security Offset.** A claimant cannot frustrate recoupment of a social security disability (SSD) overpayment by refusing to agree to a reduction in biweekly benefits. There is nothing in the offset statutes precluding the insurer from reasonably reducing benefits to recoup an SSD overpayment. A subsequent, 1993 statute authorizing termination of **all** benefits to effect recoupment is not inconsistent with this holding.

¶1 This matter is submitted for decision on an Agreed Statement of Facts, a copy of which is attached to this decision. Not all of the agreed facts are necessary for the decision.

## Facts

¶2 Paraphrased, the essential facts are as follows:

¶2A Claimant was diagnosed with an occupational disease (OD) (later diagnosed as bilateral carpal tunnel syndrome) on June 23, 1993. The State Fund which insured claimant's employer at the time, accepted liability for the OD claim.

¶2B Claimant has been totally disabled continuously since the summer of 1993. The State Fund has paid temporary total disability (TTD) benefits since that time and recently conceded that claimant is permanently totally disabled.

¶2C Sometime prior to 1996, claimant filed a claim for social security disability (SSD) benefits. His claim was initially denied, however, he was awarded SSD benefits after going to a hearing before an Administrative Law Judge for the Social Security Administration.

¶2D The State Fund learned of the SSD award, and on February 8, 1996, wrote to claimant advising him that since he was receiving SSD benefits of \$1,029.00 per month, it was reducing his biweekly benefits from \$336.00 to \$217.59 effective February 7, 1996. In addition, the State Fund also notified claimant that after taking into consideration the retroactive SSD benefits paid

to him, it had overpaid him \$14,006.25.<sup>1</sup>

- ¶2E The State Fund failed to follow through with the offset.
- ¶2F Thereafter, claimant demanded that when computing the offset the State Fund deduct \$4000 he had paid in attorney fees for pursuing SSD benefits. The State Fund has refused to do so.
- ¶2G On April 3, 1996, the State Fund suspended claimant's TTD benefits. However, on May 31, 1996, it retroactively reinstated those benefits. In reinstating the benefits, it noted that it had failed to take the social security offset for February 7, 1996, through April 2, 1996, resulting in an additional overpayment of \$947.28. It then deducted that overpayment (\$947.28) from the amounts due claimant. After further correspondence, State Fund paid the \$947.28, reserving the right to recoup the amount in the future.
- ¶2H Thereafter, the State Fund continued to pay claimant regular TTD benefits less the social security offset, without deducting any amount for overpayments.
- ¶2I That is where the matter stood until September 26, 2000, when the State Fund conceded claimant is permanently totally disabled. On that date, the State Fund notified claimant that it intended to recoup overpayments totaling \$14,984.58 by reducing claimant's future benefits by \$49.86 per week. The reduction was in addition to the ongoing social security offset already being taken.
- ¶2J In accordance with its September 26, 2000 notice, the State Fund immediately began deducting the additional \$49.86 from claimant's weekly benefits.
- ¶2K On October 6, 2000, claimant notified the State Fund that he did not want his benefits "terminated or reduced unless and until an agreement has been reached between him and the State Fund as to the exact method and amount." (Agreed Statement of Facts ¶ 22.)
- ¶2L On October 11, 2000, the State Fund invited claimant to propose an

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<sup>1</sup>The parties have not informed the Court whether the SSD amounts are correct. Presumably they are since the briefs do not indicate any dispute over the amounts involved in the controversy.

alternative for recoupment.

