

LMAC 7/22/2014

Responses to the LMAC Injured Worker/Employer Notification Letter

June 15, 2014

To: Lt. Governor Angela McLean
Chairman, Labor-Management Advisory Council

From: Gayle M. Sharbono
PO Box 1007
Glendive, MT 59330
State Fund Claim Number 014000602616

RE: AN OPEN INVITATION TO PROVIDE INPUT REGARDING MONTANA'S
WORKER'S COMPENSATION SYSTEM

Dear Lt. Governor, Angela McLean:

First of all, I would like to say thank you for inviting me to provide input into your review of the Montana's Workers' Compensation System.

My work injury took place on July 16, 2010 at Glendive Tax Service in Glendive, MT. I will first establish that since the time of my injury to the current date has been the most trying, frustrating, wearisome, and degrading experience.

The day of the injury I was taken to the emergency room here in Glendive and the doctor on duty miss-diagnosed me as having a mild back sprain, when in fact I herniated my T10-T11 Thoracic disc. Approximately one month later I developed secondary symptoms' of severe left shoulder and neck pain and again I was miss-diagnosed as having a rotator cuff sprain. Dr. Alan Dacre is the doctor who properly identified my injuries: T10-T11 thoracic disc herniation and a C5-C6 cervical disc herniation.

State Fund refuses to accept the neck and shoulder injury as I did not report it the day of the accident. Dr. Dacre stated I needed surgery right away to fix the neck portion of the injury. At that time I had Cobra insurance and had no choice but to use it. I am now indebted for approximately \$28,000 dollars for that surgery when it was work related.

State Fund accepted my back injury; however, even after Dr. Alan Dacre diagnosed it correctly, State Fund continues to call it a "Back Sprain". I never received proper physical therapy for the injuries.

On July 16, 2012, Sate Fund set up an Independent Medical Exam with a Dr. Gregg Singer. During that exam, Dr. Singer portrayed conceit toward me and insulted my injuries stating that nothing was wrong with me and said I was at Maximum Medical Improvement and he gave me a 1% disability rating. Buy the end of this examination I was in great pain and crying, the nurse in attendance, Deb Ryan, came over to me and helped me get up and off of the exam table while Dr. Singer sat on his chair and laughed at me. His report was mailed to State Fund and then State Fund stopped my temporary income payments approximately two months later. Dr. Gregg Singer is employed by State Fund and his ability to provide adequate assessments of a person's injury is vague and unprofessional

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and I have every intention to send a complaint to the Montana Medical Board and get his license removed.

I have had several telephone mediations with State Fund's Christian Simonson and Greg Overturf and my attorney Paul Toennis and the mediator. During these mediations very little is ever resolved. One mediation discussed physical therapy consisting of water walking and then it was denied as Dr. Dacre did not use the correct language on the prescription by saying it could be for weight loss. Another mediation said that this case is so confusing that maybe they should "include" the neck injury that was a secondary symptom, then they decided not to. The last mediation held, it was discussed by State Fund and the mediator to close this case and start over with a new complaint form

Now that I have shared the grossness and neglect of my work injuries, I will share with you that I continue to suffer from severe muscle spasms, nerve shocks and now bowel problems that are consistent with this type of injury. I currently take hydromorphone five times a day and Orphenidrine twice a day as well as morphine five times a day as needed.

I am unable to be employed due to the medicines as they make me tired and dizzy and foggy. I sleep on and off all day and I struggle with sleep during the night. I drive very little and my daughter drives me to Billings for my appointments and State Fund will no longer pay for the "second person". This has put a serious burden on me as I have no income. I no longer own a car or a computer. I reside in my parent's basement and rely on them for 100% of my care. I have great difficulty with personal care, dressing and showering, and with no income I have been turned into collections consisting of approximately \$70,000.

I am very disgusted, disappointed, appalled, dissatisfied, and hold State Fund accountable for failing to provide me with the proper medical care and the proper acceptance of the injuries and the lack of income payment to maintain my responsibilities. I am sickened that Dr. Gregg Singer is allowed to represent MT State Fund and possess a medical license.

Dr. Alan Dacre has stated that it is not likely that I would return to work. That statement should be regarded with great care as he is a significant orthopedic surgeon and correctly diagnosed my injuries when all others failed.

It is my opinion that State Fund needs to be seriously reviewed and monitored as there are numerous faults and discrepancies with in the manner of how claims are initiated and approved. and what kind of Doctors they contract with for IME's. But most of all they need to place a higher opinion of a Doctor's diagnosis outside of a contracted doctor.

I would be glad to hear from you should you require additional information.

Sincerely,

Gayle Sharbono
PO Box 1007
Glendive, MT 59330

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Sir/Ma'am,

I have several issues with the way the Comp system is currently administered in MT, but I'll just start with the easy one.

I'm curious as to why WC is always the "first payer", regardless of circumstances even when there's an uncontested, INSURED guilty 3rd party (i.e., not the employee or the employer) and here's why.

A few years back, we had an employee injured while moving a piece of company equipment (backhoe) on a county gravel road between job sites. The employee was doing everything right. He had a marked company vehicle in front of him and behind him, both with 4-way flashers on.

