

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2007 MTWCC 25

WCC No. 2006-1717

FREDDIE SANCHEZ,

Petitioner

vs.

MONTANA STATE FUND,

Respondent/Insurer.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

Summary: Petitioner petitioned for a lump-sum conversion of his permanent total disability benefits pursuant to § 39-71-741, MCA. Respondent argues that a lump-sum conversion is not in Petitioner's best interests.

Held: Petitioner has not met the lump-sum criteria of § 39-71-741(1)(c), MCA. He has failed to demonstrate financial need and the Court is not persuaded that a lump-sum conversion is in his best interests.

Topics:

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-741. Where Petitioner's statement of financial condition shows a modest monthly surplus and the Court concluded that Petitioner could financially sustain himself with his present income and assets, and could reasonably tighten his budget to work toward elimination of debts, Petitioner has not demonstrated the financial need for a lump sum conversion of his PTD benefits.

Benefits: Lump Sums: Generally. Lump sum conversions of PTD benefits must be the exception and may be approved only if the worker has demonstrated financial need that relates to the necessities of life, an accumulation of debt incurred prior to the injury, a feasible self-employment venture, or financial need which arises subsequent to the date of injury because of reduced income as a result of the injury. Where Petitioner's expenses include high-interest credit cards at or near their limits, loan

payments on multiple motor vehicles, and excessive discretionary spending, he has not demonstrated financial need for a lump sum conversion.

Benefits: Lump Sums: Best Interests. Where Petitioner spent previous lump-sum advances on discretionary items and entertainment without paying his outstanding debts, and where Petitioner cannot account for how he spends a significant portion of his income, it would not be in Petitioner's best interests to convert his PTD benefits to a lump sum.

¶ 1 The trial in this matter was held on Friday, February 9, 2007, at the Workers' Compensation Court, Helena, Montana. After a brief recess, the Court reconvened for a bench ruling, pursuant to ARM 24.5.335. Petitioner Freddie Sanchez was present and represented by Leslae J.E. Dalpiaz and David Lauridsen. Respondent Montana State Fund was represented by William Dean Blackaby.

¶ 2 Exhibits: Exhibits 1 through 15 were admitted without objection. At trial, Petitioner replaced Exhibit 2 and page 2 of Exhibit 5 with updated information by agreement of the parties.

¶ 3 Witnesses and Depositions: The depositions of Petitioner Freddie Sanchez, Corinne Sanchez, and Linda Robbins were made part of the record. Petitioner, Corinne Sanchez, and Linda Robbins were sworn and testified at trial. Allen Robinson testified via telephone.

¶ 4 Issues Presented: The contested issues of law as reflected in the Pretrial Order are as follows:

¶ 4a Whether Petitioner is entitled to a lump-sum conversion of his permanent total disability benefits pursuant to §39-71-741, MCA;

¶ 4b Whether Petitioner is entitled to costs and attorney's fees, pursuant to §39-71-612, MCA.¹

¶ 5 At the close of arguments, the Court issued a bench ruling pursuant to ARM 24.5.335 following a brief recess. The following findings and conclusions are in accordance with that ruling.

¹ Pretrial Order at 3.

FINDINGS OF FACT

¶ 6 On August 14, 2000, Petitioner suffered an industrial injury to his low back arising out of and in the course of his employment with Warsab Field Machining in Colstrip, Rosebud County, Montana.²

¶ 7 Respondent accepted liability for Petitioner's industrial injury and paid temporary total disability (TTD), permanent partial disability (PPD), permanent total disability (PTD), and medical benefits. Respondent has agreed that Petitioner has sustained a permanent total disability and permanent total disability benefits are currently being paid biweekly.³

¶ 8 I find Petitioner Freddie Sanchez (Petitioner) to be a credible witness to the extent that I believe Petitioner testified to the best of his recollection and was not attempting to mislead the Court.

¶ 9 I did not find Corinne Sanchez's (Ms. Sanchez) testimony to be entirely credible. Although I believe Ms. Sanchez testified to the best of her recollection and was honest in discussing the family's past financial decisions, I seriously doubt whether she genuinely intends to follow through with the debt reduction plan as testified to.

¶ 10 I find Linda Robbins (Robbins), claims adjuster for Montana State Fund, to be a credible witness.

