

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2022 MTWCC 7

WCC No. 2020-5051

LISA RUFF

Petitioner

vs.

BENEFIS HEALTH SYSTEM, INC.

Respondent/Insurer.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

Summary: Petitioner requests a lump-sum conversion of her PTD benefits on the grounds that she needs it to afford the necessities of life, manage her debt, and preserve the use of her arm. She also argues that a lump-sum conversion is in her best interest. Petitioner contends that she will use the money, as set forth in her financial plan, to pay off debt, buy a house, modify the house, buy a modified disability vehicle, and make investments for her future. Respondent argues that Petitioner does not have the financial need required for a lump-sum conversion because her monthly income exceeds her expenses, the principal and interest payments on her student loans have been temporarily suspended, she is able to make the minimum monthly payments on her credit cards, and she has other, less-expensive options to preserve the use of her arm. Respondent also argues that a lump-sum conversion is not in Petitioner's best interest because her financial plan is flawed.

Held: Petitioner's request for a lump-sum conversion of her PTD benefits is denied. Petitioner neither demonstrated that she has the financial need required to justify a lump-sum conversion nor that a lump-sum conversion is in her best interest.

¶ 1 The trial in this matter was held on January 27, 2021, in Great Falls, Montana, and on February 11, 2021, via Zoom video conference. Petitioner Lisa Ruff was present and was represented by Matthew J. Murphy. Respondent Benefis Health System, Inc. (Benefis) was represented by G. Andrew Adamek. Wendy Fisher, claims adjuster, was present on behalf of Benefis.

¶ 2 Exhibits: This Court admitted Exhibits 1 through 15, 17 through 41, and 43 through 57 without objection. This Court admitted Exhibits 16, 42, 58, and 59 over Ruff's objections.

¶ 3 Witnesses and Depositions: This Court admitted the depositions of Ruff (taken on December 2, 2019, and December 30, 2020) and Aaron Flanagan, MD (taken on December 10, 2019) into evidence. Ruff, James Acord, Fisher, and Josh Horton were sworn and testified at trial.

¶ 4 Issues Presented: This Court restates the issues from the Pretrial Order as follows:

Issue One: Is Ruff entitled to a lump-sum conversion of her PTD benefits?

Issue Two: If Ruff is entitled to a lump-sum conversion of her PTD benefits, may Benefis assert a Social Security offset and recover past overpayment of indemnity benefits?

Issue Three: Is Ruff entitled to costs for this action?

FINDINGS OF FACT

¶ 5 This Court finds the following facts by a preponderance of the evidence.¹

¶ 6 Ruff is a 41-year-old, divorced mother of two children, ages 22 and 19. She is engaged to James Acord, and they live with Ruff's younger son in a two-story apartment managed by Great Falls Housing Authority (GFHA).

¶ 7 Ruff has a congenital, left-upper-extremity amelia, i.e., her left arm ends just below her elbow. Ruff does not use an assistive prosthetic device and, from an early age, learned to do most things with her right arm and hand.

¶ 8 In her early twenties, after getting her GED and starting a family, Ruff decided to pursue a college education. Starting in 2003, and on and off until late 2017, Ruff took classes at Great Falls College MSU, which she funded through student loans. Although she never made enough money to pay anything back on those loans and did not even get credit for all of the courses she took, Ruff kept going back because she wanted to make a better life for her family and eventually become an LPN.

¶ 9 Although she worked, in addition to being a student, Ruff accumulated a significant amount of debt over the years. In 2014, she felt she needed to "just start over," and filed for Chapter 7 bankruptcy. In the end, she had over \$65,000 of debt discharged.

¹ Ordinarily, the claimant bears the burden of proving by a preponderance of the evidence that she is entitled to the benefits she seeks. *Dumont v. Wickens Bros. Constr. Co.*, 183 Mont. 190, 201, 598 P.2d 1099, 1105-06 (1979) (citations omitted).

¶ 10 After undergoing financial education, Ruff made a concerted effort to reduce her costs and do a better job budgeting. But she continued borrowing money for school – over \$50,000 in total.

¶ 11 In October 2017, Ruff was taking classes full time and working as a Certified Nursing Assistant (CNA) at Benefis. She earned about \$12.50 an hour and worked 32 hours a week. Benefis was short-staffed and Ruff was doing more patient lifts and transfers than usual. Over the course of several weeks, she developed pain in her right shoulder.

¶ 12 On October 17, 2017, while performing her usual CNA duties, Ruff “noticed extreme weakness and pain in [her] right shoulder” that made it difficult to continue doing her job without help. She sought medical care and was eventually diagnosed with “chronic right shoulder pain with impingement syndrome and subacromial bursitis.”²

¶ 13 On October 23, 2017, Ruff filed a workers’ compensation claim for her right-shoulder condition, which Benefis accepted as an Occupational Disease (OD).

¶ 14 While Medicaid paid for Ruff’s regular healthcare needs, Benefis paid for her OD-related treatment.

¶ 15 Pursuant to a medical determination that Ruff had a 4% whole person impairment, Benefis paid her an impairment award of about \$3,900. Ruff paid 20% to her attorney, about \$1,800 to extinguish the loan on her 2006 Ford Taurus, and the rest for food.

¶ 16 Ruff continued working with Benefis, in a transitional duty assignment with accommodations, for three months before taking a medical leave. Benefis terminated her six months later.