- ¶2M On October 18, 2000, claimant demanded that State Fund pay him for all the overpayment deductions made to date and reinstate his benefits without deduction for overpayments. He further proposed that the overpayment be recouped in equal payments beginning in May 2001 and ending at his retirement age<sup>2</sup>. He argued that any other arrangement would cause financial hardship.
- ¶2N On October 24, 2000, the State Fund agreed to stop recouping the overpayment until April 24, 2001, at which time it would resume recoupment at a rate of \$54.64 per week.
- ¶2O On November 2, 2000, the claimant's attorney notified the Sate Fund that he did

not agree that you [State Fund] may reduce his [claimant's] benefits next spring or any other time until we resolve our difference concerning the State Fund's pro rata share of attorney fees. We stand by our position and continue to instruct you not to withhold any benefits until the Court has ordered or we come to an agreement. This is the law.<sup>3</sup>

- ¶2P The claimant then brought this action seeking a determination that in computing the social security offset he is entitled to a pro rata credit for the attorney fees he expended in obtaining SSD benefits and a penalty for the State Fund's unilateral reduction of his benefits to recoup its overpayment.

### Issues

- ¶3 The parties have phrased the issues as follows:

¶3A Whether State Fund should be required to bear a pro rata share of attorney fees incurred by Flynn to establish his Social Security Claim?

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<sup>2</sup>The parties have not bothered to inform the Court as to claimant's age, so the amount and duration of the claimant's proposed recoupment is unknown.

<sup>3</sup>Agreed Statement of Fact ¶¶ 26.

¶3B Whether State Fund should be required to pay the \$199.44 of total disability benefits it terminated and refused to pay on and after September 26, 2000.

¶3C Whether State Fund should be required to pay a penalty, attorney fees and costs (pursuant to § 39-71-611 and -612 and -2907) for terminating and refusing to pay certain total disability benefits.

(Statement of Issues at 1-2.)

### Discussion

¶4 The claimant's occupational disease was diagnosed in June 1993 and the parties agree that the 1991 version of the Workers' Compensation Act must be applied in determining benefits owed to the claimant, *Buckman v. Montana Deaconess Hospital*, 224 Mont. 318, 321, 730 P.2d 380, 382 (1986).

¶5 At issue in this case is the social security offset provided in section 39-71-701(5), MCA (1991), with respect to TTD benefits, and in section 39-71-702(4), MCA (1991), with respect to PTD benefits. The offset language in the two sections is identical. Subsection (5) of section 39-71-701, MCA, and subsection (4) of section 39-71-702, MCA, provide:

In cases where it is determined that periodic disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for such week, which amount is to be calculated from the date of the disability social security entitlement.

#### I. The Attorney Fee Argument

¶6 Claimant urges that the attorney fees he incurred in pursuing his SSD benefits should be taken into consideration in computing the social security offset since the award of SSD benefits benefit the State Fund.

¶7 Neither section 39-71-701(5), MCA, nor section 39-71-701(4), MCA, provide for reduction of the offset on account of attorney fees expended in pursuing and securing SSD benefits. Court's are precluded from inserting additional terms into statutes. § 1-2-101, MCA. The very same arguments made by claimant herein were rejected in *Stahl v. Ramsey Const. Co.*, 248 Mont. 271, 274-276, 811 P.2d 546, 547 (1991). In *Stahl* the Court held:

Section 39-71-701(2), MCA, specifically gives the State Fund the right to offset

an amount equal to one half the benefits "payable because of the injury" without consideration of attorney's fees or costs of collection. In the absence of statutory or contractual authority for the claimant's position, we conclude there is no basis to deny the State Fund's right to offset that portion of the social security benefits that are paid to the attorney.

*Id.*

¶8 Claimant argues that *Stahl* is no longer good law in light of *Murer v. State Compensation Ins. Fund*, 282 Mont. 210, 942 P.2d 69 (1997). *Murer* held that where a claimant brings an action on his own behalf and others similarly situated to establish an entitlement to benefits under the Montana Workers' Compensation Act, and succeeds in that action, the attorney for the claimant bringing the action is entitled to collect attorney fees from benefits he or she has established **as due other benefitting claimants**. At issue in *Murer* was the *common fund* doctrine. That doctrine has no application here. Claimant is not seeking attorney fees for others who may benefit by this decision, rather he is seeking attorney fees with respect to his own entitlement. Moreover, statutes control over common law doctrine. "Where a conflict arises between the common law and a statute, the common law must yield." *ISC Distributors, Inc. v. Trevor*, 273 Mont. 185, 202, 903 P.2d 170, 180 (1995). Claimant is not entitled to a reduction in the offset based on the attorney fees he incurred in obtaining SSD benefits.

