

Case Nos. 2057-2004, 2058-2004 and 2059-2004: Whether MSF owes Dr. Pardis for services rendered to each patient and whether MSF had the authority to determine the three treatment plans.

III. Findings of Fact

Case No. 2053-2004

1. Patient 2053 developed severe neck pain on October 22, 2003, and consulted Dr. Pardis. Dr. Pardis treated Patient 2053 53 times, beginning on October 22, 2003, and ending on March 24, 2004.
2. On January 13, 2004, in response to MSF's request, the department ordered an independent medical examination by Aimee Hachigian, M.D., to determine whether Patient 2053 suffered from an occupational disease attributable to employment. On February 3, 2004, Dr. Hachigian performed the examination and concluded that Patient 2053 had an occupational disease (chronic cervical strain) attributable to employment. Dr. Hachigian "strongly recommended" that Patient 2053 "be placed under the care of a medical doctor to monitor her progress." MSF accepted the claim as an occupational disease.
3. On March 15, 2003, Montana Health Care Systems, on behalf of MSF, assigned Patient 2053 to a new treating physician, Allen Weinert, M.D., with whom an appointment had been made for March 29, 2004.
4. On March 24, 2004, Dr. Pardis provided his final treatment and diagnosed Patient 2053 as having reached maximum medical improvement. Five days later, Dr. Weinert performed his scheduled examination and also found Patient 2053 had reached maximum medical improvement, with no permanent impairment.
5. Dr. Pardis' treatment of patient 2053 involved 47.25 more treatments than the average number of treatments per chiropractic patient per year for patients whose chiropractic treatment was covered by Blue Cross Blue Shield of Montana (BCBSM) under its 240,000 life/health plans in Montana during the past three years.¹

¹ The exact periods and numbers are: 23,183 chiropractic patients received 136,147 visits from December 1, 2000 through November 30, 2001; 24,445 chiropractic patients received 144,548 visits from December 1, 2001 through November 30, 2002, and 24,386 chiropractic patients received 133,694 visits from January 1, 2003 through December 31, 2003. The combined totals for the indicated 3 years show that 72,014 chiropractic patients received 414,389 visits. The average number of annual visits per patient is thus 5.75. These numbers apply in each case.

6. Dr. Pardis' treatment of patient 2053 involved 46.25 more treatments than the average number of treatments per chiropractic patient per year for patients on Medicare in Montana during the past three years.²

Case No. 2057-2004

7. Patient 2057 reportedly suffered an industrial accident on November 12, 2003, which MSF accepted as a low back and neck injury. Patient 2057 first received treatment on December 13, 2003. Dr. Pardis treated Patient 2057 46 times, discharging the patient on April 8, 2004, as having reached maximum medical improvement.

8. MSF obtained review of Dr. Pardis' records of treatment, and authorized 20 treatments. The exhibits do not reflect any actual examination of the patient by any health care professional other than Dr. Pardis. Although his records suggested that the patient reached medical stability in early March 2004, Dr. Pardis, in his testimony, explained that the patient's subjective complaints and objective findings indicated that the patient reached maximum medical improvement on April 8, 2004.

9. Dr. Pardis' treatment of patient 2057 involved 40.25 more treatments than the average number of treatments per chiropractic patient per year for patients whose chiropractic treatment BCBSM paid under its 240,000 life/health plans in Montana during the past three years.

10. Dr. Pardis' treatment of patient 2057 involved 39.25 more treatments than the average number of treatments per chiropractic patient per year for patients on Medicare in Montana during the past three years.

Case No. 2058-2004

11. Patient 2058 reportedly suffered an industrial accident on January 9, 2004, slipping and falling in a parking lot. Dr. Pardis first treated the patient on that same date. MSF accepted the claim as a covered industrial accident, identifying the injury as a low back twist or strain. Dr. Pardis treated Patient 2058 35 times, providing

² The exact periods and numbers are: 13,790 chiropractic patients received 105,069 treatments, or services, during calendar 2001; 14,759 chiropractic patients received 112,499 services during calendar 2002, and 15,352 chiropractic patients received 133,694 services during calendar 2003. The combined totals for the indicated 3 years show that 43,901 chiropractic patients received 335,351 services. The average number of annual visits per patient is thus 7.64. Medicare approved between 6.7 and 6.8 services per patient in those 3 calendar years. These numbers apply in each case.

adjustments and other treatments to the cervical, thoracic and lumbar spine and releasing the patient from treatment March 19, 2004, as having reached maximum medical improvement.

