

**IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA**

**2025 MTWCC 4**

**WCC No. 2024-00405**

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**YELDER ESPINOZA**

**Petitioner**

**vs.**

**MONTANA STATE FUND**

**Respondent/Insurer.**

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**ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT**

**Summary:** The Petitioner claims that: 1) the Respondent incorrectly calculated his TTD benefits for two reasons: a) it should have used 60 as the number of hours the Petitioner was hired to work each week, and b) it should have used the monthly fair rental value of a four-bedroom home in Yellowstone County to determine the value of the housing provided as part of his remuneration. The Petitioner further claims that 2) the Respondent's delay and refusal to pay the correct benefits was unreasonable, thus entitling him to costs, attorney fees, and a penalty. The Respondent moves for Summary Judgment on Petitioner's claims, asserting that there are no disputes of material fact and that it is entitled to judgment as a matter of law that: 1) it properly calculated the Petitioner's TTD benefits using: a) 40 as the number of hours the Petitioner was hired to work each week, and b) the monthly fair rental value of a one-bedroom home in Yellowstone County to determine the value of the Petitioner's housing, and 2) it acted reasonably and according to the purposes of the Workers' Compensation Act.

**Held:** The Respondent's motion for summary judgment is denied. There is a genuine issue of material fact as to the number of hours the Petitioner was hired to work each week. There is also a genuine issue of material fact as to the proper valuation of the Petitioner's housing due to a lack of clarity about the details of his living arrangement at the time of his injury. This Court cannot rule on the Petitioner's claim for costs, fees, and a penalty until the Petitioner's other claims are resolved at trial.

¶ 1 The Petitioner Yelder Espinoza claims that the Respondent Montana State Fund (State Fund) incorrectly calculated his Temporary Total Disability (TTD) benefits, and that he is entitled to payment of the correctly calculated benefits, as well as costs, fees, and a penalty for State Fund's delay and refusal to pay.

¶ 2 State Fund moves for Summary Judgment, asserting that there are no disputes of material fact and that it has correctly calculated Mr. Espinoza's TTD benefits and acted reasonably throughout the adjustment of his claim.

¶ 3 Neither party requested a hearing.

¶ 4 For the following reasons, this Court denies State Fund's Motion for Summary Judgment.

### FACTS

¶ 5 In September 2022, Roadrunner Construction, Inc. (Roadrunner) was a subcontractor for Great States Construction, Inc., (Great States) on a commercial construction project (Project) in Billings, Montana.

¶ 6 Jose Vazquez was the President of Roadrunner.

¶ 7 Alejandro Raya<sup>1</sup> was a supervisor for Mr. Vazquez.

¶ 8 Yemina Vazquez, Mr. Vazquez's sister, functioned in some ways like a secretary for Roadrunner, completing tasks like onboarding workers, making entries in QuickBooks, and cutting checks. At times, Mr. Vazquez performed some of the same functions. Roadrunner also used the services of a CPA.

¶ 9 At the relevant times, Roadrunner did not carry workers' compensation insurance in Montana, and Great States was insured by State Fund.

¶ 10 On September 19, 2022, Mr. Raya hired Mr. Espinoza to work on the Project for \$22 per hour.

¶ 11 As part of Mr. Espinoza's remuneration, Roadrunner provided housing for him in a rented home at 240 Terry Avenue (Terry House) in Billings, which was shared by other workers working on Roadrunner projects.

¶ 12 On September 26, 2022, while he was working on the Project, Mr. Espinoza fell nearly 30 feet and suffered an acute traumatic brain injury, skull fractures, facial bone fractures, septal fractures, and other injuries to the head, shoulder, and arms, and was hospitalized for treatment.

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<sup>1</sup> The proper spelling of Alejandro's last name is of some debate.

¶ 13 After Mr. Espinoza's accident, Roadrunner issued him several checks, including one on October 28, 2022, for \$1,760.00, and another on December 16, 2022, for \$3,400.00.