## II. Recoupment of Overpayments

¶9 Claimant argues that the State Fund may not recoup overpayments absent his agreement or an order of this Court. In effect, he argues that he can obstruct recoupment and force the State Fund to petition the Court.

¶10 Nothing in the statutes governing the social security offset speak to the issue. The statutes do not establish any procedure or formula for taking the offset in cases where SSD benefits are awarded retroactively.

¶11 Claimant argues that this Court's decision in *Mackney v. State Compensation Mutual Ins. Fund*, WCC No. 9211-6622 (June 18, 1993), precludes the State Fund from unilaterally reducing claimant's benefits to recoup overpayments. The decision in that case lends no support whatsoever to the claimant's position. There is nothing in the decision stating that an insurer cannot unilaterally reduce a claimant's benefits to recoup a SSD offset. The portion of the decision quoted by claimant concerns payment of an undisputed impairment award. The insurer failed to pay the award, offsetting the social security overpayment. Even if the decision were to be read as precluding an insurer from taking an offset absent a claimant's agreement, I would overrule such a holding. The law is clear that an insurer is entitled to offset SSD benefits. That law puts claimants on notice that if they receive

retroactive benefits, the offset will apply. Claimant in this case was represented by competent counsel, who surely knows the offset rule. If the claimant ignored the offset and spent the portion due the insurer he cannot claim surprise when the insurer seeks to recoup the overpayment. A claimant cannot frustrate the insurer's recovery of an overpayment by rejecting the insurer's every proposal for recoupment and insisting that the insurer can take no offset unless it goes to Court.

¶12 Legislation effective July 1, 1993, expressly authorized the insurer to suspend benefits altogether to recoup overpayments. As amended, sections 39-71-701(6) and 39-71-702(7), MCA (1993) provide:

If the claimant is awarded social security benefits, the insurer may, upon notification of the claimant's receipt of social security benefits, suspend biweekly compensation benefits for a period sufficient to recover any resulting overpayment of benefits. This subsection does not prevent a claimant and insurer from agreeing to a repayment plan.

The statute does not apply to this case since it became effective after the claimant's occupational disease. Claimant, however, urges that it shows an insurer lacked authority prior to July 1, 1993, to unilaterally reduce benefits to recoup the offset. The argument is without merit. The new section sanctions **suspension of all benefits** to recoup the offset, which is the most extreme possible method of recoupment. There is nothing in the adoption of the section indicating that the legislature believed that insurers were prohibited from lesser measures of recoupment, and nothing in the prior statutes which precluded such lesser measures.

### III. Unreasonableness

¶13 An insurer has an obligation to act reasonably with regard to payment of benefits. §§ 39-71-611, -612, -2907, MCA. I do not determine that an insurer's unilateral offset for overpayments is in every case reasonable. I only determine that it is not per se unreasonable for an insurer to recoup overpayments despite a claimant's objections. In this case, claimant has not presented sufficient evidence to persuade me that the State Fund's offset for recoupment was unreasonable. I note that claimant has frustrated recoupment altogether for over five years. His own proposal to allow the State Fund to recoup the overpayment beginning May 2001 is an admission that the State Fund is entitled to some recoupment on a biweekly basis, yet he insists the State Fund should recoup **nothing** unless he agrees on a specific amount and the specific time period. **His** position is unreasonable and without legal support.

JUDGMENT

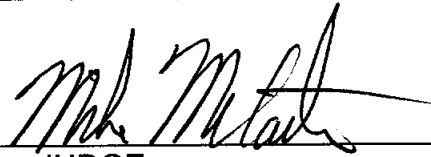
¶14 The claimant is not entitled to relief and his petition is **dismissed with prejudice**.

¶15 This decision is certified as final for purposes of appeal.