12. MSF obtained review of Dr. Pardis' records of treatment, and authorized 20 treatments. The exhibits do not reflect any actual examination of the patient by any health care professional other than Dr. Pardis. Dr. Pardis, in his testimony, explained that the patient's subjective complaints and objective findings required treatments up and down the spine to address the impact of the injury, and that this patient did not reach maximum medical improvement prior to March 19, 2004.

13. Dr. Pardis' treatment of patient 2058 involved 29.25 more treatments than the average number of treatments per chiropractic patient per year for patients whose chiropractic treatment BCBSM paid under its 240,000 life/health plans in Montana during the past three years.

14. Dr. Pardis' treatment of patient 2058 involved 28.25 more treatments than the average number of treatments per chiropractic patient per year for patients on Medicare in Montana during the past three years.

Case No. 2059-2004

15. Patient 2059 reportedly suffered an industrial accident on November 25, 2004, and first received treatment from Dr. Pardis on December 4, 2003. MSF accepted the claim as a covered industrial injury to the cervical spine resulting when the patient fell on ice a parking lot. Dr. Pardis treated Patient 2058 44 times, providing adjustments and other treatments to the cervical, thoracic and lumbar spine and releasing the patient from treatment March 5, 2004, as having reached maximum medical improvement.

16. MSF obtained review of Dr. Pardis' records of treatment, and authorized 36 treatments. The exhibits do not reflect any actual examination of the patient by any health care professional other than Dr. Pardis. Dr. Pardis, in his testimony, explained that the patient's subjective complaints and objective findings required treatments up and down the spine to address the impact of the injury, and that this patient did not reach maximum medical improvement prior to March 5, 2004.

17. Dr. Pardis' treatment of patient 2059 involved 38.25 more treatments than the average number of treatments per chiropractic patient per year for patients

whose chiropractic treatment BCBSM paid under its 240,000 life/health plans in Montana during the past three years.

18. Dr. Pardis' treatment of patient 2059 involved 37.25 more treatments than the average number of treatments per chiropractic patient per year for patients on Medicare in Montana during the past three years.

Findings Applicable to All Four Cases

19. From July 1, 2002, through May 26, 2004, Dr. Pardis treated 11 MSF claimants, who received 455 treatments, or services, prior to reaching medical stability, an average of 41.36 times per patient. This average is relatively consistent with the numbers of treatments for the patients involved in these cases. But for one patient who only received 11 treatments, the average would have been 44.40 treatments per patient. The evidence did not identify how many treatments were within a single year's time. Dr. Pardis also is treating 10 other MSF claimants who have not yet reached medical stability. These 10 claimants together have received a total of 257 treatments to date. Dr. Pardis treats his MSF patients with greater frequency than 85% to 95% of the practicing chiropractors in Montana. For his MSF patients (and perhaps for other patients as well), Dr. Pardis defines and describes "acute care" in a far broader sense than his contemporaries. As a direct result, Dr. Pardis provides care (for which he bills MSF) that the majority of his contemporaries would classify as "maintenance" or "palliative" care and would not bill MSF.

20. The only factual means to establish that any particular patient is actually receiving maintenance care would be through examination of that patient by another qualified health care professional. The statistical analysis suggests that Dr. Pardis often bills MSF for maintenance care, but the statistical evidence cannot establish that Dr. Pardis engaged in such a practice for these four specific patients. Record reviews led Dr. Blom to conclude the patients reached medical stability long before Dr. Pardis released them, but only Dr. Pardis actually saw and treated or evaluated the patients until after or at the times he released each of them or ceased treating them. As a result, Dr. Pardis' direct testimony regarding the time at which each patient reached medical stability (maximum medical improvement) is uncontroverted direct evidence sufficient to establish those facts despite testimony, based upon medical record review, and medical reports in evidence, each containing contrary conclusions about the same issue.

IV. Opinion³

Authority to Treat

These four cases involve similar dysfunctional interactions between Dr. Pardis and MSF as the previous case, *Pardis v. MSF*, Case No. 2120-2003 (May 6, 2004). In one particular, this case is identical to its predecessor. When Dr. Pardis embarked upon the treatment of these four claimants, MSF authorized specific numbers of treatments. Before the expiration of the authorizations, Dr. Pardis submitted additional information (supplemental chiropractic reports, office notes, bills) indicating that each claimant still had not reached medical stability (maximum medical improvement) and required further treatment. MSF failed timely to respond to this additional information. Exactly as in the previous case, when MSF fails timely to respond to additional information indicating the claimant requires more treatment, it loses its absolute defense of lack of authorization. On the other hand, without current authorization, Dr. Pardis has no absolute right to receive payment. The issue is whether the treatment Dr. Pardis provided consisted of primary medical services for conditions that actually resulted from the claimant's industrial injury. *See*, Mont. Code Ann. § 39-71-704(1)(a), *infra*.

