IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2020 MTWCC 20

WCC No. 2020-5019

JOSEPH JOHNSON

Petitioner

vs.

HARTFORD ACCIDENT & INDEMNITY CO.

Respondent/Insurer

and

MONTANA DEPARTMENT OF LABOR AND INDUSTRY/EMPLOYMENT RELATIONS DIVISION (RE-OPENING OF MEDICALS DEPARTMENT-MEDICAL DIRECTOR)

Respondent.

ORDER DENYING RESPONDENT/INSURER'S RENEWED MOTION TO DISMISS PETITION FOR TRIAL

Summary: Petitioner appeals the DLI's medical review panel's decision that his medical benefits are to remain terminated under the 60-month rule in the 2011 Workers' Compensation Act. He seeks a ruling that Respondent/Insurer is liable for additional medical benefits. The DLI refuses to participate in this case on the grounds that it has no legal interest in the outcome; DLI points out that its role was that of an initial adjudicator and that if Petitioner prevails in this appeal, then Respondent/Insurer will be liable for the additional medical benefits. Respondent/Insurer moves to dismiss, asserting that it is not a proper respondent and that Petitioner has not stated a claim against it.

Held: The Court denied Respondent/Insurer's motion to dismiss. Respondent/Insurer is the proper respondent because it will be liable for additional medical benefits if Petitioner

prevails. Moreover, Petitioner stated a direct claim against Respondent/Insurer for additional medical benefits.

¶ 1 In his Amended Petition for Trial, Petitioner Joseph Johnson asserts that the Department of Labor & Industry's (DLI) medical review panel erred in refusing to reopen his medical benefits under §§ 39-71-704(1)(i)(f) and -717, MCA (2011). Johnson asserts that Respondent/Insurer Hartford Accident & Indemnity Co. (Hartford) is liable for additional medical benefits. Although named as a party, the DLI will not participate in this appeal on the grounds that it does not have a legal interest in the outcome, as Hartford will be liable for the additional medical benefits if Johnson prevails. Notwithstanding, Hartford moves to dismiss, asserting that it is not a proper respondent and that Johnson has not stated a claim against it for which relief may be granted. As set forth below, this Court denies Hartford's Renewed Motion to Dismiss Petition for Trial.

FACTS AND PROCEDURAL HISTORY

¶ 2 On December 12, 2012, Johnson suffered an industrial injury.

¶ 3 Hartford accepted liability for Johnson's injury.

¶ 4 Johnson's medical benefits terminated under § 39-71-704(1)(f)(i), MCA (2011), which provides, in relevant part, that medical benefits "terminate 60 months from the date of injury."

¶ 5 Johnson petitioned the DLI to reopen his medical benefits under § 39-71-717(2), MCA (2011), which provides, in relevant part, that the DLI's medical review panel may reopen medical benefits "if the worker's medical condition is a direct result of the compensable injury . . . and requires medical treatment in order to allow the worker to continue to work or return to work."

¶ 6 The DLI's medical review panel decided that the preponderance of the evidence did not support Johnson's petition to reopen his medical benefits.

¶ 7 Pursuant to § 39-71-717(9), MCA (2011), Johnson appealed the DLI's medical review panel's decision by filing an Amended Petition for Trial with this Court, naming Hartford and the DLI as respondents. He alleges that "[a] dispute exists between the parties with regard to reopening of Petitioner's medical benefits" and that his medical benefits should be reopened. In his prayer for relief, Johnson prays for a decision from this Court directing Hartford to "pay his medical and hospital benefits pursuant to § 39-71-704, M.C.A."

¶ 8 The DLI notified this Court, Johnson, and Hartford that it will not participate in this case because its medical review panel's role as the initial adjudicator is complete and that it has no legal interest in the outcome of Johnson's appeal.

¶ 9 Hartford moves for an order dismissing it from this case, asserting that it is not a proper respondent and that Johnson has not made a claim against it for which relief may be granted.

LAW AND ANALYSIS

¶ 10 "A motion to dismiss for failure to state a claim upon which relief may be granted requires this Court to determine whether a claim has been adequately stated in the Petition for [Trial]."[1] "All a petitioner need show to survive a motion for judgment for failure to state a claim is that a set of facts exists under which he could recover."[2]

¶ 11 Section 39-71-704(1)(f)(i), MCA (2011), the statute governing medical benefits, states:

> The benefits provided for in this section terminate 60 months from the date of injury or diagnosis of an occupational disease. A worker may request reopening of medical benefits that were terminated under this subsection (1)(f) as provided in 39-71-717.