¶16 Any party to this dispute may have twenty (20) days in which to request a rehearing from this Decision and Judgment.

DATED in Helena, Montana, this 18<sup>th</sup> day of May, 2001.

(SEAL)



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JUDGE

c: Mr. Rex Palmer  
Ms. Ann E. Clark  
Submitted: February 27, 2001  
Attachment: Agreed Statement of Facts



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**FILED**

**JAN 24 2001**

OFFICE OF  
WORKERS' COMPENSATION JUDGE  
HELENA, MONTANA

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

ROBERT FLYNN	)	WCC No. 2000-0222
Petitioner,	)	
v.	)	AGREED STATEMENT OF FACTS
MONTANA STATE FUND,	)	
Respondent/Insurer for	)	
	)	
SALISH KOOTENAI COLLEGE	)	
Employer.	)	

\* \* \* \* \*

COME NOW the parties, by and through their counsel of record, and stipulate that the following statements are true.

1. That prior to and on June 23, 1993, Claimant suffered an occupational disease arising out of and in the course of his employment with Salish Kootenai College in Lake County, Montana. Claimant injured his arms/hands while performing repetitive activities.
2. At the time the occupational disease arose and progressed, Claimant's employer was enrolled under Compensation Plan III of the Workers' Compensation Act and its insurer is State Compensation Insurance Fund

[State Fund].

3. State Fund has accepted Claimant's claim and has paid both medical and temporary total disability benefits. Claimant has been continuously totally disabled since the summer of 1993 and State Fund has paid total disability benefits for this entire period of time. State Fund has recently conceded permanent total disability.
4. The parties have complied with any mediation procedure required in the Workers' Compensation Act. The Department of Labor, Employment Relations Division, has declined to mediate the issues presented by Claimant's Petition for Hearing on the ground that it does not have jurisdiction over those issues.
5. On June 23, 1993, R. D. Marks, MD, diagnosed Claimant with carpal tunnel syndrome.
6. Also on June 23, 1993, Lennard Wilson, MD, a neurologist, performed nerve conduction studies and diagnosed Claimant with bilateral carpal tunnel syndrome.
7. On July 7, 1993, Rory Wood, MD, an orthopedic surgeon, diagnosed Claimant with bilateral carpal tunnel syndrome. At the time of his evaluation, Claimant had been having numbness and tingling in both hands for quite some time. Dr. Wood noted that claimant had "seen Dr. Marks about this, and had nerve conduction studies done which show bilateral carpal tunnel syndromes." State Fund received this information on August 13, 1993.
8. On August 24, 1993, Claimant presented State Fund with his Claim for Compensation, wherein he stated "Beginning during the last three months of 1992 I noticed gradually increasing pain, numbness and loss of control in my hands. This developed into continual tingling and restricted motion and loss of grip strength." He listed the cause of his condition as "overuse and repetitive activity" affecting his "arms and hands" "beginning during last 3 months 1992."
9. On November 4, 1993, Claimant presented State Fund with a "Claimant

Travel Expense Voucher" wherein he claimed travel expenses for 14 separate trips for medical care related to his carpal tunnel syndrome. The first claimed trip was for 140 miles on June 23, 1993, and described as "went to Dr. Marks and Dr. Wilson."