Case No. 2053-2004

When a workers' compensation insurer does not accept liability for a claim of occupational disease attributable to employment, the department directs the claimant to an approved physician for an evaluation. Mont. Code Ann. § 39-2-602. That procedure occurred with Patient 2053, and MSF accepted the results, which qualified Patient 2053 as suffering from a compensable occupational disease. The medical benefits for Patient 2053 are identical to those provided for a worker suffering from a compensable industrial accident. Mont. Code Ann. § 39-72-704.

Patient 2053 exercised the statutory right to choose the treating physician, selecting Dr. Pardis. Mont. Code Ann. § 39-71-1101(1). The same statute contains a list of four circumstances in which an injured worker loses to right to choose or retain a treating physician who is not a member of a managed care organization:

- (a) the injury results in a total loss of wages for any duration;
- (b) the injury will result in permanent impairment;

³ Statements of fact in this opinion are hereby incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

- (c) the injury results in the need for a referral to another medical provider for specialized evaluation or treatment; or
- (d) specialized diagnostic tests, including but not limited to magnetic resonance imaging, computerized axial tomography, or electromyography, are required.

Mont. Code Ann. § 39-71-1101(3).

Dr. Pardis is not a member of a managed care organization. There is no legal authority requiring transfer of a covered worker from a treating physician who is a chiropractor to a treating physician who is a medical doctor when a claim is accepted as an occupational disease. *Cf.*, Mont. Code Ann. § 39-72-704, *op. cit.* Thus, only if and when Patient 2053 fits within any of the four circumstances articulated in Mont. Code Ann. § 39-71-1101(3) can MSF designate a new treating physician.

There is no evidence that Patient 2053 has suffered or will suffer a total loss of wages at any time. There is no evidence that Patient 2053 will suffer a permanent impairment. The physician who evaluated Patient 2053 strongly recommended referral to a medical doctor, but MSF cited no authority for the proposition that such a recommendation constituted the need for a referral to another medical provider for specialized evaluation or treatment or specialized diagnostic tests. The evidence does not establish that Patient 2053 fits within any of the four circumstances that would authorize MSF to require a change of treating physicians.

Since the patient had reached medical stability, the only current relief to which Dr. Pardis is entitled is an order both confirming that he remains (for any future covered treatment that may become necessary) the treating physician for Patient 2053 and requiring that MSF pay for the 53 past treatments (as it appears MSF has already done).

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A workers' compensation insurer must "furnish reasonable primary medical services for conditions resulting from the injury for those periods as the nature of the injury or the process of recovery requires." Mont. Code Ann. § 39-71-704(1)(a). "Primary medical services" are defined by statute as "treatment prescribed by a treating physician, for conditions resulting from the injury, necessary for achieving medical stability." Mont. Code Ann. § 39-71-116(26). At the times pertinent to the disputes regarding these three claimants, they had each selected Dr. Pardis as their treating physician. Mont. Code Ann. § 39-71-704(1) permits the Fund to limit or

deny authorization for treatment when it has conflicting medical reports about the reasonableness of the primary medical care Dr. Pardis proposes to provide. However, the issue here is payment for treatments delivered beyond authorizations in place at the times of the treatments. Clearly, Dr. Pardis risked an ultimate determination that the treatments were not reasonable services necessitated by the respective covered injuries. There is no legal authority which would mandate denial of his claims for payment unless the treatments indeed were not such covered services.

MSF has presented a wealth of statistical evidence from which it is clear that Dr. Pardis provides more extensive treatments to his patients who have industrial injuries covered by MSF than are typically provided to chiropractic patients around the state of Montana whose treatments are covered by either BCBSM or Medicare. Neither BCBSM nor Medicare operate under the statutes and regulations that govern entitlement to medical services for injured workers covered by Montana's workers' compensation laws. Nor does either insurer cover injuries of the same origin as does MSF (*i.e.*, compensable industrial injuries)—indeed, the hearing officer notes that both insurers normally exclude from their coverages injuries for which another entity, including workers' compensation insurers, is responsible. Nonetheless, both insurers necessarily cover (as the expert testimony indicated) the same range of conditions (acute injuries, flare-ups, exacerbations, and so on) as MSF, albeit both insurers may also cover an additional range of conditions for which “maintenance” or “palliative” treatments could also be covered.

