

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

**2005 MTWCC 3**

**WCC No. 2004-1119**

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**GARY L. QUIGG**

**Petitioner**

**vs.**

**MONTANA STATE FUND**

**Respondent/Insurer.**

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**SUMMARY JUDGMENT**

**Summary:** Gary L. Quigg, who is serving a life sentence in the Montana State Prison, filed a petition seeking a determination that upon his release from prison he will be entitled to rehabilitation benefits, along with temporary total and permanent total disability benefits, on account of an injury he suffered while earlier on parole and working in a community service program.

**Held:** The petition is dismissed since Quigg does not allege any present entitlement to benefits. He may never become entitled to benefits since he may never be released again from prison.

**Topics:**

**Jurisdiction: Ripeness.** Where the claimant is incarcerated in prison pursuant to a life sentence and may never be released, his entitlement to benefits which might be due if released is speculative and not ripe for adjudication. Courts adjudicate only actual, present controversies.

**Jurisdiction: Justiciability.** Where the claimant is incarcerated in prison pursuant to a life sentence and may never be released, his entitlement to benefits which might be due if released is speculative and non-justiciable. Courts adjudicate only actual, present controversies.

¶1 The matter before the Court is the respondent's Motion for Summary Judgment. Finding that there is no present case and controversy, the motion is **granted**.

### Uncontroverted Facts

¶2 Admissions made in the pleadings and briefs, along with uncontroverted facts taken from discovery exhibits attached to the respondent's Motion for Summary Judgment, provide the following factual background:

¶2a The petitioner is Gary L. Quigg (Quigg or claimant), an inmate at the Montana State Prison. Quigg is serving a life sentence for first-degree murder, having been convicted of that offense in 1968. (Ex. A at 3.<sup>1</sup>)

¶2b On February 5, 1993, Quigg was paroled from prison. (*Id.* at 67.) One of the conditions of his parole was that he perform community service. (*Id.* at 64.) Thereafter, Quigg began community service under the auspices of Beta Alternatives (Alternatives).

¶2c In April 1993, while performing community service, Quigg injured his back. (Ex. B.<sup>2</sup>)

¶2d At the time of Quigg's injury, Alternatives was insured by the Montana State Fund (State Fund). The State Fund accepted liability for the injury and has paid both medical expenses and a ten percent impairment award. (*Id.*)

¶2e Quigg had no wages while working for Alternatives (see Ex. 1 to Ex. B).

¶2f In September of 1996, Quigg's parole was revoked and he was returned to prison, where he remains. (Ex. A at 4.)

### Discussion

¶3 Quigg's petition in this case requests a determination that he is entitled to rehabilitation benefits and to \$34,790.31 in temporary and permanent total disability

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<sup>1</sup>Exhibit A is a copy of documents of the Montana Board of Pardons and Parole.

<sup>2</sup>Exhibit B is an Affidavit of Gina Keltz, a claims adjuster for the Montana State Fund. Copies of several documents, including Quigg's workers' compensation claim, are attached to the affidavit.

benefits. However, he states that he “does not request that he receive benefits while incarcerated but that same be ordered available and waiting upon his release from incarceration.” (Petition For Hearing (Injury) at 4.)

¶4 Section 39-71-744, MCA (1993), prohibits payment of either rehabilitation or indemnity benefits so long as the claimant is incarcerated.<sup>3</sup> Under this section, he is not presently entitled to any of the benefits he seeks. Further, his future entitlement to benefits is speculative since he may in fact remain in prison for the rest of his life. The issues raised by his petition are therefore premature and not ripe for adjudication:

The ripeness doctrine . . . is a principle of law, grounded in the federal constitution as well as in judicial prudence, that requires an actual, present controversy, and therefore a court will not act when the legal issue raised is only hypothetical or the existence of a controversy merely speculative.

*The Montana Power Co. v. Montana Public Service Com'n*, 2001 MT 102, ¶ 32, 305 Mont. 260, 26 P.3d 91(2001); and see also *Hardy v. Krutzfeldt*, 206 Mont. 521, 525-26, 672 P.2d 274, 276 (1983).

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<sup>3</sup>The section provides in full:

**39-71-744. Benefits not due while claimant is incarcerated -- exceptions.** (1) Except as provided in subsection (2), a claimant is not eligible for disability or rehabilitation compensation benefits while the claimant is incarcerated in a correctional institution, such as the Montana state prison or the Montana women’s correctional center, as the result of conviction of a felony. The insurer remains liable for medical benefits. A time limit on benefits otherwise provided in this chapter is not extended due to a period of incarceration.

(2) A person who is employed while participating in a prerelease center program or a diversionary program is eligible for temporary total benefits as provided in 39-71-701 and medical benefits for a work-related injury received while participating in a prerelease center program or a diversionary program. Other disability or rehabilitation benefits are not payable while the worker is participating in a prerelease center. This subsection does not prohibit the reinstatement of other benefits upon release from incarceration, nor does it apply to an employee performing community service described in 39-71-118(1)(f).

¶5 I further note that the claimant is not entitled to temporary total disability benefits in any event since he received no wages for his community service. (See Ex. 1 to Ex. B.) Temporary total disability benefits are also excluded since the claimant was performing community service. § 39-71-744(2), MCA (1993).

#### ORDER AND JUDGMENT

¶6 Since the issues raised by the petition are non-justiciable, judgment is hereby entered **dismissing the petition**. If and when the petitioner is released from prison, he may file a new petition if the issues are not resolved at that time.

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

¶8 Any party to this dispute may have twenty days in which to request a rehearing from this Judgment.

DATED in Helena, Montana, this 14<sup>th</sup> day of January, 2005.

(SEAL)

/s/ MIKE McCARTER  
JUDGE

c: Mr. Gary L. Quigg  
Mr. Greg E. Overturf  
Ms. Brenda E. Thompson  
Mr. Mike Ferriter  
Submitted: January 3, 2005