

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2006 MTWCC 21

WCC No. 2005-1330

MONTANA STATE FUND

Appellant

vs.

MICHAEL H. PARDIS, D.C.

Respondent.

DECISION AND JUDGMENT

Summary: Insurer appealed ruling by hearing officer for the Department of Labor and Industry which held that insurer was liable for payment to chiropractor for treatments provided to four patients even though those treatments far exceeded statistical averages presented by insurer's experts. The insurer did not obtain independent medical examinations of the patients and therefore could not prove the patients had reached maximum medical improvement prior to the cessation of treatment. Furthermore, as regards one of the four patients, the insurer did not have the authority to direct the patient to obtain treatment from another physician.

Held: The Final Agency Decisions are affirmed.

Topics:

Appeals (To Workers' Compensation Court): Standard of Review. Appeals to this Court from the Department of Labor and Industry are subject to the applicable provisions of the Montana Administrative Procedures Act (MAPA). Section 2-4-704(2), MCA, sets forth the standard of review which this Court utilizes in reaching its determination.

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 2-4-704. Appeals to this Court from the Department of Labor and Industry are subject to the applicable provisions of the Montana Administrative Procedures Act (MAPA). Section 2-4-704(2), MCA, sets forth the standard of review which this Court utilizes in reaching its determination.

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-1101. Although an IME doctor strongly recommended that a patient, whose treating physician is a chiropractor, see a medical doctor to “monitor [the patient’s] progress,” the insurer cannot compel the patient to change treating physicians. Monitoring progress does not equate to the type of specialized evaluation or treatment contemplated by § 39-71-1101(3), MCA.

Physicians: Treatment: Specialized Evaluation or Treatment. Although an IME doctor strongly recommended that a patient, whose treating physician is a chiropractor, see a medical doctor to “monitor [the patient’s] progress,” the insurer cannot compel the patient to change treating physicians. Monitoring progress does not equate to the type of specialized evaluation or treatment contemplated by § 39-71-1101(3), MCA.

Physicians: Treatment: Overtreatment. Although the insurer put forth credible statistical data which demonstrated that a chiropractor performed an average number of treatments on four subject patients which far exceeded the average number of treatments conducted by chiropractic providers statewide on patients insured by Medicare or Blue Cross Blue Shield of Montana, the insurer did not put forth evidence that any of these specific four patients were overtreated.

Benefits: Medical Benefits: Maintenance Care. This Court affirmed a Department of Labor and Industry hearing officer who, in a case in which four chiropractic patients received a number of treatments far in excess of the statewide statistical average of treatments, concluded that the only factual means to establish that any particular patient is receiving maintenance care would be through examination of that patient by another qualified health care professional.

Physicians: Independent Medical Examinations: Generally. Where no IME was performed on four chiropractic patients until after the treating physician opined that the patients were at MMI, in spite of statistical evidence which demonstrated that the four patients each received a number of treatments well in excess of the statistical average, the Court cannot conclude that a high number of treatments taken alone – without an IME or other direct evidence that a patient has reached MMI and is therefore receiving palliative or maintenance treatments – is sufficient to deny the insurer’s liability for payment.

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¶1 Montana State Fund appeals the May 11, 2005, Final Agency Decisions from the Department of Labor and Industry. The Department’s hearing officer determined that Montana State Fund was liable to Dr. Michael H. Pardis, the Petitioner in the consolidated cases below, for chiropractic treatments he provided to four patients.¹ Regarding patient 2053, the hearing officer further held that Montana State Fund could not refer that patient, whose treating physician was Dr. Pardis, to managed care or a new treating physician without the patient’s consent because patient 2053’s condition did not satisfy any of the requirements of § 39-71-1101(3)(a)-(d), MCA.²

¶2 Appeals to this Court from the Department of Labor and Industry are subject to the applicable provisions of the Montana Administrative Procedures Act (MAPA).³ Section 2-4-704(2), MCA, provides:

The court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because:

- (a) the administrative findings, inferences, conclusions, or decisions are:
 - (i) in violation of constitutional or statutory provisions;
 - (ii) in excess of the statutory authority of the agency;
 - (iii) made upon unlawful procedure;
 - (iv) affected by other error of law;
 - (v) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;
 - (vi) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (b) findings of fact, upon issues essential to the decision, were not made although requested.

¹ For privacy reasons, the patients were identified by the cause numbers of Dr. Pardis’ respective petitions: 2053, 2057, 2058, and 2059.

² Final Agency Decisions at 10.

³ *McNeese v. State Comp. Ins. Fund*, 1995 MTWCC 33.