It is impossible to draw a one to one correspondence between the average number of treatments per year per patient by Dr. Pardis and by chiropractors serving BCBSM and Medicare patients. The disparity between Dr. Pardis' average annual treatments of MSF patients and the average annual treatments for BCBSM and Medicare patients is striking, but the hearing officer cannot presume from that evidence that these particular patients received excessive treatments. There is no evidence (nor could there be) that the average number of treatments for the chiropractic patients covered by either a private health insurer or a government health care cost coverage program bears any particular relationship to the treatments necessary to restore a specific worker injured in an industrial accident to medical stability. So long as Dr. Pardis is the only health care professional to treat or actually to evaluate the patient, MSF will always have grave difficulty proving that Dr. Pardis has overtreated a particular patient in restoring that patient to medical stability.

The proof requirements leave MSF in a difficult position. On the one hand, the expert testimony in this case, like the evidence adduced by MSF in the previous case (*Pardis v. MSF*, Case No. 2120-2003, *op. cit.*), certainly raises questions about

Dr. Pardis' credibility regarding maximum medical improvement and the reasonableness of the primary medical services he routinely provides to injured workers. On the other hand, without incurring the expense to obtain independent medical examinations (with chiropractic treatments continuing until the results are obtained), MSF lacks the specific contravening testimonial medical opinions to challenge Dr. Pardis' diagnoses and treatment plans. It is highly improbable that virtually every MSF covered injured worker that Dr. Pardis treats reasonably requires far more adjustments than injured workers with comparable injuries treated by other chiropractors. But there is no statutory basis for applying that statistical analysis to individual injured workers.

The issue is whether the evidence (for each of these three patients) established that Dr. Pardis provided treatments which were not reasonable primary medical services for conditions resulting from each covered injury for periods that the nature of the injury or the process of recovery required. Dr. Blom, in each of the three cases, found nothing in Dr. Pardis' reports which justified continuing treatments. This provided a solid basis for MSF to decline further authorizations, placing Dr. Pardis at risk of not receiving payment for further treatments. However, Dr. Pardis was the only health care professional who both testified and actually saw and treated or evaluated the patients over the course of his subsequent treatments. Absent contrary direct evidence that these three patients had, indeed, reached medical stability, thereafter receiving maintenance treatments, the hearing officer concludes that Dr. Pardis is entitled to payment for those subsequent treatments.

V. Conclusions of Law

1. The department has jurisdiction to decide the disputes between Dr. Pardis and the Montana State Fund regarding Patient Nos. 2053, 2057, 2058 and 2059. Mont. Code Ann. § 39-71-2401(2) and § 39-71-704(6); *see also* Admin. R. Mont. 24.29.1404 and 24.1.101(2)(e)(i).
2. Dr. Pardis remains the treating physician of Patient 2053 for that claimant's occupational disease. Mont. Code Ann. §§ 39-72-704 and 39-71-1101(1) and (3).
3. MSF is liable to Dr. Pardis for treatments provided as the treating physician of Patients 2053, 2057, 2058 and 2059. Mont. Code Ann. § 39-71-704(1)(a).

VI. Order

1. The Montana State Fund is liable to Dr. Michael H. Pardis, D.C., for chiropractic treatment provided to Patients 2053, 2057, 2058 and 2059.

2. The Montana State Fund cannot refer a claimant whose treating physician is Dr. Pardis to managed care or a new treating physician without the consent of the patient unless and until that claimant's condition satisfies one of the requirements of Mont. Code Ann. § 39-71-1101(3)(a) through (d), which have not been met with regard to Patient 2053.

3. The confidentiality order previously issued remains in full force and effect.

DATED this 11th day of May, 2005.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By: /s/ TERRY SPEAR
Terry Spear
Hearing Officer

Notice: This Order is signed by the Hearing Officer of the Department of Labor and Industry under authority delegated by the Commissioner. Any party in interest may appeal this Order to the Workers' Compensation Court within 30 days after the date of mailing of this Order as provided in Mont. Code Ann. § 39-71-2401(3) and Admin. R. Mont. 24.29.215(3). The Court's address is:

Workers Compensation Court
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