¶ 12 In turn, § 39-71-717, MCA (2011), sets forth the procedures and standards for a reopening of medical benefits case. The injured worker files a petition to reopen medical benefits with the DLI.[3] The DLI's medical review panel, or just the DLI's medical director if both parties agree, reviews the petition and the injured worker's medical records to determine, on a preponderance of the evidence standard, whether "the worker's medical condition is a direct result of the compensable injury or occupational disease and requires medical treatment in order to allow the worker to continue to work or return to work."[4] The DLI's medical review panel issues a written decision.[5] If the injured worker or insurer thinks that the DLI's medical review panel erred, the injured worker and insurer mediate their dispute over whether the injured workers' medical benefits are to be reopened.[6] If the parties do not reach a settlement at mediation, the "party aggrieved by [the] decision of the department's medical director or medical review panel" may petition this Court, which is to presume that the DLI's medical review panel's decision is correct and may reverse only if the appealing party convinces this Court of error by clear and convincing evidence.[7]

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[1] *Jimenez v. Liberty Nw. Ins. Corp.*, 2016 MTWCC 17, ¶ 6 (citation omitted).

[2] *Id*. (citation omitted).

[3] § 39-71-717(3), (5)-(6), (8), MCA (2011).

[4] § 39-71-717(1)-(2), (7), MCA (2011).

[5] § 39-71-717(8), MCA (2011).

[6] § 39-71-717(9), MCA (2011).

[7] § 39-71-717(9), MCA (2011).

¶ 13 Shortly after Johnson filed this case, the DLI notified this Court, Johnson, and Hartford that it would not participate in this case. The DLI explains that under § 39-71-717, MCA (2011), its role is solely as the initial adjudicator. The DLI explains it "takes no position on this appeal, because the insurer is the only potentially liable party, and because there is no basis for inclusion of [the] DLI in this matter." The DLI also explains, "the dispute here remains between [the] injured worker and [the] insurer, since it is their rights impacted."

¶ 14 Hartford moves for an order dismissing it from this case, asserting that it is not a proper respondent and that Johnson has not made a claim against it for which this Court can grant relief. Hartford reasons that because it did not make the decision to keep Johnson's medical benefits terminated, "the dispute is not between the Respondent and Petitioner, it is between Petitioner and the medical [review] panel." Thus, Hartford asserts that this Court should dismiss it from this case, leaving the DLI as the only respondent to defend Johnson's appeal, notwithstanding the DLI's notice that it will not participate in this case.

¶ 15 Johnson does not take a position as to whether Hartford or the DLI is the proper respondent, or whether both are proper respondents. He explains that he named both and leaves it to this Court to determine which is the proper respondent, or whether both are proper respondents.

¶ 16 For two reasons, Johnson has set forth a claim against Hartford for which relief can be granted. First, Hartford is the proper entity to defend Johnson's appeal of the DLI's medical review panel's decision because if Johnson prevails, then Hartford will be liable to Johnson for additional medical benefits; i.e., Hartford is the entity that will directly bear the legal burden if Johnson prevails. The DLI is correct that under § 39-71-717, MCA (2011), its medical review panel is the initial adjudicator of the dispute as to whether an injured worker's medical benefits should be reopened. As in other appeals, the entity that prevailed in the initial adjudication, and not the adjudicator, is the entity that defends the appeal.

¶ 17 Second, Johnson has specifically stated a claim for relief against Hartford. He alleges that his medical benefits should be reopened and prays "that ***the Insurer*** pay his medical and hospital benefits" under § 39-71-704, MCA (2011).[8] Hartford is the insurer. As set forth in § 39-71-717(9), MCA (2011), this Court can grant that relief if Johnson proves with clear and convincing evidence that the DLI's medical review panel erred.

¶ 18 Accordingly, IT IS ORDERED that Respondent's Renewed Motion to Dismiss Petition for Trial is **denied**.

[8] Am. Pet. for Trial, Docket Item No. 10 at 3 (emphasis added).

¶ 19 IT IS FURTHER ORDERED that, pursuant to ARM 24.5.302, Hartford shall file a response to Johnson's Amended Petition for Trial on or before **Friday, November 13, 2020**. If Hartford fails to file a response by this deadline, then this Court will enter a default judgment in Johnson's favor and against Hartford for the relief Johnson seeks in his Amended Petition for Trial.[9]

DATED this 28th day of October, 2020.

(SEAL)

/s/ David M. Sandler
JUDGE

c: Garry D. Seaman
Adrianna Potts
Quinlan L. O'Connor

Submitted: October 21, 2020

[9] *See* ARM 24.5.327(1) (providing that this Court can enter a default judgment against a party who fails to defend a claim against it).