¶3 Montana State Fund argues that this Court should reverse the hearing officer's decision under either § 2-4-704(2)(a)(v) or (vi), MCA.⁴ Dr. Pardis responds that the facts found within the Final Agency Decisions, and which are unchallenged by the Appellant, support the conclusions reached by the hearing officer.⁵

Issue One: Whether Montana State Fund had the authority under § 39-71-1101, MCA, to direct patient 2053 to obtain treatment from another physician.

¶4 Montana State Fund argues that the hearing officer incorrectly concluded that it lacked the authority to transfer patient 2053 to a new treating physician.⁶ Dr. Pardis responds that no basis for removing Dr. Pardis as patient 2053's treating physician was provided.⁷

¶5 The hearing officer found that Dr. Pardis treated patient 2053 a total of 53 times beginning October 22, 2003, and ending March 24, 2004,⁸ at which time Dr. Pardis placed patient 2053 at maximum medical improvement (MMI).⁹ On February 3, 2004, Dr. Aimee V. Hachigian-Gould performed an independent medical examination (IME) of patient 2053. Dr. Hachigian-Gould did not find patient 2053 to be at MMI, but "strongly recommended" that 2053 "be placed under the care of a medical doctor to monitor patient 2053's progress."¹⁰ On March 15, 2004,¹¹ Montana State Fund assigned patient 2053 to a new treating physician and scheduled an appointment for March 29, 2004.¹² At this appointment, the new treating physician concluded, as had Dr. Pardis five days earlier, that the patient had reached MMI.¹³ Montana State Fund argues that Dr. Hachigian-Gould's recommendation that patient 2053 be placed under the care of a medical doctor made Montana State Fund's transfer appropriate pursuant to § 39-71-1101(3)(c), MCA.¹⁴ The hearing officer reasoned that patient 2053

⁴ Brief of Appellant at 1-2.

⁵ Brief of Respondent at 2:16-20.

⁶ Brief of Appellant at 9, fn. 1.

⁷ Brief of Respondent at 4:15-19.

⁸ Final Agency Decisions, Findings of Fact 1.

⁹ *Id.*, Findings of Fact 4.

¹⁰ *Id.*, Findings of Fact 2.

¹¹ The Final Agency Decisions states the date as March 15, 2003. However, this is obviously a scrivener's error since patient 2053 was assigned to a new treating physician, Dr. Allen Weinert, with whom an appointment was made on March 29, 2004.

¹² Final Agency Decisions, Findings of Fact 3.

¹³ *Id.*, Findings of Fact 4.

¹⁴ Brief of Appellant at 9, fn. 1.

exercised a statutory right to choose a treating physician and selected Dr. Pardis.¹⁵ The hearing officer concluded that § 39-71-1101(3)(c), MCA, does not give Montana State Fund the authority to transfer the patient to another treating physician because Dr. Hachigian-Gould's recommendation did not establish the need for specialized evaluation or treatment.¹⁶

¶6 Section 39-71-1101(1), MCA, states that a worker may choose his or her initial treating physician, subject to the limitations found within subsection 3 of that statute. Section 39-71-1101(3)(c), MCA, states that a medical service provider who otherwise qualifies as a treating physician but who is not a member of a managed care organization may not provide treatment unless authorized by the insurer if the injury results in the need for a referral to another medical provider for specialized evaluation or treatment.¹⁷ In the case at hand, Dr. Hachigian-Gould's "strong" recommendation was that a medical doctor "monitor [2053's] progress."¹⁸ Monitoring progress does not equate to the type of specialized evaluation or treatment contemplated by § 39-71-1101(3)(c), MCA. Therefore, the Court affirms the hearing officer's conclusion that the requirements of the aforementioned statute have not been met in this case and Montana State Fund cannot refer patient 2053 to managed care or a new treating physician without that patient's consent.

Issue Two: Whether Montana State Fund owes Dr. Pardis for services rendered to patients 2053, 2057, 2058, and 2059.

¶7 Montana State Fund argues that while it does not contest the hearing officer's findings, it disagrees with the hearing officer's conclusion that Montana State Fund could not prove that Dr. Pardis' chiropractic treatments were excessive without an IME of each patient.¹⁹ Montana State Fund argues that the evidence it presented overwhelmingly demonstrates that Dr. Pardis overtreats his patients.²⁰ Dr. Pardis maintains that by failing to obtain IMEs, Montana State Fund failed to present substantial evidence that the frequency of Dr. Pardis' treatments of the four patients at issue were either unnecessary or excessive.²¹

¶8 At hearing, Montana State Fund argued that the average number of treatments Dr. Pardis performed on the subject patients far exceeded the average number of treatments conducted by chiropractic providers statewide on patients insured by Medicare or Blue Cross

¹⁵ Final Agency Decisions at 6.