¶ 14 In March 2023, Ms. Vazquez filed a First Report of Injury (FROI) on Mr. Espinoza's behalf, based mainly on information she got from Mr. Raya.

¶ 15 The Uninsured Employers Fund (UEF) initially reviewed Mr. Espinoza's claim because Roadrunner was uninsured. The UEF investigated but denied the claim on May 10, 2023, and tendered it to State Fund.

¶ 16 State Fund accepted Mr. Espinoza's claim for multiple injuries on June 9, 2023.

¶ 17 State Fund initially calculated Mr. Espinoza's Average Weekly Wage (AWW) based on "the bunkhouse provision" and determined that his AWW was \$1,017.39 per month in Yellowstone County.<sup>2</sup>

¶ 18 On October 3, 2024, State Fund re-calculated Mr. Espinoza's AWW based on the monthly fair rental value of a "One Bedroom" and determined that his AWW was \$1,042.94 per month in Yellowstone County.

¶ 19 State Fund issued a check under separate cover to Mr. Espinoza to cover its underpayment of his TTD benefits.

*The Number of Hours Mr. Espinoza Was Hired to Work*

¶ 20 Neither party has produced a copy of a written agreement as to the terms of Roadrunner's hire of Mr. Espinoza or a paycheck or paystub as to the actual hours Mr. Espinoza worked in the days before his injury.

¶ 21 The UEF interviewed Mr. Espinoza at some point between March 2023 and May 2023 as part of its investigation of his claim. During his interview, Mr. Espinoza indicated that he worked full time, sometimes 9 to 10 hours a day or 5 if it was snowing. But normally, it was 6 am to 5 pm, Monday to Saturday.

¶ 22 At Ms. Vazquez's deposition on July 8, 2024, she testified that Roadrunner sent checks to Mr. Espinoza after his injury, equivalent to the 40-hour week, since he was not working and needed to have care and at least his 40-hour week pay. The same day, at his deposition, Mr. Vazquez testified that after Mr. Espinoza's injury, he assumed the insurance would pay for the surgery, but he intended to give Mr. Espinoza wages based on 40 hours during his recuperation.<sup>3</sup>

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<sup>2</sup> This miscalculation was based on a misreading of Mr. Espinoza's interview with the UEF, in which he stated that, 16 of Mr. Vazquez's workers sometimes shared a rental house where he stayed after leaving Montana.

<sup>3</sup> Affidavit of Ashley Makowski, Exs. 2, 3, 12, 13.

¶ 23 At his deposition on May 22, 2025, Mr. Espinoza testified that Roadrunner issued him checks after his injury so that he could support himself and his family. He testified that those checks were not reflective of his wage and that he never received a check from Roadrunner for the actual wages that he was supposed to be paid for.

¶ 24 When asked at their depositions whether there was any agreement with respect to the number of hours Mr. Espinoza was going to get paid to work:

¶ 24a Mr. Vazquez testified on July 8, 2024<sup>4</sup>: “Well, that depends on the time that they are behind that they need to clean. If they’re behind, they need to work more. If there isn’t that much, there isn’t that much work. So it fluctuates.”

¶ 24b Mr. Espinoza testified<sup>5</sup> that on a call on speaker phone, between him and Mr. Raya on one end, and Mr. Vazquez on the other, an agreement was reached that Mr. Espinoza would work 10 hours per day, six days per week.

#### *The Details of Mr. Espinoza’s Housing as Part of His Remuneration*

¶ 25 When asked at her deposition on July 8, 2024, Ms. Vazquez testified that Mr. Vazquez rented a couple of houses per month based on the crews that he might have and terminated the contract when he was done. She did not know how many workers he had on the Project around the time of Mr. Espinoza’s injury or who was staying at which house. Likewise, at his deposition the same day, Mr. Vazquez testified “I really don’t know” if Mr. Espinoza lived at the Terry House, but “most likely, yes.”