A speeding pickup truck came up behind our 3 vehicles. Unable to see the backhoe, it flew around the trailing vehicle with the flashers on and immediately tried to cut back in front of it striking the backhoe. The driver and occupants of the (totaled) truck immediately exited the vehicle and started pitching beer cans as well as unopened beers. They admitted to our employees that they "just got off work" and were out drinking beer. When law enforcement showed up, the driver of the truck was cited as being at fault for the wreck *as well as DUI*, yet our WC policy was on the hook for the incident. Why?! All I've heard for the last 10 years is how expensive MT's WC premiums are, yet in an obvious case of no fault on either side, we got stuck with the tab. I could understand it if the guilty party was uninsured, but doesn't it make more sense in a situation like this to bill the 3rd party's insurance FIRST, and then have WC kick in for any uncovered expenses?

This makes zero sense from an operational or financial standpoint either one. In this case, the guilty party got off scotfree just because his "victim" happened to be on the clock at the time. Ridiculous. And I haven't been able to find anyone who can explain the logic of this to me (because there is none, I suspect).

Thank you.

Michael Ruger, COSS
Safety Manager
Colstrip Electric, Inc.

Sir/Ma'am,

Here's another issue I have with the way WC is *really* administered in MT:

MT Code Annotated 39-71-407. Liability of Insurers -- limitations states:

(3) (a) An insurer is liable for an injury, as defined in 39-71-119, **only** if the injury is established by objective

medical findings **and if the claimant establishes** that it is **more probable than not** that:

(i) a claimed injury has occurred; or

(ii) a claimed injury has occurred and aggravated a preexisting condition.

(b) **Proof that it was medically possible that a claimed injury occurred or that the claimed injury aggravated a preexisting condition is not sufficient to establish liability.**

Actual practice is diametrically opposite of what this law requires.

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In reality, if I have an employee sprain an ankle over the weekend playing softball, come in to work on Monday and fill out a report claiming he fell down on the job with NO witnesses, I'm on the hook for a claim unless I can prove it DIDN'T happen at work, which is impossible.

We've even been stuck paying for claims former employees file months after they no longer even work for us, having never reported an injury when they DID work for us. I find out about the "injury" by being contacted by my carrier or a Doctor, check the "yes" block on the 1st report that asks if I have reason to doubt the claim, type up a whole page of WHY I doubt it (sometimes even with quoted testimony from the "injured's" coworkers) and *still* end up paying for it.

This brings me to another major issue I have.

An employee or former employee should not be able to even FILE a claim without going through their employer, period. Again, how can I prove 6 months after you've left my employ that your injury you are claiming, but you never reported to me, did or didn't happen?! (We had one former employee flat out TELL us he *knew* it didn't happen when he worked for us, but this was the "easiest way to get it taken care of". Again, can I *prove* he said that? Nope. Two party conversation...his word against ours...we pay.

Bottom line, it's been my experience in MT that the employee makes a claim and the employer pays, end of story. There is no burden on the claimant to establish *anything* in reality as the law requires. The system in MT is broken. The law is not being applied as written, and we wonder why we have so many people "hurt" in MT...

Thank you.
Michael Ruger, COSS
Safety Manager
Colstrip Electric, Inc.

RECEIVED ERD

OFFICE OF THE GOVERNOR
STATE OF MONTANA

JUN 3 2014

STEVE BULLOCK
GOVERNOR

ANGELA McI
LT. GOVER

Don't let anyone tell you IT CAN NOT be done!
"stupid" CAN be fixed! This is what leaders do!

ONE INSURANCE POOL

ONE

HIT THE NAIL
ON THE HEAD!



TO: MONTANA WORKERS AND EMPLOYERS
FROM: LT. GOVERNOR ANGELA McLEAN
CHAIRMAN, LABOR-MANAGEMENT ADVISORY COUNCIL

RE: AN OPEN INVITATION TO PROVIDE INPUT REGARDING MONTANA'S
WORKERS' COMPENSATION SYSTEM

We want to hear from you! The Labor Management Advisory Council (LMAC) is reaching out to you for your input into our review of Montana's Workers' Compensation System.

Members of LMAC represent the wide range of stakeholders involved in workers' compensation, including injured workers, employers, insurers, medical providers, and attorneys. Workers' compensation insurance provides medical and lost wage benefits to workers who incur accidents or occupational diseases in the course and scope of employment. Montana employers pay the premium costs to provide those benefits.

LMAC is reviewing and monitoring changes to Montana's workers' compensation system and may make recommendations for future improvements. All LMAC meetings are open to the public and every agenda allots time for public comments.

Your thoughts on Montana's workers' compensation system, positive or negative, are valued by the LMAC. The LMAC invites you to share your input with them and here are four ways you can do so:

- Send an email to mtlmac@mt.gov
- Go online to the LMAC website, www.mtlmac.com, and use the comment form
- Attend an LMAC meeting. Meeting dates and locations are posted at www.mtlmac.com
- Contact an individual LMAC member (refer to the attached membership list)

Thank you and we look forward to hearing from you.

Sincerely,

ANGELA MCLEAN
Lt. Governor

All pay the same rate!
At the same time!
SO EASY!

Nice to be heard! THANK YOU! Mark
① workers comp. The Almighty Hiss Rule:
Please use ONE rate only
for state worker as the same one
for cooks as for roofers ect. That's
the way INSURANCE should work!
Thank you!
What a waste of cost for a small state!

2 JUN 2014 RCVD

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