¹⁶ *Id.* at 7.

¹⁷ Dr. Pardis is not a member of a managed care organization.

¹⁸ Final Agency Decisions, Findings of Fact 2.

¹⁹ Brief of Appellant at 2.

²⁰ *Id.* at 3.

²¹ Brief of Respondent at 6:18-26.

Blue Shield of Montana.²² In the Final Agency Decisions, the hearing officer agreed, finding that, compared to the average number of treatments per chiropractic patient per year for patients whose treatment was covered by Blue Cross Blue Shield of Montana during the last three years, patient 2053 received 47.25 more treatments,²³ patient 2057 received 40.25 more treatments,²⁴ patient 2058 received 29.25 more treatments,²⁵ and patient 2059 received 38.25 more treatments.²⁶ The hearing officer further found that Dr. Pardis treats his Montana State Fund patients with greater frequency than 85% to 95% of the practicing chiropractors in Montana, and that he defines and describes “acute care” in a far broader sense than his contemporaries, billing Montana State Fund for care which the majority of his contemporaries would classify as “maintenance” or “palliative.”²⁷

¶9 However, the hearing officer continued, “[t]he only factual means to establish that any particular patient is actually receiving maintenance care would be through examination of that patient by another qualified health care professional.”²⁸ The hearing officer opined that while the statistical analysis suggests Dr. Pardis bills Montana State Fund for maintenance care, statistics alone cannot establish that Dr. Pardis engaged in such a practice with these four specific patients. Although a record review by Dr. Gary P. Blom, D.C., a chiropractic consultant for Montana State Fund, led Dr. Blom to conclude that the patients reached MMI before Dr. Pardis released them, only Dr. Pardis saw and treated the patients. The hearing officer found Dr. Pardis’ direct testimony regarding the time at which each of the four patients reached MMI to be “uncontroverted direct evidence sufficient to establish those facts despite testimony, based upon medical record review, and medical reports in evidence, each containing contrary conclusions about the same issue.”²⁹

¶10 Montana State Fund put on several credible witnesses who testified to the statistical evidence. What Montana State Fund did not do, however, was put forth evidence that any of these specific four patients was overtreated, beyond offering that the number of times each was treated placed them well above the statistical average of number of visits for insured chiropractic patients in Montana.³⁰

²² Hearing Test.

²³ Final Agency Decisions, Findings of Fact 5.

²⁴ *Id.*, Findings of Fact 9.

²⁵ *Id.*, Findings of Fact 13.

²⁶ *Id.*, Findings of Fact 17.

²⁷ *Id.*, Findings of Fact 19.

²⁸ *Id.*, Findings of Fact 20.

²⁹ *Id.*

³⁰ Hearing Test.

¶11 On appeal, Montana State Fund draws this Court's attention to prior decisions by this Court³¹ in which, it alleges, Dr. Pardis provided suspect chiropractic treatment. Montana State Fund points out that in *Parmer*, Dr. Pardis provided 89 chiropractic treatments to the petitioner in a 14-month period.³² In *Thirsk*, Montana State Fund notes that Dr. Blom reviewed Dr. Pardis' records and concluded that Dr. Pardis' treatments were not going to improve the claimant's condition.³³ Montana State Fund further points to *McGillis*, arguing that in that case, this Court rejected an impairment rating calculated by Dr. Pardis.³⁴

¶12 Dr. Pardis responds that the *Parmer* case did not pertain to any consideration of his treatment of the petitioner, but rather pertained to the treatment provided to that petitioner by another chiropractor years later.³⁵ Dr. Pardis further responds that the issue in *Thirsk* involved Dr. Pardis' continued treatment of the patient after an IME revealed the claimant to be at MMI.³⁶ Dr. Pardis argues that the specific facts behind *McGillis* involved an impairment rating, not overtreatment.³⁷

¶13 Although these cases are enlightening to a degree regarding Dr. Pardis's past practices, the Court finds little utility from anecdotal evidence in reaching a conclusion that a medical professional's practices should be viewed with skepticism. This is particularly true with the cases that are cited. In *Parmer*, the disputed issue was the claimant's post-MMI treatments with Dr. Amy Pezo, over a year and a half after the last time the claimant saw Dr. Pardis.³⁸ Nothing in these findings and conclusions indicates that either the Court or the respondent/insurer found anything excessive in the treatments the claimant received from Dr. Pardis nor, for that matter, the treatments the claimant received from Dr. Pezo prior to reaching MMI. *McGillis* appears to offer no value to the Court's determination since it appears the chiropractor whose impairment rating was at issue was *not* Dr. Michael H. Pardis, the Respondent in the present case, but rather Dr. W. Patrick Pardis, who practices in Great Falls.³⁹

³¹ *Parmer v. State Comp. Ins. Fund*, 2000 MTWCC 33, *Thirsk v. State Comp. Ins. Fund*, 1999 MTWCC 34, and *McGillis v. State Comp. Ins. Fund*, 1998 MTWCC 79.

