

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2009 MTWCC 15

WCC No. 2008-2092

KURT VANDERVALK

Petitioner

vs.

MONTANA STATE FUND

Respondent/Insurer.

ORDER DENYING PETITIONER'S MOTION FOR EMERGENCY INDEPENDENT
MEDICAL EXAMINATION AND TRAVEL REIMBURSEMENT

Summary: Petitioner moves the Court to order Respondent to arrange and pay for an IME, and to order Respondent to reimburse Petitioner for travel expenses and for certain medications he has purchased. Respondent responds that it is not statutorily obligated to arrange and pay for the IME Petitioner seeks, and further responds that the issues regarding reimbursement of certain expenses have facts in dispute and are better resolved after a trial has been held.

Held: While an insurer has a right to request an IME pursuant to § 39-71-605, MCA, the Court is aware of no statutory or case authority for the proposition that Petitioner is entitled to obtain an IME at Respondent's expense. As to Petitioner's claim for reimbursement of certain out-of-pocket expenses, the Court agrees with Respondent that this claim is best characterized as a motion for summary judgment and is better resolved on the merits at trial. The Court therefore declines to consider this issue on summary judgment under ARM 24.5.329(1)(b). Petitioner's motion is denied.

Topics:

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-605. Although Respondent attempted to obtain an IME with a cardiologist, it was unable to do so within Montana. Respondent decided not to seek an out-of-state IME. Although Petitioner argues that

Respondent should be required to obtain the IME, Respondent is not statutorily obligated to do so.

Independent Medical Examinations: Generally. Although Respondent attempted to obtain an IME with a cardiologist, it was unable to do so within Montana. Respondent decided not to seek an out-of-state IME. Although Petitioner argues that Respondent should be required to obtain the IME, Respondent is not statutorily obligated to do so.

¶ 1 Petitioner Kurt Vandervalk moves this Court to order Respondent Montana State Fund to arrange and presumably pay for a “complete” independent medical examination (IME) and to order Respondent to reimburse Petitioner for travel expenses he allegedly incurred while traveling to medical appointments during the last five years. Petitioner further seeks reimbursement for certain medications he purchased.¹ Respondent objects to Petitioner’s motion, arguing that Petitioner is not statutorily entitled to the IME he seeks, and further arguing that there are factual disputes regarding the items for which Petitioner seeks reimbursement, and that these disputes are best resolved at trial.²

¶ 2 On May 29, 2008, Petitioner, appearing pro sé, filed a Petition for Hearing with this Court in which he alleged that he suffered carpal tunnel syndrome, an occupational disease, in the course and scope of his employment.³ Petitioner contends that Respondent has refused to accept liability for the claim, has denied his medical benefits, and has refused to reopen or review his claim. Petitioner further contends that Respondent has refused to pay rehabilitation benefits and has denied reimbursement for medical treatments Petitioner has received. Petitioner further contends that Respondent has refused to pay biweekly disability benefits.

¶ 3 Among other relief, Petitioner requests that his “claim, settlements and the medical evidence to be reviewed, and a complete medical evaluation done.”⁴ In its response to the present motion, Respondent argues that Petitioner’s request for an IME may be decided at the present time as it is an issue of law, but contends that Petitioner’s request for reimbursement of certain expenses may best be characterized as a motion for partial

¹ Motion For [E]mergency IME & Travel [R]eimbursement (Motion), Docket Item No. 33.

² Response to Motion for Emergency IME and Travel Reimbursement (Response Brief), Docket Item No. 37.

³ Petition for Hearing (Occupational Disease) (Petition), Docket Item No. 1.

⁴ Petition at 2 [sic].

summary judgment. As such, Respondent argues that summary judgment should be denied on the reimbursement issues as facts remain in dispute.⁵

¶ 4 Petitioner argues that Respondent agreed to pay for an IME, but has not done so. Petitioner attaches to his brief in support of his motion several exhibits including e-mail correspondence between Petitioner and counsel for Respondent which show that Respondent attempted to set up IME appointments for Petitioner which apparently did not ultimately occur.⁶ Respondent responds that it attempted to arrange an IME for Petitioner with an occupational medicine physician and a cardiologist and, while the IME with the occupational medicine physician occurred, Respondent was unable to locate a cardiologist in Montana who was willing to perform an IME. Respondent asserts that it does not intend to seek an IME by an out-of-state cardiologist, but intends to rely upon the opinions of cardiologists who have acted as Petitioner's treating physicians. Respondent argues that it is not statutorily obligated to provide the IME Petitioner requests, and draws the Court's attention to *Thompson v. Liberty Northwest Ins. Corp.*⁷ in support of its argument.

¶ 5 In *Thompson*, the claimant challenged the impairment rating he had been assigned and demanded a second IME at the insurer's expense. This Court held:

The claimant has cited no statutory or case authority for the proposition that he is entitled to an IME at the insurer's expense, and I am aware of none. Rather, it is the insurer's right to request an IME. § 39-71-605, MCA (1999). While Liberty agreed to and paid for [an additional] IME, it was not required to do so. And, it certainly was not required to pay for yet a second IME requested by the claimant. The claimant, however, was free to seek an additional impairment rating at his own expense. . . .⁸

¶ 6 This Court's holding in *Thompson* is directly on point to the present case. Respondent is under no statutory obligation to arrange and pay for the IME Petitioner requests. Therefore, Petitioner's motion to compel Respondent to arrange an emergency IME is denied.

¶ 7 As to Petitioner's claim for reimbursement of certain out-of-pocket expenses, I agree with Respondent that this claim is best characterized as a motion for partial summary

⁵ Response Brief at 1-2.

⁶ Exhibits to Motion at 37-39.

⁷ *Thompson*, 2004 MTWCC 16.

⁸ *Thompson*, ¶ 17.

judgment pursuant to ARM 24.5.329. While Petitioner has attached exhibits which set forth some of the expenses he alleges to have incurred for which he believes Respondent should be liable, I am convinced that this issue is better resolved on the merits at trial. I therefore decline to consider this issue on summary judgment under ARM 24.5.329(1)(b). Petitioner's motion for reimbursement of these expenses is denied; this issue will be determined at trial.

ORDER

¶ 8 Petitioner's motion for an emergency IME is **DENIED**.

¶ 9 Petitioner's motion for reimbursement of travel and other expenses, deemed to be a motion for partial summary judgment, is **DENIED**.

DATED in Helena, Montana, this 30th day of April, 2009.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Kurt Vandervalk
Greg E. Overturf
Submitted: April 27, 2009