10. On May 4, 1994, State Fund agreed to pay for the claimed travel expenses "from June 1993 forward."
11. On February 8, 1996, State Fund wrote to Claimant that since Social Security had accepted his claim and started paying him \$1,029.00 per month, it had reduced Claimant's weekly compensation rate from \$336.00 to \$217.59 effective February 7, 1996. At this same time, State Fund also wrote that due to the retroactive lump sum Social Security payment, State Fund calculated that it had overpaid \$14,006.25. Claimant's Social Security benefits were the result of Claimant pursuing active litigation and hearing before an Administrative Law Judge of the Social Security Administration. State Fund also wrote that if Claimant did not contact State Fund to arrange repayment, State Fund might suspend biweekly payments for a period sufficient to recover the overpayment.
12. On February 19, 1996, Claimant wrote to State Fund and asked that his benefits not be suspended, stated that he would prefer a monthly reduction and asked that State Fund take into account the \$4,000.00 he paid in attorney fees to establish and collect his Social Security benefits.
13. On March 26, 1996, State Fund wrote that "on February 28, the State Fund referred Mr. Flynn's claim to Crawford & Company to obtain a Coles Analysis" and that "14 days from the date of this letter, Mr. Flynn's temporary total disability benefits will be suspended. Once the Coles Analysis is completed, the State Fund will be in a better position to revisit this decision regarding [Claimant's] benefits."
14. State Fund suspended biweekly benefits effective April 3, 1996.
15. On April 5, 1996, State Fund wrote, (confirming an April 3, 1996, phone conversation) regarding the attorney fees Claimant paid to obtain his Social Security benefits, "There is no statute which requires the State

Fund to take those attorney fees into consideration.”

16. On May 29, 1996, Claimant wrote (confirming a phone conversation of the same day) requesting that State Fund reinstate his total disability benefits retroactive to the date of his last benefit check which was April 2, 1996. Claimant explained that reinstatement was mandatory since (1) State Fund had terminated benefits before completing the Coles Analysis and (2) Claimant did not agree as to the amount or method of Social Security recoupment. Claimant directed State Fund to Mackney vs. State Fund, WCC No. 9211-6622, June 18, 1993, page 15 and quoted that portion of the opinion where the Court stated:

“the fund apparently unilaterally determined that it would use claimant’s impairment award entitlement to offset the claimant’s Social Security overpayment obligation to the insurer....there is no authority in the workers’ compensation act to allow it (recoupment) to be done indiscriminately. There is certainly no prohibition in simplifying the process, however, the insurer should not assume that the claimant will in all instances agree with this method of recoupment.”

Claimant advised that if an agreement could not be reached, State Fund could take the matter to court but could not unilaterally initiate recoupment.

17. On May 31, 1996, State Fund notified Claimant that it would reinstate total disability benefits retroactive to April 3, 1996, since his last benefit check paid through April 2, 1996. In this same letter, State Fund stated that it had failed to initiate the Social Security offset described in its letter of February 8, 1996, which created an additional overpayment of \$947.28. (Specifically, State Fund paid from February 7, 1996, through April 2, 1996, eight weeks, at a rate of \$336.00 per week for a total of \$2,688.00 rather than \$217.59 per week for a total of \$1,740.72.)

State Fund also wrote that:

“...the State Fund owe’s [Claimant] temporary total disability benefits from April 3, 1996, through May 27, 1996, or 8

weeks. These weeks at the temporary total disability rate of \$217.59 equals \$1,740.42. In order to avoid additional overpayment on top of the already \$14,006.25, [State Fund had] recouped from the back TTD, \$947.28."

State Fund paid Claimant the sum of \$793.44 shortly after this letter.

18. On June 11, 1996, Claimant notified State Fund that he did not agree with State Fund's unilateral decision to recoup the claimed overpayment of \$947.28 in a lump sum. Claimant pointed out that under the Mackney rational this lump sum recoupment was not permissible without agreement of the Claimant. Claimant asked State Fund, "Please reconsider your position and forward the sum of \$947.28 which you withheld from the previous payment."
19. On July 3, 1996, State Fund wrote to Claimant agreeing to pay the additional \$947.28 which it had withheld, with the caveat that this sum would be added to the existing overpayment.
20. On July 10, 1996, Claimant wrote State Fund reiterating his wish that State Fund pay him the additional \$947.28 which it had withheld. State Fund complied with Claimant's request in due course after July 10, 1996.
21. On September 26, 2000, State Fund wrote to Claimant confirming that his occupational disease "was diagnosed on June 23, 1993," and conceding that Claimant is "unable to return to any form of gainful employment in his usual occupations and, as such, is permanently totally disabled as defined by the Workers' Compensation Act."