³² *Parmer*, ¶ 7.

³³ *Thirsk*, ¶ 9.

³⁴ *McGillis*, ¶ 54.

³⁵ Brief of Respondent at 5:12-15.

³⁶ *Id.* at 5:8-10.

³⁷ *Id.* at 5:10-12.

³⁸ *Parmer*, ¶ 12.

³⁹ *McGillis*, ¶¶ 3, 39.

¶14 In *Thirsk*, the claimant was injured in April 1994⁴⁰ and treated with Dr. Pardis from May 1994 until June 1996.⁴¹ In August 1995, Dr. Blom reviewed the claimant's file and found the claimant was not progressing.⁴² In September 1995, an orthopedist performed an IME and found the claimant to be at MMI.⁴³ In October 1995, Montana State Fund stated that it would not pay for more chiropractic treatments.⁴⁴ However, the claimant continued to treat with Dr. Pardis and sought reimbursement for treatments from October 1995 through June 1996.⁴⁵ Additional examinations by other doctors were performed during 1996, and the doctors agreed the chiropractic care provided only temporary relief and was palliative in nature.⁴⁶ Based on the medical evidence, this Court found that MMI was reached in August 1995, and that the subsequent chiropractic treatments claimant received from Dr. Pardis were palliative in nature and thus the insurer was not liable for them.⁴⁷

¶15 The difference between *Thirsk* and the case at hand, however, is precisely what the hearing officer found significant in reaching his conclusions. In *Thirsk*, after a file review indicated a lack of progress, an IME was performed and the claimant was determined to be at MMI.⁴⁸ In the case at hand, no such IME was performed and the treatments for which Dr. Pardis seeks payment all occurred prior to when the four subject patients were found to be at MMI. As the hearing officer explained:

On the one hand, the expert testimony in this case . . . certainly raises questions about Dr. Pardis' credibility regarding [MMI] and the reasonableness of the primary medical services he routinely provides On the other hand, without incurring the expense to obtain [IMEs] . . . MSF lacks the specific contravening testimonial medical opinions to challenge Dr. Pardis' diagnoses and treatment plans. It is highly improbable that virtually every MSF covered injured worker that Dr. Pardis treats reasonably requires far more adjustments tha[n] injured workers with comparable injuries treated by other chiropractors.

⁴⁰ *Thirsk*, ¶ 6.

⁴¹ *Id.*, ¶ 8.

⁴² *Thirsk*, ¶ 9.

⁴³ *Id.*, ¶ 10.

⁴⁴ *Id.*, ¶ 12.

⁴⁵ *Id.*, ¶ 13.

⁴⁶ *Id.*, ¶¶ 18-20.

⁴⁷ *Id.*, ¶ 21.

⁴⁸ *Id.*, ¶ 10.

But there is no statutory basis for applying that statistical analysis to individual injured workers.⁴⁹

¶16 The hearing officer's analysis is well-reasoned. Although the Court shares the hearing officer's view that the statistical evidence regarding Dr. Pardis's treatments raises questions about Dr. Pardis's credibility, the Court similarly cannot conclude that a comparably high number of treatments taken alone – without an IME or other direct evidence that a patient has reached MMI and is therefore receiving palliative or maintenance treatments – is sufficient to deny the insurer's liability for payment. In that vein, the Court certainly cannot conclude that the hearing officer's decision was clearly erroneous, arbitrary or capricious, or constituted an abuse of discretion. Therefore, the hearing officer's conclusion that Montana State Fund is liable to Dr. Pardis for chiropractic treatment provided to patients 2053, 2057, 2058, and 2059 is affirmed.

ORDER AND JUDGMENT

¶17 Montana State Fund cannot refer patient 2053 to managed care or a new treating physician without that patient's consent because the requirements of § 39-71-1101, MCA, have not been met.

¶18 Montana State Fund is liable to Dr. Pardis for chiropractic treatment provided to patients 2053, 2057, 2058, and 2059.

¶19 The Final Agency Decisions are hereby **AFFIRMED**.

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

¶21 Any party to this dispute may have twenty days in which to request reconsideration from this DECISION AND JUDGMENT.

DATED in Helena, Montana, this 10th day of May, 2006.

(SEAL)

/s/ James Jeremiah Shea
JUDGE

⁴⁹ Final Agency Decisions at 8-9.

c: Thomas E. Martello
C.W. Leaphart, Jr.
Submitted: November 1, 2005