¶ 26 Mr. Vazquez testified that the Terry House was two stories, and it had three bedrooms downstairs and another three upstairs. He testified that a worker would not have had “one whole bedroom per person.” However, he also testified that he had no basis to dispute that Mr. Espinoza had his own room. Mr. Vazquez testified that he was housing two to three workers on the Project in the house but that other groups on different projects could also stay there.

¶ 27 Mr. Vazquez testified that he offered Mr. Espinoza the opportunity to move back into that house when he got out of the hospital – even his own room if his girlfriend wanted to take care of him – but that he did not know where Mr. Espinoza stayed after he left the hospital.

¶ 28 In his Responses to Interrogatories Nos. 1 and 3, dated July 17, 2024, Mr. Espinoza stated that the Terry House was a five- or six-bedroom house, and that it had three bedrooms upstairs and two to three bedrooms downstairs, respectively.

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<sup>4</sup> Mr. Vazquez’s deposition was taken on July 8, 2024.

<sup>5</sup> Mr. Espinoza’s deposition was taken on May 22, 2025.

¶ 29 In his Responses to Montana State Fund’s Second Set of Discovery Requests to Petitioner No. 9, dated August 29, 2024, Mr. Espinoza admitted that while he was working in Billings, “Roadrunner Construction had provided a separate bedroom for him and that there were six bedrooms in the house,” but clarified that although “there were three bedrooms in the upstairs of the house that Roadrunner Construction provided in Billings, Montana,” he “[could not] recall or say with certainty how many bedrooms were downstairs.”

¶ 30 At his May 22, 2025, deposition, Mr. Espinoza testified that he did not remember the address of where he was living while he was working on the Project, but it was a house provided by Roadrunner for workers. He testified that there were three bedrooms and six people living on the top floor, that he did not have his own room, and that he shared his room with a male coworker. He further testified that there were people living in the basement.

### LAW AND ANALYSIS

¶ 31 To prevail on a motion for summary judgment, the moving party must meet its initial burden of showing the “absence of a genuine issue of material fact and entitlement to judgment as a matter of law.”<sup>6</sup> “[I]f the moving party meets its initial burden to show the absence of a genuine issue of fact and entitlement to judgment, the burden shifts to the party opposing summary judgment either to show a triable issue of fact or to show why the undisputed facts do not entitle the moving party to judgment.”<sup>7</sup>

¶ 32 The 2021 version of the Workers’ Compensation Act is applicable to this matter.

¶ 33 Section 39-71-701(3), MCA, provides, in pertinent part, that TTD benefits are 66 2/3% of the wages received at the time of the injury but that the maximum weekly compensation benefits may not exceed the state’s AWW at the time of injury.

¶ 34 Section 39-71-123, MCA, provides, in pertinent part, that:

(1) "Wages" means all remuneration paid for services performed by an employee for an employer . . . . Wages include the cash value of all remuneration paid in any medium other than cash. The term includes but is not limited to:

. . . .

(g) lodging, rent, or housing if it constitutes part of the employee's remuneration and is based on a value as set by administrative rule. The

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<sup>6</sup> *Begger v. Mont. Health Network WC Ins. Trust*, 2019 MTWCC 7, ¶ 15 (citation omitted).

<sup>7</sup> *Richardson v. Indem. Ins. Co. of N. Am.*, 2018 MTWCC 16, ¶ 24 (alteration added) (citation omitted), *aff'd*, 2019 MT 160, 396 Mont. 325, 444 P.3d 1019.

values set by administrative rule must address the general geographic proximity to available housing and may consider other reasonable factors that affect value.

. . . .

(3)(a) . . . [F]or compensation benefit purposes, the average actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except that if the term of employment for the same employer is less than four pay periods, the employee's wages are the hourly rate times the number of hours in a week for which the employee was hired to work.