¶ 17 Benefis concedes that Ruff is permanently totally disabled under the Montana Workers’ Compensation Act (WCA) and is paying her biweekly permanent total disability (PTD) benefits at the rate of \$244.27 per week. Ruff will reach full retirement age when she turns 67. In the meantime, however, she has applied to the Social Security Administration (SSA) for Social Security Disability Insurance (SSDI) benefits. She has yet to receive a decision on her application.

¶ 18 Ruff’s monthly income is \$1,061.41, calculated as follows:

Weekly PTD Benefit Rate	\$ 244.27
Weeks/Year	x 52.143
Annual PTD Benefit	\$12,736.97
Months/Year	÷ 12.00
TOTAL MONTHLY INCOME	\$ 1,061.41

² Emphasis removed.

On at least one occasion, Ruff has run out of these funds before the end of the month and had to wait up to a week to buy food.

¶ 19 Ruff splits most of her monthly expenses 50/50 with Acord. Acord is working a steady, full-time job after suffering several significant financial setbacks in recent years, including having a business fail, losing his mobile home to foreclosure, and having his wages garnished to pay off an emergency medical bill. He is earning between \$2,500 and \$3,500 a month and slowly paying off his credit card debt, which is about \$1,600.

¶ 20 One of the expenses Ruff and Acord split evenly is rent. However, although they share the apartment, only Ruff's income is considered for purposes of calculating the rent because Acord is regarded as her live-in aide. The other monthly expenses Ruff splits evenly with Acord are those utility charges that exceed GFHA's \$105 allowance; food costs; internet charges; and other household expenses/necessities of living/clothing. Ruff pays about 1/3 of the cellphone bill under an agreement with her parents, her kids, and Acord. Acord pays for Ruff's car insurance as she is on his policy. Sometimes with Acord's help, Ruff has been making the minimum payments – and sometimes more – on her credit cards.

¶ 21 Ruff keeps a journal where she writes out the dates she and Acord need to pay their bills. Each currently makes payments out of a separate account, but the couple plans to join the accounts once they are married. The amount of the bills for which Ruff is responsible and that she pays each month under her current financial arrangement is \$794.75, calculated as follows:

Rent	\$ 148.00
Utilities	\$ + 17.50
Food	\$ + 150.00
Internet	\$ + 41.97
Other Household Expenses/Necessities of Living/Clothing	\$ + 25.00
Cellphone	\$ + 100.00
Car Insurance	\$ + 0.00
Credit One Bank Card	\$ + 30.00 (varies)
First Premier Bank Card	\$ + 30.00 (varies)
Indigo Credit Card	\$ + 40.00 (varies)
<u>20% Attorney Fees on PTD Benefits</u>	<u>\$ + 212.28</u>
TOTAL MONTHLY EXPENSES:	\$ 794.75

¶ 22 Since Acord moved into Ruff's apartment on September 1, 2020, and started sharing her expenses, Ruff has had a monthly surplus of \$266.66, calculated as follows:

TOTAL MONTHLY INCOME	\$ 1,061.41
<u>TOTAL MONTHLY EXPENSES</u>	<u>\$ - 794.75</u>
TOTAL MONTHLY SURPLUS:	\$ 266.66

And she could increase that surplus by making such changes as limiting the use of her high-interest credit cards for discretionary purchases, like drinks at the convenience store and eating out, and planning better to avoid incurring overdraft and late fees from her bank.

¶ 23 The bulk of Ruff's debt consists of student loans. However, her principal and interest payments have been temporarily suspended. Ruff has some additional, smaller debts, which are accruing interest at high rates and/or are in collections. Although it has grown since then, as of October 2020, when she first met financial advisor Josh Horton, Ruff's total debt load was \$58,067, calculated as follows:

Student Loans at 5.50% Interest	\$43,386.00
Student Loans at 4.45% Interest	\$ +5,138.00
Student Loans at 3.76% Interest	\$ +2,737.00
AT&T Debt in Collections	\$ +3,265.00
Hospital Debt in Collections	\$ +1,197.00
Miscellaneous Debt at 10%+ Interest	\$ +2,344.00
<u>TOTAL DEBT:</u>	<u>\$58,067.00</u>

¶ 24 Ruff owns minimal assets. These include her still-functioning 2006 Ford Taurus, a checking/savings account that usually holds little more than the minimum \$25 balance, and other minor personal property, like basic home furnishings and her engagement ring.

¶ 25 In February 2020, Ruff requested that Benefis convert her entire future entitlement to PTD benefits into a lump sum under § 39-71-741, MCA, but Benefis denied her request.

¶ 26 In October 2020, Ruff had a meeting with Horton to "discuss the most financially advantageous method of investing and expending" a lump-sum conversion of her PTD benefits in the amount of \$150,000. Ruff told him that she was expecting to receive SSDI benefits in the amount of \$924 per month. She gave Horton some paperwork detailing her debt but did not mention her bankruptcy and low credit score or that the principal and interest payments on her student loans had been temporarily suspended. Nor did Ruff and Horton discuss the cost of her present living arrangement. They talked about Ruff's as yet unpursued financial goals, such as paying off debt, buying a house, and procuring home and vehicle modifications and categorized them in terms of her "needs" and "wants."

