

# Prosthesis

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Montana Department of  
**LABOR & INDUSTRY**

# Purpose

Discuss the need to define the term “prosthesis” in terms of the 60-month reopening petition

- Review relevant workers’ compensation court decisions
- Highlight medical necessity for definition using case example



Review the proposed prosthesis language

# Review of relevant workers' compensation cases

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# Wiard vs. Liberty Northwest Insurance Corporation

## Reference 39-71-704 (1)(d), MCA (1991)

“Except for the repair or replacement of a prosthesis furnished as a result of an industrial injury, the benefits provided for in this section terminate when they are not used for a period of 60 consecutive months.”

## 2001 MTWCC 31A

- Court defined prosthesis as “an artificial substitute for a missing body part.”<sup>1</sup>

## 2003 MT 295

# Mellinger vs. Montana State Fund

## 2018 MTWCC13

### Workers' Compensation Court noted:

“The Legislature has not defined ‘prosthesis’ or ‘prosthetic device’ in the WCA and there is no universally accepted definition in the medical field.”

“There are narrow definitions, under which only devices that replace a missing body part, such as artificial limbs and joints, qualify.”

“And there are broad definitions, under which devices that ‘replace or augment a missing or impaired part of the body’ qualify, including devices such as hearing aids.”

# Mellinger vs. Montana State Fund, cont.

## Workers' Compensation Court noted:

“While this Court adopted a narrow definition in *Wiard*, and while the Department of Labor & Industry has also adopted a narrow definition of ‘prosthesis,’ the WCA provides that an ‘injury’ includes ‘damage to prosthetic devices or appliances, except for damages to eyeglasses, contact lenses, dentures, or hearing aids,’ thereby indicating that the Legislature intended a broader definition in the WCA.”

# Mellinger vs. Montana State Fund, cont.

## In reference to “definition” of prosthesis

### 24.29.1407 PROSTHETIC APPLIANCES

(1) Claims for furnishing replacement or repair of prosthetic appliances shall be paid to orthotists or prosthetists, who have been certified by the American Board for Certification in Orthotics or Prosthetics, and whose services are performed in a certified facility.

(2) For services provided on or after July 1, 2011, claims must be paid in accordance with the utilization and treatment guidelines adopted by the department in ARM 24.29.1591.

# Mellinger vs. Montana State Fund, cont.

## In reference to “injury” defined

### Per 39-71-119 Injury and Accident Defined

(1) "Injury" or "injured" means:

(a) internal or external physical harm to the body that is established by objective medical findings;

(b) damage to prosthetic devices or appliances, except for damage to eyeglasses, contact lenses, dentures, or hearing aids; or

(c) death.

(2) An injury is caused by an accident. An accident is:

(a) an unexpected traumatic incident or unusual strain;

(b) identifiable by time and place of occurrence;

(c) identifiable by member or part of the body affected; and

(d) caused by a specific event on a single day or during a single work shift.

(3) "Injury" or "injured" does not mean a physical or mental condition arising from:

(a) emotional or mental stress; or

(b) a nonphysical stimulus or activity.

(4) "Injury" or "injured" does not include a disease that is not caused by an accident.

(5) (a) A cardiovascular, pulmonary, respiratory, or other disease, cerebrovascular accident, or myocardial infarction suffered by a worker is an injury only if the accident is the primary cause of the physical condition in relation to other factors contributing to the physical condition.

(b) "Primary cause", as used in subsection (5)(a), means a cause that, with a reasonable degree of medical certainty, is responsible for more than 50% of the physical condition

# Mellinger vs. Montana State Fund, cont.

## In reference to “injury” defined

Per 39-71-119 Injury and Accident Defined

(1) "Injury" or "injured" means:

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(b) damage to prosthetic devices or appliances, except for damage to eyeglasses, contact lenses, dentures, or hearing aids; or

**(b) damage to prosthetic devices or**

**appliances, except for damage to**

**eyeglasses, contact lenses, dentures, or**

**hearing aids; or...**

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(b) "Primary cause", as used in subsection (5)(a), means a cause that, with a reasonable degree of medical certainty, is responsible for more than 50% of the physical condition



# Mellinger vs. Montana State Fund, cont.

Workers' Compensation Court noted:

...the WCA provides that an 'injury' includes 'damage to prosthetic devices or appliances, except for damages to eyeglasses, contact lenses, dentures, or hearing aids,' thereby indicating that the Legislature intended a broader definition in the WCA."



