

Larry W. Jones
 Law Office of Jones & Garber
 An Insurance Company Law Division
 700 SW Higgins Avenue, Suite 108
 Missoula, MT 59803-1489
 (406) 543-2420
 (406) 829-3436 (FAX)
 Attorney for Liberty Northwest Ins. Corp.

FILED

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OFFICE OF
 WORKERS' COMPENSATION JUDGE
 HELENA, MONTANA

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

EULA MAE HIETT,)	WCC No. 2001-0278
)	
Petitioner,)	
)	
vs.)	LIBERTY'S RESPONSE TO
)	HIETT'S OPENING BRIEF
MONTANA SCHOOLS GROUP INSURANCE)	
AUTHORITY,)	
)	
Respondent/Insurer,)	
)	
MONTANA STATE FUND,)	
)	
Intervenor.)	

The Court in its Minute Entry of May 11, 2005 framed the issues to be briefed thusly:

Two threshold issues were identified. The first is whether the *Hiett* decision abrogates the exclusion of palliative and maintenance care, § 39-71-704(1)(f), MCA. The second is whether the secondary medical services section, 39-71-704(1)(b), MCA, applies under any circumstances or whether it was wholly abrogated by the *Hiett* decision. In other words are insurers liable for secondary medical services to the same extent they are liable for primary medical services?

Hiett in her Brief at p. 6-7 slides off the issues as framed by the Court and addresses the following issue: Did the Hiett Court in redefining the word "achieving" to mean "sustainment" redefine secondary medical services and palliative and maintenance care, so as to transform

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payment for these types of care into a chameleon liability that shifts based on whether the prescribing physician characterizes the care as necessary or not necessary to sustain medical stability?

The word "abrogate" means "To annul, cancel, repeal or destroy." Black's Law Dictionary, 5th Ed. at p. 8.

As Hiett sets forth at p. 5 of her Brief, the Hiett Court did not strike, re-write or otherwise modify MCA § 39-71-704(1)(f). Therefore, if a treatment is palliative or maintenance, as those terms are defined, the insurer is not liable for them.

Also, the Hiett Court did not strike, re-write or otherwise modify MCA § 39-71-704(1)(b), and its related definitions. Therefore, if an insurer can show prescribed care, falls under the definition of secondary medical services, it is not liable for it.

All the Hiett decision stands for is the proposition that the Court redefined "achieving" to mean sustained for chronic conditions, such as pain. If prescribed treatment is necessary to sustain medical stability, it is primary and the concepts of secondary medical services and palliative and maintenance care as defined and delineated by the legislature remain unchanged.

The short answer to the questions framed by the Court's two issues is no. The dissenters in Hiett suggest something else may have been abrogated.

DATED this 13 day of July, 2005.



Larry W. Jones
Attorney for Respondent/Insurer

CERTIFICATE OF SERVICE

I hereby certify that on the 13 day of July, 2005, I served the original of the foregoing LIBERTY'S RESPONSE TO HIETT'S OPENING BRIEF, by first-class mail, postage prepaid, on the following:

Ms. Patricia J. Kessner
Clerk of Court
Workers' Compensation Court
P. O. Box 537
Helena, MT 59624-0537

and a copy of the same to the following:

Sydney E. McKenna
Tornabene & McKenna, PLLC
P. O. Box 7009
Missoula, MT 59807-7009
Attorney for Petitioner

Leo S. Ward
Browning Law Firm
P. O. Box 1697
Helena, MT 59624-1697
Attorney for Respondent

Bradley J. Luck
Garlington, Lohn & Robinson, PLLP
P. O. Box 7909
Missoula, MT 59807-7909
Attorney for Montana State Fund

CB Felton
Cindy Brown Felton