¶ 27 Horton then performed a financial analysis. He never determined how long Ruff's biweekly PTD benefits would last, when and how her cost-of-living adjustments (COLAs) would be calculated, or what effect receiving SSDI benefits would have on the value of her PTD benefits, whether in biweekly or lump-sum form. Notwithstanding, Horton concluded that it was in Ruff's best interest to take her remaining PTD benefits in a lump sum.

¶ 28 Accordingly, Horton devised a financial plan for Ruff based on the assumption that she would receive SSDI benefits, which she could put toward her living expenses. In the plan, he made recommendations for dividing the \$150,000 lump sum between five of Ruff's specific "needs."

¶ 29 First, Horton allocated \$58,067 for Ruff to fully pay off her debt.

¶ 30 Second, estimating from the list prices of comparable houses that Ruff could buy a single-level house in Great Falls for \$130,000, and assuming that she would be able to qualify for an acceptable mortgage, Horton allocated \$26,000 for Ruff to make a down payment of 20%. Ruff did not recall whether Horton talked to her about the other costs typically encountered in the home-buying process, such as inspection, title insurance, closing, and moving costs. But Horton did not allocate any additional funds for those costs, and she had no independent knowledge of what they might be.

¶ 31 Third, based on his "best guess," Horton allocated \$7,500 for Ruff to modify the new home's door handles and shelves.

¶ 32 Fourth, based on his own research, Horton allocated \$27,500 for Ruff to buy a modified vehicle to better accommodate her OD-related disability. At their meeting, Ruff told Horton about the types of modifications she would want. But she could not recall whether they discussed the possibility of Ruff having her existing vehicle modified.

¶ 33 And fifth, Horton recommended that Ruff use \$31,000 – which was the amount of the lump sum remaining after his allocations for debt payoff, house down payment, home modifications, and a modified disability vehicle – to make low- to moderate-risk investments. The purpose of the investments would be to generate income for Ruff to pay her mortgage, which he expected would be a 30-year loan, fixed at 3% interest, with monthly payments of \$440. Ruff could not remember whether Horton talked to her about the other recurring costs of home ownership, like insurance, utilities, property taxes, and maintenance. But he did not factor those costs into his calculation of her income needs, "because [they] var[y] so much from person to person and home to home," and Ruff had no independent knowledge of what they might be. She was not concerned as to how she would be able to afford them, however, because she anticipated returning to see Horton "to have that all covered."

¶ 34 As for his fees, Horton told Ruff that there were two ways for her to pay: by flat fee or commission. But Horton did not factor these fees into his calculation of Ruff's income needs because, "with all of the unknowns," he felt that "it would be better to discuss the fees and costs when [they] actually were working with a set dollar figure."

¶ 35 Horton provided Ruff with two investment options – either an annuity that would pay her \$90 per month for life, or a mix of preferred stocks and debt securities (mixed investment), which, with around 6% yields and eventual liquidation, would pay her mortgage for a maximum of seven years before the investment funds ran out. Ruff

understood that the latter investment option would fund her mortgage payment in full for seven years. But she was not aware that the investment would then cease to exist, and she would have to find a way to pay the mortgage on her own. Rather, Ruff's understanding was that the investment would continue to generate income after seven years, but that "at the end of seven years . . . [they] would have to do another plan to see how that would work to continue to pay."

¶ 36 Ruff now seeks this Court's determination that she is entitled to a lump-sum conversion of her PTD benefits. She seeks a lump-sum payment of approximately \$150,000³ and intends to use it as set forth in her financial plan.

¶ 37 Based on the foregoing evidence, this Court is not convinced that Ruff has the financial need required under § 39-71-741, MCA, to convert her remaining PTD benefits into a lump sum. Under her current financial arrangement, Ruff's monthly income outweighs her expenses, she could increase her surplus with spending changes, and she can procure the necessities of life, including food, clothing, and shelter, as well as utility services, a functioning and insured vehicle, and OD-related and -non-related medical care. Ruff is also able to manage her debt load because, although she may eventually owe on her student loans, her principal and interest payments have been temporarily suspended, and she makes at least the minimum monthly payments on her credit cards with which Acord tries to help.

¶ 38 However, even if Ruff had the financial need required, this Court is not convinced that a lump-sum PTD award is in her best interest. Horton's conclusion to the contrary is not persuasive because it lacks an adequate foundation. His financial plan for Ruff is unreliable. And, in the absence of a reliable financial plan, Ruff does not have the wherewithal to manage a large lump sum.

CONCLUSIONS OF LAW

¶ 39 Generally, the law in effect when a claimant files her claim, or on her last day of work, whichever is earlier, governs an OD claim.⁴ This Court applies the 2017 version of the WCA, since that was the law in effect when Ruff filed her claim.

³ This figure takes into account Benefis's potential monthly SSDI offset, but neither a discount to present value nor estimated COLAs.

⁴ *Hardgrove v. Transp. Ins. Co.*, 2004 MT 340, ¶ 2, 324 Mont. 238, 103 P.3d 999 (citation omitted); *Bouldin v. Liberty Northwest Ins. Corp.*, 1997 MTWCC 8. *But see Nelson v. Cenex, Inc.*, 2008 MT 108, ¶¶ 30, 33, 342 Mont. 371, 181 P.3d 619 (worker's later employment was irrelevant to his hazardous exposure and OD, and the court therefore applied the ODA in effect on the date in which the period of employment which included his last injurious exposure ended).