State Fund also wrote that it had calculated the overpayment resulting from Claimant's SSDI entitlement to be \$14,984.58 and that it would immediately initiate recovery of overpayment by unilaterally reducing Claimants benefits by \$49.86 per week, in addition to the ongoing Social Security offset. State Fund reduced Claimant's benefits as it said it would.

22. On October 6, 2000, Claimant notified State Fund by telephone and letter that he did not want his benefits "terminated or reduced unless and until

an agreement has been reached between him and the State Fund as to the exact method and amount.”

Claimant reminded State Fund that “the law which permits unilateral reduction of benefits to accomplish offset for any Social Security overpayment was not enacted until 1993. Although arising in 1993, Mr. Flynn’s claim occurred under the 1991 law; i.e., before July 1, 1993.”

Claimant expressed his concern that “we do not think the State Fund can reap the full benefit of Mr. Flynn’s expenses incurred to obtain the Social Security award without also paying some of those expenses. If you have any legal authority to the contrary, it would certainly speed up the negotiation process to determine the proper and acceptable amount of reduction in order to permit recoupment of the Social Security overpayment.”

23. On October 11, 2000, State Fund responded to Claimant’s October 6, 2000, communication and invited Claimant to make any alternate suggestion for recoupment of the Social Security offset that Claimant might prefer. State Fund advised that despite Claimant’s objection, State Fund would continue “the current recovery method” pending an agreement to change the method. State Fund further advised that it would not allow or recognize any reduction in the claimed overpayment as a result of the attorney fees Claimant paid to obtain his Social Security benefits.
24. On October 18, 2000, Claimant wrote to State Fund that he still did not want his benefits terminated or reduced unless and until an agreement has been reached between him and the State Fund as to the exact method and amount. Claimant also asked that State Fund please immediately pay the recent biweekly check reduction and reinstate benefits to the prior level until an agreement is reached or the Workers’ Compensation Court orders otherwise.

Claimant went on to propose that any reductions in biweekly benefits begin with the first benefit check coming due in May 2001 with equal reductions through his retirement age. Claimant advised that this would allow him to adjust his budget in preparation for the reduction. He


explained that the present reduction which State Fund initiated unilaterally was a violation of law and a hardship on Claimant and his family. He further advised State Fund that, "just this year Claimant's wife had retired from work and they were trying to adjust to the income loss." Also, he advised that at this time of year his utility bills increase from the range of \$30.00 per month in the summer to the range of \$200.00 per month in the winter. He further explained that he can switch to a flat rate budget billing with Montana Power to help adjust to the reduction in workers' compensation benefits, but he understood that this option was not available until spring.

Finally, Claimant pointed out that waiting until spring would allow State Fund and Claimant to work out the attorney fee issue. Claimant pointed out that his counsel's efforts in establishing and collecting Social Security benefits created a common fund from which he and the State Fund both benefitted. Claimant concluded this communication by again reminding State Fund that, "there is no just reason why the State Fund should not share in the cost of that benefit. Again, if you have any authority, legal or otherwise, to the contrary, please provide it to me."

25. On October 24, 2000, State Fund wrote Claimant that it would cease the unilateral reductions in his biweekly payments (of which there were two, a total of \$199.44) but that it would not pay him the funds it had withheld. It went on to advise that it would reinstate reductions beginning April 24, 2001. At that point the reductions would be \$54.64 per week.
26. On November 2, 2000, Claimant wrote State Fund once again advising that he, "does not agree that you may reduce his benefits next spring or any other time until we resolve our differences concerning the State Fund's pro rata share of attorney fees. We stand by our position and continue to instruct you not to withhold any benefits until the Court has ordered or we come to an agreement. This is the law."
27. At all times relevant to the issues and funds in dispute, there has been no court order or agreement between the parties authorizing State Fund to recoup any portion of the alleged overpayment.

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\_\_\_\_\_  
by Rex Palmer

1-24-01  
date

  
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by Ann E. Clark

2/2/01  
date