# Review of relevant requests for benefit reopening

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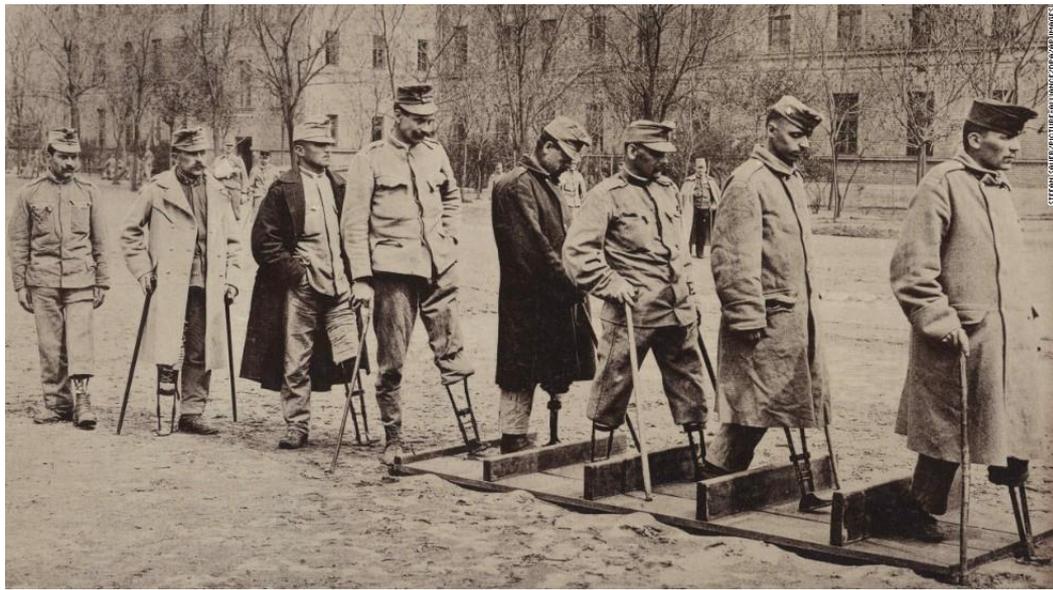


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[https://www.cnn.com/2014/06/26/opinion/schlich-world-war-i-prosthetics/index.html;](https://www.cnn.com/2014/06/26/opinion/schlich-world-war-i-prosthetics/index.html)  
<https://www.minnpost.com/mnopedia/2014/07/minnesotas-first-medical-device-industry-artificial-limbs/>

# Montana Utilization and Treatment Guidelines

Effective Date

July 1, 2019

Presented by:

**State of Montana**

**Department of Labor and Industry  
EMPLOYMENT RELATIONS DIVISION**



# Medical implications of defining prosthesis with respect to the 60-month petition process

The ongoing need for maintenance/repair of a prosthetic device is well-accepted in the medical community

A narrow definition of prosthesis may result in inappropriate termination of medical benefits

# Medical benefits per 39-71-704 MCA

Per 39-71-704, MCA Payment of medical, hospital, and related services – fee schedules and hospital rates – fee limitation

(f) (i) 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.

(ii) Subsection (1)(f)(i) does not apply to a worker who is permanently totally disabled as a result of a compensable injury or occupational disease or for the repair or replacement of a prosthesis furnished as a direct result of a compensable injury or occupational disease.

# Petitions & the “39-71-717 MCA test”

39-71-717. Reopening of terminated medical benefits – medical review.