Issue One: Is Ruff entitled to a lump-sum conversion of her PTD benefits?

¶ 40 Ruff argues that she has the financial need required to obtain a lump-sum conversion of her remaining PTD benefits. She contends that she needs the funds to afford the necessities of life, including food, and to pay off the debt she incurred primarily before, but also after, the onset of her OD. She cites § 39-71-741(2)(c), MCA, *Barnard v. Liberty Northwest Ins. Corp.*,⁵ *Daniels v. Kalispell Regional Hospital*,⁶ and *Benhart v. Liberty Northwest Ins. Co.*⁷ in support of her position.

¶ 41 Ruff also argues that a lump-sum conversion of her PTD benefits is in her best interest because it will enable her to preserve and protect her right arm by buying a house, modifying the house, buying a modified vehicle, and investing in financial products that will generate income to pay the mortgage. She cites *Barnard*,⁸ *Daniels*, *Murphy v. Montana State Fund*,⁹ and *Benhart* in support of her position.

¶ 42 Ruff contends that, because all of this will cost more than \$20,000, which is the statutory limit for the total of partial lump-sum payments, she is entitled to a total conversion of her remaining PTD benefits, as calculated on the date of this Court's final order. She cites § 39-71-741(2)(c), MCA, *Barnard*,¹⁰ and *Utick v. Utick*¹¹ in support of these contentions.

¶ 43 Citing *Utick*,¹² Ruff also argues that she is entitled to a lump-sum conversion of her remaining PTD benefits because Benefis has failed to establish that a lump sum "[would] not serve Ruff's best interests."

¶ 44 Benefis argues that Ruff has failed to meet her burden of proving that a lump-sum conversion is necessary to meet a pressing financial need or to afford the necessities of life because she takes in more money than she spends each month. It cites *Martin v. The Hartford*,¹³ *Barnard*, and *Sanchez v. Montana State Fund*,¹⁴ in support of its position. Benefis also argues that Ruff has failed to meet her burden of proving that a lump-sum conversion is necessary to pay off her debt because the principal and interest payments

⁵ 2008 MT 254, 345 Mont. 81, 189 P.3d 1196.

⁶ 230 Mont. 407, 750 P.2d 455 (1988).

⁷ 2008 MTWCC 6.

⁸ *Barnard*, ¶ 22.

⁹ 2010 MTWCC 6.

¹⁰ *Barnard*, ¶¶ 18-20.

¹¹ 181 Mont. 351, 357, 593 P.2d 739, 742 (1979).

¹² *Utick*, 181 Mont. at 356, 593 P.2d at 742.

¹³ 2004 MT 57, ¶ 8, 320 Mont. 206, 86 P.3d 569.

¹⁴ 2007 MTWCC 25.

on her student loans have been temporarily suspended, she is usually able to make minimum monthly payments on her credit cards, which she no longer uses for automatic withdrawals, and Ruff has no debt on her vehicle.

¶ 45 Benefis further argues that a lump-sum conversion is not in Ruff's best interest because, among other reasons, it would cut her overall recovery by more than half. Benefis contends that Horton's opinion in this regard is not persuasive and that Ruff's financial plan is flawed because it: makes assumptions that may not come to fruition, e.g., that she will receive SSDI benefits and earn the predicted return on her investments; makes no provision for income generation after seven years if Ruff chooses the mixed investment; does not take into account many of the upfront and recurring costs of home ownership; and ignores more affordable options to preserve the use of her right arm like modifying her present housing and vehicle as opposed to purchasing new. In short, Benefis argues that Ruff's financial plan is so speculative and irresponsible that proceeding under it is not in her financial interest.

¶ 46 Montana law provides that, as a general rule, an insurer should pay PTD benefits on a biweekly basis.¹⁵ However, this Court and the Montana Supreme Court recognized an exception, allowing the award of PTD benefits in a lump sum when it was in the claimant's best interest.¹⁶ As appropriate, this Court may consider as components of the best interest analysis: the claimant's physical and mental health, family situation, level of maturity, and financial condition (which may encompass outstanding indebtedness and pressing financial needs);¹⁷ as well as the interests of the claimant's family and the general public.¹⁸

¶ 47 In 1987, the Legislature amended § 39-71-741, MCA. It kept in place the admonition that the award of a lump-sum conversion "must be the exception" to the general presumption that biweekly benefits are in the best interest of the worker. But it added the requirement that a worker seeking a lump-sum PTD award must demonstrate a specific type of "financial need." The 2017 version of the statute, which governs this case, states, at (2)(c), that:

It may be given only if the worker has demonstrated financial need that:

(i) relates to:

(A) the necessities of life;

(B) an accumulation of debt incurred prior to the injury; or

¹⁵ See § 39-71-741(2)(c), MCA ("The approval or award of a lump-sum permanent total disability payment in whole or in part by the department or court is the exception.").

¹⁶ *Sullivan v. Aetna Life & Cas.*, 271 Mont. 12, 16-17, 894 P.2d 278, 280-81 (1995).

¹⁷ *Martin*, ¶ 7; *Sullivan*, 271 Mont. at 16-18, 894 P.2d at 280-81 ("The best interest test embraces all factors . . .").

¹⁸ *Barnard*, ¶ 22 (citation omitted).