¶ 35 The 2018 version of ARM 24.29.721, which was in effect until mid-2024, and thus, at the time of Mr. Espinoza's injury, provides, in pertinent part:

(1) For the purposes of this rule, the following definitions apply:

. . . .

(b) "Bedroom" means a room in a dwelling that is primarily used for sleeping.

. . . .

(d) "Zero bedrooms" means a dwelling that is an efficiency, dormitory, or a bunkhouse.

(2) For the purposes of calculating wages pursuant to 39-71-123, MCA, the monthly fair rental value, in U.S. dollars, for housing is established for each county in Montana as specified in the publication entitled "Montana Workers Compensation Housing, Rent or Lodging Monthly Rates."

. . . .

(4) If an individual is not currently using the room for sleeping, it is not considered a bedroom for the purpose of this rule.

¶ 36 The Montana Workers Compensation Housing, Rent or Lodging Monthly Rates, effective between April 1, 2018, and June 30, 2024, were:

Locality Name	Zero-Bedroom	One-Bedroom	Two-Bedroom	Three-Bedroom	Four-Bedroom
Yellowstone County	\$597	\$708	\$936	\$1,308	\$1,594

#### Hours Hired to Work:

¶ 37 There is no dispute that Mr. Espinoza's term of employment for Roadrunner immediately preceding his injury was less than four pay periods. Thus, part of his AWW is calculated pursuant to § 39-71-123(3)(a), MCA, i.e., his hourly rate times the number of hours in a week for which he was hired to work. His hourly rate was \$22 per hour.

¶ 38 As to the number of hours Mr. Espinoza was hired to work per week, State Fund contends that Mr. Espinoza was hired to work 40 hours per week. It proffers the checks Roadrunner sent Mr. Espinoza after his injury, which were "based on" and "equivalent to" 40 hours of work per week.

¶ 39 Mr. Espinoza contends that he was hired to work 60 hours per week. He testified that Mr. Vazquez agreed on a call with him that he would work 10-hour days, six days per week. He further testified that the checks Roadrunner sent him were to help him support himself and his family and that he was never paid for the hours he worked before his injury.

¶ 40 There is clearly a genuine dispute of material fact, inappropriate for resolution on summary judgment.

#### Monthly Fair Rental Value:

¶ 41 There is no dispute that Roadrunner provided housing at the Terry House as part of Mr. Espinoza's remuneration for working on the Project. Thus, part of Mr. Espinoza's AWW is calculated pursuant to § 39-71-123(1)(g), MCA, ARM 24.29.721(2), and The Montana Workers Compensation Housing, Rent or Lodging Monthly Rates.

¶ 42 Notwithstanding that the Terry House had five or six bedrooms, State Fund contends that the monthly fair rental value of a one-bedroom house is the proper rate to be used in the calculation of Mr. Espinoza's AWW since he shared the house with other employees and used only one of the bedrooms for sleeping.

¶ 43 Mr. Espinoza contends that, even though the Terry House had more than four bedrooms, the monthly fair rental value for a four-bedroom house should be used in the calculation of his AWW since that is the largest house for which rates are published. Further, he argues that publication of rates for two-, three-, and four-bedroom houses

indicates that the Petitioner is not limited to the value of a one-bedroom house simply because he cannot occupy more than one bedroom at a time.

¶ 44 Because the record is unclear as to the details of Mr. Espinoza's living arrangement at the Terry House, including the number of people who lived there, when, and in which rooms, the value of the housing he received as remuneration for working on the Project cannot be determined on Summary Judgment.

¶ 45 Accordingly, this Court enters the following:

ORDER

¶ 46 State Fund's Motion for Summary Judgment is **denied** on the grounds that there are genuine disputes of material fact that preclude summary judgment.

DATED this 22<sup>nd</sup> day of August, 2025.

(SEAL)

/s/ Lee Bruner  
JUDGE

c: Anthony F. Jackson  
Mark D. Meyer

Submitted: June 23, 2025