¶ 11 Allen Robinson (Robinson), a structured settlement broker and consultant for Wringler Associates testified via telephone about structured annuities or structured settlements. Since I am denying Petitioner's request for a lump-sum conversion because I am not convinced Petitioner cannot sustain himself with his present income and assets, Robinson's testimony is not relevant to the disposition of this case.

¶ 12 According to Petitioner's January 18, 2007, Statement of Financial Condition, his household monthly income is \$4,014.50. This is comprised of \$1,281.84 in Workers' Compensation benefits; \$1,866.00 in Social Security disability benefits; and \$866.66 in income from Ms. Sanchez's babysitting services. The Statement of Financial Condition reflects that Petitioner's monthly expenses total \$4,025.52, resulting in a monthly loss of \$11.02.⁴

² Pretrial Order at 2.

³ *Id.*

⁴ Ex. 5 at 1.

¶ 13 Ms. Sanchez testified that they have paid off one of their credit cards, which changes their monthly expenses to a total of \$3,985.52. This adjusts their Statement of Financial Condition from a monthly deficit of \$11.02 to a monthly surplus of \$28.98.⁵

¶ 14 In addition to his monthly expenses, Petitioner alleges he owes \$14,500 from personal loans received from various family members which are currently not being paid upon.⁶

¶ 15 Petitioner's Statement of Financial Condition lists several reasonable and necessary expenses such as his mortgage and utilities.⁷

¶ 16 Petitioner's Statement of Financial Condition also lists nearly \$10,000 on a high interest line of credit and approximately \$1,500 in credit card debt, with minimum monthly payments of approximately \$400 in the aggregate.⁸

¶ 17 Petitioner's Statement of Financial Condition also lists a substantial amount of discretionary spending which I find to be excessive in light of Petitioner's financial condition. Moreover, Petitioner's bank statements which have been submitted to the Court⁹ demonstrate a level of discretionary spending which is even more excessive than the Statement of Financial Condition reflects. This leads me to question the accuracy of the Statement of Financial Condition.

¶ 18 I am also concerned about Petitioner's substantial automotive expenses. Petitioner's Statement of Financial Condition reflects spending of \$500 per month on automotive maintenance and gasoline. Petitioner has a 1995 GMC Suburban on which he owes \$7,000. Petitioner also owns a 2006 Toyota Corolla, which he purchased in January 2006, and on which he owes approximately \$17,000, with monthly payments of \$380.86.¹⁰

¶ 19 Ms. Sanchez testified that they purchased the Toyota by getting a \$2,000 advance from claims adjuster Robbins, and that in retrospect she wishes they had asked for a larger amount to incur less debt on the loan. Ms. Sanchez admits she was surprised that they qualified for the loan because she did not think their credit was good enough.¹¹ However,

⁵ Trial Test.

⁶ Ex. 5 at 1-2.

⁷ *Id.*

⁸ *Id.*

⁹ See Ex. 12.

¹⁰ Ex. 5 at 1-2.

¹¹ Trial Test.

the fact that the Sanchezes were concerned that they might not even qualify for the loan did not dissuade them from taking on the debt. Furthermore, Petitioner admitted that they represented to Robbins that they needed \$3,000 for the down payment, but only applied \$2,000 to the purchase, and that they had already purchased the car before even requesting the advance from Respondent.¹²

¶ 20 Petitioner testified that purchasing a new vehicle was “a smart thing to do” because by making regular on-time payments he and his wife could improve their credit. Petitioner admitted that paying down the \$10,000 debt on his high-interest line of credit would also have improved their credit rating, but that they have not made any attempts to pay down this debt, even when they received various lump-sum payments over the past three years.¹³

¶ 21 On June 1, 2006, Petitioner received a lump-sum advance of \$20,000 from Respondent.¹⁴ Petitioner did not use this money to pay down his debts. Instead, Petitioner used the majority of this advance for discretionary items such as \$7,000 for furniture and redecorating and approximately \$4,000 in clothing for his three school-age children.¹⁵ Ms. Sanchez explained that although she could have used the money to pay down some of the family’s debt, she felt that her children deserved it.¹⁶ According to the family’s bank records, the family spent the \$20,000 advance in 16 days.¹⁷ Ms. Sanchez admitted that she cannot account for how \$5,000 of the \$20,000 advance was spent.¹⁸