- (C) a self-employment venture that is considered feasible under criteria set forth by the department; or
- (ii) arises subsequent to the date of injury or arises because of reduced income as a result of the injury.

¶ 48 In *Bennett v. State Compensation Ins. Fund*, this Court interpreted the above statute as incorporating the best interest test, explaining, “If the legislature did not intend to incorporate the historical best interests test, and the statute is interpreted to allow lump-summing based on *any* financial need, then lump summing would become the rule, biweekly benefits the exception.”¹⁹ Likewise, this Court explained:

Debt, which is one of the stated grounds for lump summing, is prevalent in our society. If that is the only criteria to be satisfied, lump sums would be routine, a result which flies in the face of the basic principle of statutory construction requiring that all the words of a statute be given meaning and effect, if possible.²⁰

¶ 49 Then, in *Barnard*, the Montana Supreme Court clarified when a court should apply each test, explaining that when the question is whether the court *may* grant a lump-sum PTD award, the court must be satisfied that the claimant has met the statutory test,²¹ and when the question is whether the court *should* grant a lump-sum PTD award, the court must be satisfied that the award is in the claimant’s best interest.²² In short, to grant a lump-sum PTD award, the court must be satisfied that both the statutory financial need and the traditional best interest tests have been met.

I. Financial Need

¶ 50 This Court found above that Ruff does not have the financial need required for a lump-sum PTD award. Under her current financial arrangement, Ruff’s monthly income

¹⁹ 1998 MTWCC 33, ¶ 25 (emphasis in original) (citations omitted). In *Bennett*, this Court was interpreting the 1991 version of the statute, which requires the same as the 2017 version with respect to the type of “financial need” a worker seeking a lump-sum PTD award must show. See *Bennett*, ¶¶ 22, 23.

²⁰ *Bennett*, ¶ 25 (emphasis in original) (citation omitted). See also *Sullivan*, 271 Mont. at 17, 894 P.2d at 281 (“Considering that debt is a significant part of our society, . . . it is unrealistic to conclude that outstanding debt alone is sufficient grounds to grant a lump sum settlement. Were that the case, most claimants could get lump sum settlements on demand. This would be contrary to the express policy that regular payments are the rule rather than the exception.” (citation omitted)); *Ruple v. Bob Peterson Logging Co.*, 209 Mont. 276, 281, 679 P.2d 1252, 1254-55 (1984) (“The mere fact that Ruple is indebted does not require either the Workers’ Compensation Court or this Court to convert some or all of his benefits.”). But see *Willoughby v. Arthur G. McKee & Co.*, 187 Mont. 253, 260-61, 609 P.2d 700, 703-04 (1980) (reaffirming that “each case for a lump sum payment stands or falls on its own merits,” and affirming the Workers’ Compensation Court’s decision awarding a partial lump-sum settlement to satisfy debts which had been or would be incurred for basic necessities, including shelter, water, power, medical treatment, and transportation (citation omitted)).

²¹ *Barnard*, ¶ 22 (citing § 39-71-741(1)(c), MCA).

²² *Barnard*, ¶ 22 (citing *Sullivan*, 271 Mont. at 17, 894 P.2d at 281).

outweighs her expenses, and she could increase her surplus with spending changes.²³ Thus, she has the means to, and has demonstrated that she can, procure the necessities of life. And, although Ruff may eventually owe on her student loans, because those principal and interest payments have been temporarily suspended, and she pays at least the minimums on her credit cards, Ruff is able to manage her debt load.

¶ 51 To the extent that Ruff has unmet concerns as to her physical comfort and productivity, she has other options to address those concerns short of a lump-sum conversion. As to home modifications, she could get a prescription from her medical provider and ask GFHA to fund modifications to her current unit in compliance with federal housing law. As to vehicle modifications, Ruff could save her monthly surplus and, in time, use it, along with any contributions from Acord, to secure the modifications she seeks.

¶ 52 This court is not persuaded that *Barnard*, *Daniels*, or *Benhart* support Ruff's contention that she has the financial need required to justify a lump-sum PTD award. In *Barnard*, the Montana Supreme Court affirmed this Court's approval of Barnard's request for a lump-sum PTD award where Barnard, who had a limited ability to walk, wanted a more accessible house and vehicle to address his safety and mobility concerns.²⁴ Ruff proposed using her lump sum to purchase a more accessible house (one that she would buy and modify) and vehicle (one that she would buy pre-modified) to address similar concerns. However, among other reasons, this Court was not satisfied that Ruff has the financial need to make these purchases because she did not first explore obvious alternatives that might cost less.

¶ 53 While Ruff only cited *Daniels* as boiler plate, that "[l]ump sums . . . may be made to clear up a claimant's outstanding debts,"²⁵ this Court notes that the outcome of that case cuts against Ruff's position. *Daniels* sought a lump sum to start a business and buy a house from which to run it.²⁶ But this Court denied the request, and the Supreme Court affirmed, finding that the business would likely fail, and, without its financial contributions, *Daniels* would end up unable to afford her basic needs or keep the house.²⁷ Likewise, this Court is denying Ruff's request, in part, because it is convinced that spending the lump sum in accordance with her financial plan would leave Ruff in a similar position as *Daniels*. Indeed, Horton admitted that after a maximum of seven years, "[Ruff's]

²³ See *Martin*, ¶ 8 (affirming denial of claimant's request for lump sum where Workers' Compensation Court found, among other things, "that [claimant's] monthly income exceed[ed] his monthly expenses [and] that he ha[d] other sources of income that [would] allow for payment of extraordinary expenses"); *Sanchez*, ¶ 34 (denying petition for lump-sum conversion of PTD benefits pursuant to § 39-71-741, MCA (1999), where, "As was the case in *Martin*, Petitioner's monthly income exceed[ed] his monthly expenses and his surplus could [have been] even greater with better money management" (citation omitted)).