(2) Medical benefits may be reopened only if 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. Medical benefits closed by settlement or court order are not subject to reopening.

\*Consider the implications of this language in the setting of occupational hearing loss

Diagnosed with occupational hearing loss?	Requires hearing amplification?	Documentation that hearing amplification enhances communication/ quality of life?	Is the ongoing need for hearing amplification medically appropriate?	Expresses intent to return to work?
<b>Yes</b> Heavy equipment operator w/ supporting noise monitoring data	<b>Yes, predating retirement</b>	<b>Yes</b>	<b>Yes</b>	<b>No</b>
<b>Yes</b> Mines, front end loader operator	<b>Yes, predating retirement</b>	<b>Yes</b>	<b>Yes</b>	<b>No</b>
<b>Yes,</b> MT DOT with noise monitoring data showing unsafe exposure	<b>Yes, predating inability to RTW due to illness</b>	<b>Yes</b>	<b>Yes</b>	<b>No</b>
<b>Yes</b> > decade hearing surveillance	<b>Yes, predating retirement</b>	<b>Yes</b>	<b>Yes</b>	<b>No</b>

# Petitions & the “39-71-717 MCA test”

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At least four cases where the worker was beyond retirement age but substantially functionally benefited from hearing amplification with respect to occupational hearing loss

Per 39-71-717 MCA, the worker is no longer eligible for maintenance and/or replacement of hearing aids at the 60-month mark

# Review of proposed prosthesis language

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# Proposed prosthesis language

24.29.1407 PROSTHETIC APPLIANCES DEVICES (1) For the purposes of identifying what constitutes a prosthesis not subject to the automatic 60-month closure of medical benefits under 39-71-704, MCA, the term "prosthesis" means, with respect to a body part or organ missing or damaged as the direct result of a workplace accident or occupational disease:

- (a) an artificial substitute to replace that body part or organ; or
- (b) a device to augment the functioning of that body part or organ.



# Proposed prosthesis language, cont.

~~(1)(2) Claims for furnishing replacement or repair~~ Examples of a prosthetic appliances shall be paid to orthotists or prosthetists, who have been certified by the American Board for Certification in Orthotics or Prosthetics, and whose services are performed in a certified facility device include, but are not limited to:

- (a) an artificial joint;
- (b) an artificial eye;
- (c) an artificial limb; and
- (d) an artificial tooth.



# Proposed prosthesis language, cont.

~~(2)(3) For services provided on or after July 1, 2011, claims must be paid in accordance with the utilization and treatment guidelines adopted by the department in ARM 24.29.1591~~ Examples of a prosthetic device that augments function include, but are not limited to:

- (a) prescription eye glasses;
- (b) prescription contact lenses;
- (c) dentures; and
- (d) hearing aids.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA



# Proposed prosthesis language, cont.

24.29.1407 PROSTHETIC DEVICES (1) For the purposes of identifying what constitutes a prosthesis not subject to the automatic 60-month closure of medical benefits under 39-71-704, MCA, the term "prosthesis" means, with respect to a body part or organ missing or damaged as the direct result of a workplace accident or occupational disease:

- (a) an artificial substitute to replace that body part or organ; or
- (b) a device to augment the functioning of that body part or organ.

(2) Examples of a device include, but are not limited to:

- (a) an artificial joint;
- (b) an artificial eye;
- (c) an artificial limb; and
- (d) an artificial tooth.

(3) Examples of a prosthetic device that augments function include, but are not limited to:

- (a) prescription eye glasses;
- (b) prescription contact lenses;
- (c) dentures; and
- (d) hearing aids.

AUTH: 39-71-203, MCA  
IMP: 39-71-704, MCA



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# Summary

Return to and maintenance of function are cornerstones of the Montana Utilization and Treatment Guidelines

Adopting a broader definition of prosthesis is consistent with Montana's approach to medical care for injured and ill workers and is also consistent with the legislative intent

# Works cited & resources

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