

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2008 MTWCC 22

WCC No. 2007-1870

YANCY STEWART

Petitioner

vs.

MACo WORKERS' COMPENSATION TRUST

Respondent/Insurer.

ORDER REGARDING CHARGES FOR COPYING CLAIM FILES

Summary: Petitioner moved the Court for an order requiring Respondent to provide him with a free copy of his claim file. Respondent responded that it is well-recognized in Montana law that it may charge for such copies and that its charge of \$149 for copying a 283-page claim file is appropriate.

Held: Respondent may charge Petitioner the same amount as is commonly charged by businesses offering photocopy services to the public which are located in the same community as the claim file is maintained.

Topics:

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 50-16-540. In setting a copy fee for Petitioner's claims file, Respondent's reliance on the statutory maximums set by the Legislature regarding the copying charges of medical providers and some state agencies is misplaced. It is clear that these statutes do not apply to the copying of workers' compensation claim files.

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-107. In the absence of a statute which sets forth permissible copy charges for a claimant's request of his own claim file, § 39-71-107(3), MCA, offers some guidance to the Court in mandating that a claim file must be maintained in a manner that makes it accessible to the claimant.

A prohibitively expensive claim file is not truly accessible to a claimant. An insurer may charge a reasonable amount – the same amount as is commonly charged by businesses in the community which offer photocopy services to the public where the claim file is maintained.

Discovery: Claims File. In the absence of a statute which sets forth permissible copy charges for a claimant's request of his own claim file, § 39-71-107(3), MCA, offers some guidance to the Court in mandating that a claim file must be maintained in a manner that makes it accessible to the claimant. Section 39-71-105(4), MCA, expresses the public policy that claimants should be able to speedily obtain benefits in a system designed to minimize reliance upon lawyers and the courts. A prohibitively expensive claim file is not truly accessible to a claimant without the assistance of counsel or the Court. An insurer may charge a reasonable amount – the same amount as is commonly charged by businesses in the community which offer photocopy services to the public where the claim file is maintained.

¶ 1 Petitioner Yancy Stewart moves this Court for an order requiring Respondent MACo Workers' Compensation Trust to provide him with a free copy of his claim file.¹ Petitioner alleges that after Respondent terminated his benefits, he asked for a copy of his claim file so that he could determine why his benefits had been terminated. Respondent then demanded \$149 for a copy of Petitioner's 283-page claim file. Petitioner offered Respondent \$70.75, or \$.25 per page, and Respondent refused to provide the file for that amount.

¶ 2 Petitioner alleges that Respondent set its copy fee by relying on the statutory amount set forth in § 50-16-540, MCA, which provides that a reasonable fee for copies of health care information may not exceed \$.50 per page. Petitioner argues that this statute applies only to medical providers and that since Respondent is not a medical provider, it cannot use the statute to justify its copy fee. Petitioner further points out that even if this statute were to apply to the portion of his file which constitutes medical records, the statutory provision would not apply to the portions of his claim file which are not medical records.

¶ 3 Petitioner further argues that Respondent's fee is prohibitive to claimants seeking to assert their rights to workers' compensation benefits, and that charging for a copy of the claim file is actually the insurer's failure to pay a claim-related cost in violation of the Unfair Trade Practices Act (UTPA), §§ 33-18-201 *et seq.*, MCA.

¹ Motion to Require the Insurer to Provide a Free Copy of the Claim File, Docket Item No. 12.

¶ 4 Petitioner further argues that ARM 24.5.317(2) provides that the parties shall exchange medical records relating to the claimant's work-related medical conditions, and that since those records must be exchanged pursuant to the ARM, he should not have to pay \$.50 per page to receive them.

¶ 5 Respondent responds that workers' compensation insurers generally charge copy fees for providing claim files, and that while § 50-16-540, MCA, applies to health care providers, it used the statute as a guideline in determining its copy fee. Respondent further states:

Montana law recognizes the charging for copies in a number of statutory references, including the State Auditor's office, which is required to charge 50¢ per page for furnishing photostatic copies of securities information (§ 30-10-107, MCA); clerks of district courts are required to charge \$1 per page for the first ten pages and 50¢ for each additional page for copies of papers on file in the clerks' offices (§ 25-1-201, MCA); and the Secretary of State's office, which charges \$1 per page for copies of information from the Secretary's office, with a minimum of \$5 due (ARM 1.2.104).²

Respondent further alleges that Montana State Fund and "nearly all other" workers' compensation insurers charge for claim files when they are requested by claimants or their counsel.