²⁴ *Barnard*, ¶¶ 23-25.

²⁵ *Daniels*, 230 Mont. at 413, 750 P.2d at 458 (citations omitted).

²⁶ *Daniels*, 230 Mont. at 409-10, 750 P.2d at 456.

²⁷ *Daniels*, 230 Mont. at 410, 411, 750 P.2d at 456-57.

investment funds would run out,” at which point “it would be up to her” to come up with the money to pay her mortgage. And while Horton acknowledged that “[h]e did not know if [Ruff would] be able to return to work,” the only suggestion he had as to how Ruff could source the income to pay her mortgage was, “The home appreciates in value over time, she could sell that.”

¶ 54 *Benhart* is also unhelpful for Ruff. In that case, Benhart sought a lump-sum award, one purpose of which was to pay off existing bills, which included credit card debt and loans for a boat and four-wheeler. This Court denied the request, not because Benhart lacked financial need, but because the need was not related to an accumulation of debt incurred prior to the injury, both of which were required under the facts of the case.²⁸ Rather, this Court found that Benhart’s current monthly payment obligations stemmed from the discretionary, post-injury purchases of recreational vehicles.²⁹ Here, Ruff seeks a lump-sum award for similar reasons as Benhart, i.e., to pay off credit card debt and loans. And likewise, this Court is denying her request because one of the two components required under the facts of the case is not present. Ruff has an accumulation of debt incurred prior to her injury. However, she lacks the related financial need because the principal and interest payments on her student loans have been temporarily suspended, and she is able to pay the monthly minimums on her credit cards.

II. Best Interest

¶ 55 This Court found above that a lump-sum PTD award is not in Ruff’s best interest on the following grounds: Horton’s opinion to the contrary is not persuasive because it lacks an adequate foundation; his financial plan for Ruff is unreliable;³⁰ and, in the absence of a reliable financial plan, Ruff does not have the wherewithal to manage a large lump sum.

¶ 56 A lump-sum PTD award is not in Ruff’s best interest because Horton’s opinion to the contrary is not persuasive. To the extent his opinion is based on dollar values, it has no foundation. Horton never ascertained the facts needed to determine the future or current value of Ruff’s PTD benefits or compare one with the other. Although he admitted that he did not know how long biweekly PTD benefits would last or that those benefits

²⁸ *Benhart*, ¶¶ 37, 38.

²⁹ *Benhart*, ¶ 38.

³⁰ See *Daniels*, 230 Mont. at 413-14, 750 P.2d at 459 (affirming Workers’ Compensation Court’s denial of claimant’s request for partial conversion of PTD benefits to a lump sum to start a construction-related business where, for among other reasons, her plan was too speculative because its data was not the most recent, the construction industry had since declined, there were many similar businesses in the area, and the plan made no provisions for either labor costs or depreciation). Compare with *Utick*, 181 Mont. at 353-54, 356, 593 P.2d at 740, 741-42 (holding that a lump sum of total disability benefits should have been awarded where, for among other reasons, the claimant submitted a detailed investment plan and both the Division and the Workers’ Compensation Court acknowledged that the plan would work and guarantee him a substantially higher income than his periodic benefits) and *Murphy*, 2010 MTWCC 6 (awarding a lump sum of PTD benefits where, for among other reasons, claimant presented a detailed, specific, reasonable, and financially sound business plan).

would be subject to COLA increases every two years, Horton acknowledged that these factors would affect which payment arrangement was in Ruff's best interest – continuing with biweekly PTD benefits or taking a lump sum. However, without knowing the specific numbers, Horton did not know what the effect would be.

¶ 57 To the extent Horton's opinion is based on purchasing power, its foundation is inaccurate. As described below, Horton underestimated the cost of buying a house and, thus, overestimated the amount of funds Ruff would have available for investment. He also underestimated Ruff's monthly payments and overestimated the rate of return she would get from his recommended investments. Finally, Horton overlooked less-costly alternatives for the home and vehicle modifications Ruff seeks. As a result of Horton's not having, accurately estimating, or investigating certain facts, his opinion as to Ruff's best interest lacks an adequate foundation and is not persuasive to this Court.

¶ 58 A lump-sum PTD award is also not in Ruff's best interest because the financial plan that Horton put together for her is unreliable. First, the plan is not in final form; it is based on assumptions and estimates, one of which has already proven to be incorrect and another of which may yet do so. For example, when Horton met Ruff, she was not prequalified for a residential mortgage, so he did not know what her rates would be. Nor did he even want to get into those details until Ruff had real assets to work with. Nevertheless, for preliminary purposes, Horton assumed that she would qualify for a mortgage with average rates and drafted the rest of the plan accordingly. When he later became aware of Ruff's bankruptcy history and poor credit, however, Horton admitted that those factors would very likely raise her rates, and that if he had had the information up front, he may have reordered Ruff's financial priorities and/or recommended different investments. Horton also based the plan on the assumption that Ruff would be able to cover her living expenses with SSDI benefits. However, Ruff has yet to get a decision on her application, and Horton acknowledged that were it to be denied, the plan would no longer be feasible.