¶ 22 Between 2003 and 2006, Petitioner received lump sums totaling \$51,400, which consisted of the \$20,000 advance, \$29,752 in social security retroactive benefits, and his impairment rating, less some overpayments and recoupments of previous advances.¹⁹ Ms. Sanchez testified that \$5,000 was spent on a 5-day family vacation in Phoenix, \$1,800 for a Kirby vacuum cleaner, and \$8,000 in furniture and home remodeling.²⁰

¶ 23 Ms. Sanchez testified that she and her husband have not closed any of their credit card accounts. All of their credit cards are near their limits, and she says they would intend

¹² Trial Test.

¹³ Trial Test.

¹⁴ Ex. 9 at 118.

¹⁵ Ex. 13 at 1.

¹⁶ Trial Test.

¹⁷ Ex. 12 at 24-27.

¹⁸ Trial Test.

¹⁹ Ex. 13 at 2; Trial Test.

²⁰ Trial Test.

to use those cards again if they paid them down, although they might close some of the cards if the proposed lump-sum conversion was approved.²¹

¶ 24 Petitioner's counsel have stipulated that they would take a reduced fee of 17.5%, or \$58,820.47. After accounting for Petitioner's counsel's reduced fee, therefore, Petitioner would receive \$277,296.52. Petitioner's total debt load is \$85,056.43 according to his Statement of Financial Condition, after adjusting for the recent pay-off of one credit card debt. If Petitioner were to pay off his debts with the proposed lump-sum conversion, he would be left with \$192,240.09. However, Petitioner does not propose to pay off **any** of the \$14,500 in personal loans which he owes to various family members.²² Therefore, his plan would not eliminate all of his debts.

¶ 25 Petitioner also proposes that he would make a one-time payment of \$7,000 toward back child support which he has been ordered to pay. Ms. Sanchez testified that she does not know how much is currently owed on Petitioner's child support obligation, but she is sure it is more than \$7,000 and the monthly obligation of \$125 is being taken out of Petitioner's Social Security disability benefits. Ms. Sanchez further testified that when Petitioner received a \$29,000 retroactive social security check, they were aware of the outstanding child support obligation but Petitioner made no payments on it because of some purported confusion with Social Security.²³ Inexplicably, however, when Petitioner later received the \$20,000 advance from Respondent, he again ignored this obligation.

¶ 26 Petitioner also proposes that he would use approximately \$200,000 to purchase a structured annuity.²⁴ The proposed annuity's projected monthly payout is \$1,007.78.²⁵ Petitioner currently receives \$1,281.84 per month in workers' compensation benefits.²⁶ Petitioner has demonstrated that he is unable to live within his current income and I am not persuaded that eliminating Petitioner's current debts – several of which are not even factored into his current monthly budget because he is not paying on them – will change his spending habits and allow him to live on nearly \$300 less per month without incurring future financial difficulties. Ms. Sanchez's testimony indicates that the family has made some positive efforts to rectify their financial difficulties. However, as discussed above, their handling of past lump-sum payments is less than reassuring. I am convinced that Petitioner's continued receipt of biweekly workers' compensation benefits rather than a lump-sum conversion is in his best interests.

²¹ Trial Test.

²² Trial Test.

²³ Trial Test.

²⁴ Ex. 2.

²⁵ Ex. 5 at 2.

²⁶ Ex. 5 at 1.

¶ 27 Petitioner has argued that part of his financial condition has been due to the drastic reduction in his income as a result of his industrial injury. However, Petitioner testified that prior to his injury, his best year working was approximately \$50,000 in income, which is in line with what he has been receiving since his industrial injury when his Social Security and workers' compensation benefits are taken into account. Moreover, he has had over \$51,000 – effectively an extra year's income – in additional lump-sum payments since his injury. I, therefore, am not persuaded that Petitioner's financial condition is due to the drastic reduction in his income since, by all appearances, he has not suffered a drastic reduction in income.

