

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1995 MTWCC 51

WCC No. 9501-7213

TEDDY A. O'CONNOR

Petitioner

vs.

NATIONAL UNION FIRE INSURANCE

Respondent.

ORDER DENYING PETITIONER'S REQUEST FOR REHEARING

Summary: In Request for Rehearing more in the nature of motion to amend the Court's findings and conclusions, claimant asks that insurer be required to pay for her psychological treatment and to honor a change of treating physicians.

Held: Where claimant's doctor testified at trial that he did not recommend counseling for claimant, insurer was not liable for claimant's counseling costs. Although claimant now submits additional opinion from her physician, the matter should have been explored at trial and will not now be reopened. Because there is presently no controversy regarding claimant's treating physician, the Court will not now make any orders on that issue.

Topics:

Benefits: Medical Benefits: Treating Physician. Although claimant asks the Court to allow her to designate a particular physician as her treating physician after her current treating doctor completes surgery and post-operative care, there is presently no controversy regarding claimant's treating physician, so the Court will not now make any orders on that issue.

Benefits: Medical Benefits: Psychological Counseling. Where claimant's doctor testified at trial that he did not recommend counseling for claimant, insurer was not liable for claimant's counseling costs. Although claimant now submits additional opinion from her physician, the matter should have been explored at trial and will not now be reopened.

Medical Conditions (By Specific Condition): Mental Disorders. Where claimant's doctor testified at trial that he did not recommend counseling for claimant,

insurer was not liable for claimant's counseling costs. Although claimant now submits additional opinion from her physician, the matter should have been explored at trial and will not now be reopened.

Physicians: Psychologists. Where claimant's doctor testified at trial that he did not recommend counseling for claimant, insurer was not liable for claimant's counseling costs. Although claimant now submits additional opinion from her physician, the matter should have been explored at trial and will not now be reopened.

Physicians: Treating Physician: Changing. Although claimant asks the Court to allow her to designate a particular physician as her treating physician after her current treating doctor completes surgery and post-operative care, there is presently no controversy regarding claimant's treating physician, so the Court will not now make any orders on that issue.

Petitioner has filed petitioner's request for rehearing. The request is more in the nature of a motion to amend the Court's findings rather than for a new trial.

Petitioner requests first, that the Court revisit its finding that she is not entitled to reimbursement for psychological counseling. The finding was based on Dr. McMurry's testimony at trial that he did not recommend counseling and the lack of a recommendation from any other physician. Petitioner draws the Court's attention to an office note of Dr. McMurry as supporting her request. That note, which is found at Exhibit 1, page 36, reads in relevant part: "She [petitioner] has also remained very despondent, tearful, depressed, and has requested referral to psychiatry and arrangements are being made to satisfy that need." Petitioner emphasizes the latter part of the sentence dealing with "arrangements." The Court emphasizes the word "requested" since this demonstrates that Dr. McMurry was complying with the petitioner's request rather than making an independent recommendation. Thus, the note does not contradict his testimony.

Petitioner has provided the Court with a post-trial letter from Dr. McMurry stating that he did recommend that psychological support for pain control be provided. (Exhibit A to petitioner's request for rehearing.) This matter should have been explored with Dr. McMurry at trial. Of course, the Court may have misunderstood Dr. Murry's testimony but the motion does not contest the Court's finding or attach a transcript of the testimony in question.

Finally, petitioner asks that the Court clarify that claimant may designate Dr. Richard A. Nelson as her treating physician after Dr. McMurry completes surgery and post-surgical care, and also that the respondent is responsible for referrals by Dr. McMurry to Dr. Shenton and Dr. Honeyman. Dr. Honeyman was the psychologist who treated the claimant and payment of his bills is the subject of the claimant's first argument. For the reasons outlined in the previous two paragraphs, the Court declines to order payment of his bills. Based on Exhibit B, page 2 to the petitioner's request for rehearing, it appears that Dr. Shenton's bill was paid and that the insurer merely notified claimant that any future bills of

the doctor would not be paid. Thus, there is no present controversy regarding his bills. As to Dr. Nelson, that matter presents no present controversy. Should there be a controversy in the future, petitioner may file a new petition.

The petitioner's request for rehearing is denied.

Dated in Helena, Montana, this 23rd day of June, 1995.

(SEAL)

/S/ Mike McCarter

JUDGE

c: Mr. Don Edgar Burris
Mr. Joe Seifert