¶ 59 Second, the plan's recommendations do not reflect careful consideration. For example, Horton did not know the amount of Ruff's current rent or the other details of her lease when he recommended that she take on a \$440-a-month mortgage payment. Thus, he did not know how much more Ruff would have to pay per month to buy than continue renting. Nor did Horton allocate enough funds for the costs associated with buying a home. As a result, Ruff would have less of the lump sum available for investment than Horton estimated and, therefore, smaller returns. In addition, Horton did not investigate whether there were less-costly alternatives before recommending that Ruff spend large sums on home modifications and a pre-modified vehicle, which he estimated using only his "best guess" and unspecified "research," respectively.

¶ 60 Third, setting aside the fact that Horton underestimated Ruff's need for income – by not having Ruff get prequalified for a mortgage so he could use credible rates or allocating funds for the recurring costs of home ownership – and the fact that Horton

overestimated Ruff's rates of return – by neglecting to incorporate his 1 to 1.25% fee – and assuming *arguendo* that Ruff's need for income and the investment options' rates of return were accurately set forth in the plan, neither investment option would fulfill its intended purpose, which is to generate sufficient income to pay Ruff's mortgage. The annuity would pay only 20% of Ruff's monthly mortgage payment for the duration of the mortgage.

¶ 61 The mixed investment would pay 100% of Ruff's mortgage for a maximum of seven years, but only if her withdrawals and liquidations were exclusively made for that purpose. And unlike Ruff's biweekly benefits, which – barring an improvement in condition that would allow her to return to work – would continue with COLAs every two years until age 67, her investment funds would run out before age 50, leaving Ruff with a monthly mortgage obligation she had no means to pay. At that point, "it would be up to [Ruff]" to "source the income from other areas in order to cover her mortgage," and the only suggestion Horton articulated for how she could do so – sell the house – would negate the purpose of even having the mortgage in the first place.

¶ 62 Finally, a lump-sum PTD award is not in Ruff's best interest because, in the absence of a reliable financial plan, she does not have the wherewithal to manage a large lump sum. Apart from the down payment and monthly mortgage payment, Ruff has no independent knowledge of the costs of purchasing and owning a home. She has put forth effort and shown growth in her ability and willingness to manage money but had little success on the whole, even as to small sums. And her bankruptcy history, as well as her borrowing, banking, and spending practices are cause for concern.

¶ 63 While Acord brings a modicum of stability into the picture, he, too, has had his share of significant financial setbacks, including a failed business venture, home foreclosure, and wage garnishment. The couple does not have much experience working together to pay the bills from their separate bank accounts and no experience working together to pay them from a joint account. Given all of this, Ruff cannot realistically or reasonably be expected to successfully manage a large lump sum³¹ without being able to rely on her financial plan for guidance.

³¹ See *Sullivan*, 271 Mont. at 15, 18, 19, 894 P.2d at 280, 282 (affirming Workers' Compensation Court's denial of claimant's petition for a lump-sum advance of permanent partial disability benefits where, for among other reasons, claimant demonstrated that she lacked money-managing abilities, as well as recall and understanding of basic financial information); *Sanchez*, ¶ 26 (denying request for a lump-sum conversion of PTD benefits where, for among other reasons, the family's "handling of past lump-sum payments [wa]s less than reassuring" notwithstanding that it "ha[d] made some positive efforts to rectify their financial difficulties"); *Bennett*, ¶¶ 21, 26 (denying request for a lump sum of PTD benefits where, for among other reasons, the claimant and her husband "ha[d] to date proven themselves unable to wisely manage their finances," having fallen behind financially despite having previously been advanced \$20,000, declared bankruptcy, invested in expensive snowmobiles rather than control debt, made a financially unwise move, and allowed their monthly expenses to double in a two-year period). Compare with *Barnard*, ¶¶ 7, 23 (affirming Workers' Compensation Court's award of a lump-sum conversion of PTD benefits where, for among other reasons, claimant's financial history demonstrated that he "carefully manage[d] his money" and "ha[d] no debts") and *Miller v. Sears*, 2005 MTWCC 54, ¶¶ 18, 23 (awarding a lump-sum settlement of PTD benefits where, for among other reasons, "the petitioner, with the assistance of his wife, [wa]s competent to handle his financial affairs," his "current financial

¶ 64 This Court is not persuaded that *Barnard*, *Daniels*, *Murphy*, or *Benhart* support Ruff's contention that a lump-sum PTD award is in her best interest. In awarding a lump sum in *Barnard*, this Court took into account that it would allow Barnard to buy a more accessible house and vehicle, which, in turn, would address his safety and mobility concerns.³² While this Court agrees with Ruff that whether a lump sum will enable the claimant to buy a house and/or vehicle is an appropriate consideration for a best interest analysis, it is not the only consideration. In *Barnard*, this Court also found that Barnard's financial history demonstrated that he "carefully manage[d] his money" and "ha[d] no debts."³³ Here, this Court considered whether a lump sum would enable Ruff to buy a more accessible house and vehicle. One of the reasons it concluded that a lump sum was not in Ruff's best interest, however, was because it would not enable her to buy a more accessible house and vehicle under the financial plan she presented. Under the plan she presented, after paying off all of her debt, buying a house, modifying the house, and buying a modified vehicle, Ruff would not have enough money left to pay the mortgage. Moreover, this Court found that, unlike Barnard, Ruff would not be able to successfully manage a large lump sum in the absence of a reliable financial plan.