CONCLUSIONS OF LAW

¶ 28 This case is governed by the 1999 version of the Montana Workers' Compensation Act since that was the law in effect at the time of Petitioner's injury.²⁷

¶ 29 Petitioner bears the burden of proving by a preponderance of the evidence that he is entitled to the benefits he seeks.²⁸

¶ 30 Under § 39-71-741, MCA, a lump-sum conversion of a PTD claim must be the exception and may be approved only if the worker has demonstrated financial need that relates to the necessities of life, an accumulation of debt incurred prior to the injury, a feasible self-employment venture, or financial need which arises subsequent to the date of injury because of reduced income as a result of the injury.

¶ 31 I agree with Respondent that the case of *Martin v. The Hartford*²⁹ is applicable to the case at hand. In *Martin*, this Court refused to grant a lump-sum conversion where the Court found the claimant "failed to show he cannot financially sustain himself with his present income and assets."³⁰ In the present case, having reviewed Petitioner's Statement of Financial Condition and Ms. Sanchez's testimony, I note that Petitioner has a modest monthly surplus. I also believe that Petitioner can financially sustain himself with his present income and assets and that he can reasonably tighten his budget to continue to work toward elimination of his current debts.

¶ 32 In *Martin*, the household budget had a \$246.87 surplus. However, the Court further found there was "room to reasonably tighten up on expenses" and noted specific items,

²⁷ *Buckman v. Montana Deaconess Hosp.*, 224 Mont. 318, 321, 730 P.2d 380, 382 (1986).

²⁸ *Ricks v. Teslow Consol.*, 162 Mont. 469, 512 P.2d 1304 (1973); *Dumont v. Wickens Bros. Constr. Co.*, 183 Mont. 190, 598 P.2d 1099 (1979).

²⁹ *Martin v. The Hartford*, 2003 MTWCC 25 (aff'd 2004 MT 57, 320 Mont. 206, 86 P.3d 569).

³⁰ *Martin*, ¶ 12.

such as premium cable TV and frequent dining out.³¹ These expenses are likewise present in Petitioner's household budget.

¶ 33 The Court in *Martin* also found that while the claimant had debt, including credit card and other debt, it was not "extraordinary."³² Similarly, in this case, while Petitioner has substantial debts, a debt load of \$85,056.43 – which includes a mortgage balance of approximately \$43,000.00 – plus approximately \$7,000.00 in back child support, is not insurmountable with reasonable budgeting in light of Petitioner's annual income of over \$48,000.00, or even the roughly \$45,400.00 that Petitioner will receive annually after Respondent begins to recoup the \$20,000.00 advance from his biweekly benefits at the rate of roughly \$50.00 per week.³³

¶ 34 Petitioner has not met the lump-sum criteria of § 39-71-741(1)(c), MCA, because he has failed to demonstrate financial need. As was the case in *Martin*, Petitioner's monthly income exceeds his monthly expenses and his surplus could be even greater with better money management.³⁴ If a claimant does not meet the criteria of § 39-71-741(1)(c), MCA, a lump-sum conversion of a PTD claim will be made only if it is in the claimant's best interests.³⁵ Robbins testified that she denied Petitioner's request because she did not determine a lump-sum conversion to be in his best interests. I agree.

¶ 35 Finally, although Petitioner argues that the Court could impose various conditions on his lump-sum conversion, including ordering him to purchase the annuity and paying off his current obligations, I need not consider this argument in reaching my decision. Even if I were to consider it, I certainly cannot order Petitioner to avoid incurring future debts over the next 30 years. Based upon Petitioner's past history, I view this as a likely, if not inevitable, occurrence.

³¹ *Martin*, ¶ 16.

³² *Martin*, ¶ 17.

³³ Trial Test.

³⁴ *Martin*, ¶ 36.

³⁵ *Martin*, ¶¶ 36-37.

JUDGMENT

¶ 36 Petitioner's petition for a lump-sum conversion of his PTD benefits pursuant to § 39-71-741, MCA, is **DENIED**.

¶ 37 Petitioner is not entitled to costs and attorney's fees pursuant to § 39-71-612, MCA.

¶ 38 Petitioner's Petition is **DISMISSED WITH PREJUDICE**.

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

¶ 40 Any party to this dispute may have twenty days in which to request reconsideration from these FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT.

DATED in Helena, Montana, this 22nd day of June, 2007.

(SEAL)

\s\ James Jeremiah Shea
JUDGE

c: Leslae J.E. Dalpiaz
David W. Lauridsen
William Dean Blackaby
Submitted: February 9, 2007