¶ 6 I agree with Respondent that insurers should not be obligated to absorb the cost of copying claim files. However, Respondent's reliance on the statutory maximums set by the Legislature regarding the copying charges of medical providers and some state agencies is misplaced. It is clear from the plain reading of these statutes that they do not apply to the copying of workers' compensation claim files. Conversely, nowhere in the Workers' Compensation Act is there a prohibition on charging for the copying of claim files.

¶ 7 Although there is no specific statute within the Workers' Compensation Act which sets forth the amount which may be charged for copies, §§ 39-71-105(4), -107(3), MCA, provide some guidance in resolving the present dispute.

¶ 8 Section 39-71-105(4), MCA, provides:

(4) Montana's workers' compensation and occupational disease insurance systems are intended to be primarily self-administering.

² Respondent's Response to Petitioner's Motion to Require the Insurer to Provide a Free Copy of the Claim File at 2, Docket Item No. 14.

Claimants should be able to speedily obtain benefits, and employers should be able to provide coverage at reasonably constant rates. To meet these objectives, the system must be designed to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities.

¶ 9 Section 39-71-107(3), MCA, provides:

(3) An insurer shall maintain the documents related to each claim filed with the insurer under the Workers' Compensation Act at the Montana office of the claims examiner examining the claim in Montana until the claim is settled. The documents may be either original documents or duplicates of the original documents and must be maintained in a manner that allows the documents to be retrieved from that office and copied at the request of the claimant or the department. Settled claim files stored outside of the claims examiner's office must be made available within 48 hours of a request for the file. Electronic or optically imaged documents are permitted.

¶ 10 Recently, in *Porter v. Liberty Northwest Ins. Corp.*³, the parties asked this Court to determine what obligations an insurer has to produce a claimant's file upon the request of the claimant or his counsel. I concluded that this Court had no jurisdiction to order an insurer to produce a claims file prior to a petition being filed in this Court. In that case, the petitioner argued that § 39-71-107(3), MCA, mandates that an insurer must release its files to be copied at the request of the claimant, while the respondent argued that the statute merely requires that the files be maintained in a retrievable fashion.⁴ Although I was not able to reach the issue of interpreting the statute in *Porter* on jurisdictional grounds, the issue of an insurer's obligation to produce a claimant's file is now squarely before me in the pending dispute.

¶ 11 In the absence of a statute which sets forth permissible copy charges for a claimant's request of his own claim file, the aforementioned statutes provide some direction to the Court. Section 39-71-107(3), MCA, mandates that a claim file must be maintained in a manner that makes it accessible to the claimant. Section 39-71-105(4), MCA, expresses the public policy that claimants should be able to speedily obtain benefits while ensuring that employers be able to provide coverage at reasonably constant rates in a system designed to minimize reliance upon lawyers and the courts. Neither of the positions advanced by either party in this case further the purposes of these statutes. A prohibitively expensive claim file is not truly accessible to a claimant without the assistance of counsel

³ *Porter*, 2007 MTWCC 42.

⁴ *Id.*, ¶¶ 47-53.

or the Court. A claimant may well ask why he could not simply take his file to a local copy shop and copy it himself for a reasonable cost. On the other hand, Petitioner's argument that an insurer must absorb the entire cost of copying the claim file by providing a copy of the file to the claimant at no charge countervails the expressed public policy of providing coverage at reasonably constant rates. Therefore, I find that an insurer may charge a reasonable amount per page to recoup its cost in copying the file. I find that a "reasonable amount" would be the same amount as is commonly charged by businesses in the community which offer photocopy services to the public where the claim file is maintained. The location of the claim file and the prevailing cost of copies in the community not being in evidence in the present case, I leave this issue to the parties to determine and to return if they cannot agree on the amount.

ORDER

¶ 12 Respondent may charge Petitioner the same amount as is commonly charged by businesses offering photocopy services to the public which are located in the same community as the claim file is maintained.

DATED in Helena, Montana, this 15th day of May, 2008.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Thomas J. Murphy
Norman H. Grosfield
Submitted: January 14, 2008