¶ 65 As discussed above, the denial of the request for a lump sum in *Daniels*, to start a business and buy a house from which to run it, cuts against Ruff's case and supports this Court's findings that, where there is real concern that granting a lump-sum award would leave the claimant unable to afford her basic needs or keep the house that the proposed award would buy, a lump-sum award is not in the claimant's best interest.³⁴

¶ 66 In *Murphy*, this Court granted a request for a lump-sum award for a self-employment venture and, in so doing, observed that Murphy "will have a saleable asset when he retires."³⁵ If Ruff bought a house, she, too, would have a saleable asset for a time, but not likely at her retirement. Notwithstanding, whether a lump sum would give the claimant a saleable asset at retirement may be an appropriate factor to consider in a best interest analysis, but, again, it is not the only one. And the rest of the facts in the two cases are distinguishable. *Murphy* is about a business venture that this Court found would bring financial and other intangible benefits to Murphy, his family, and his community. Ruff did not propose a business venture, her financial plan was nowhere near as sound as Murphy's, and this Court has a real concern that if she were to follow that plan, she would end up without a sufficient income stream, or any income stream, to pay her mortgage and be in as bad a financial condition as she was in to begin with or worse.

situation [wa]s not due to any mismanagement," and "the petitioner and his wife ha[d] managed their financial affairs admirably with limited resources and setbacks beyond their control").

³² *Barnard*, ¶ 23.

³³ *Barnard*, ¶¶ 7, 23.

³⁴ See *Daniels*, 230 Mont. 407, 750 P.2d 455.

³⁵ *Murphy*, 2010 MTWCC 6.

¶ 67 Finally, in *Benhart*, this Court denied Benhart’s request for a lump sum to buy a house. This Court found that Benhart did not sincerely believe he would have to vacate his present home in the foreseeable future. This Court is not clear why Ruff believes this case applies other than for its implicit recognition that enabling the claimant to buy a house can be considered as part of a best interest analysis. This Court considered that factor, and, as discussed above, it found that, on the facts in Ruff’s case, converting her benefits into a lump sum and buying a house were not in her best interest.

¶ 68 As to Ruff’s argument that she is entitled to a lump-sum award because Benefis failed to establish that a lump-sum award would not serve Ruff’s best interest, Ruff has improperly attempted to shift the burden of proof to Benefis. She must prove that a lump-sum award is in her best interest.³⁶ And, as discussed above, this Court found that Ruff did not meet her burden. *Utick* is no help to Ruff because, in that case, the problem with this Court establishing no “countervailing interests,” was that there was nothing to offset the effect of *Utick*’s demonstration that a lump-sum award was in his best interest.³⁷ In other words, as the Montana Supreme Court held, where *Utick* had met his burden of proving that a lump sum was in his best interest, it was an abuse of discretion for this Court to deny a lump sum without giving any reasons.³⁸ This case is clearly distinguishable; Benefis established countervailing interests and, in any event, a failure to establish countervailing interests on Benefis’s part would have had no effect as it is Ruff who had the burden of proof and failed to meet it.

¶ 69 In sum, Ruff is not entitled to a lump-sum conversion of her PTD benefits because she neither demonstrated that she has the financial need required to justify a lump-sum conversion nor that a lump-sum conversion is in her best interest.

Issue Two: If Ruff is entitled to a lump-sum conversion of her PTD benefits, may Benefis assert a Social Security offset and recover past overpayment of indemnity benefits?

¶ 70 In light of this Court’s resolution of Issue One, it need not address Issue Two as framed.

Issue Three: Is Ruff entitled to costs for this action?

¶ 71 Because Ruff has not prevailed on her claim for a lump-sum conversion of her PTD benefits, she is not entitled to costs for this action.³⁹

³⁶ *Martin*, ¶ 4 (citation omitted).

³⁷ See *Utick*, 181 Mont. at 356, 593 P.2d at 742.

³⁸ *Utick*, 181 Mont. at 354, 356, 593 P.2d at 740-41, 742.

³⁹ See *Johnson v. Gibson*, 227 Mont. 464, 468, 740 P.2d 665, 668 (1987) (affirming this Court’s award of attorney fees and costs to claimant under § 39-71-612, MCA (1979), where claimant prevailed in dispute over propriety of a lump-sum advance (citations omitted)).

JUDGMENT

¶ 72 Ruff is not entitled to a lump-sum conversion of her PTD benefits.

¶ 73 Ruff is not entitled to costs for this action.

¶ 74 Pursuant to ARM 24.5.348(2), this Judgment is certified as final and, for purposes of appeal, shall be considered as a notice of entry of judgment.

DATED this 27th day of April, 2022.

(SEAL)

/s/ DAVID M. SANDLER
JUDGE

c: Matthew J. Murphy
G. Andrew Adamek

Submitted: February 11, 2021