

BAD FAITH BLOG

Carrier's Challenges to Workers' Comp Benefits 30 Years After Injury Lead to Bad Faith Penalties

AUTHOR: SANDBERG PHOENIX

Summary: Harris' 1976 work-related motor vehicle accident left him a paraplegic which resulted in multiple medical complications. Thirty-one years after the accident, the workers' compensation carrier challenged (controverted) some aspects of his medical care and required him to submit to an independent medical evaluation. The Alaska Worker's Compensation Board ruled that several of those controversions were frivolous, unfair, or in bad faith and imposed a statutory penalty and reported its findings to the Alaska Division of Insurance. The Alaska Workers' Compensation Appeals Commission ruled the Board was not authorized to impose a penalty for some of those controversions. The Supreme Court of Alaska reversed that ruling and vacated the Commission's reversal of the Board's award of attorney's fees, reinstated the Board's award, and remanded to the Commission to award fees for Harris' appeal in the Commission.

Harris v. M-K Rivers

Mr. Harris' October 1976 work-related motor vehicle accident caused a spinal cord injury which left him a paraplegic. Ever since the accident he used a wheelchair or was confined to one of two hospital beds, one used for sleeping and the other for "daily living skills." Those types of beds were important to his skin care to try to lessen the chronic bed sores. He had other chronic medical conditions as well.

There were several partial settlements between Harris and his employer's carrier since the accident. The carrier accepted responsibility in 1998 for compensating him for his diabetes and to pay for "24-hour a day attendant care and a personal trainer" as long as they were deemed reasonable and necessary in accordance with the Compensation Act. The same stipulation "authorized the services of a non-medical fitness facility" and agreed that care was "appropriate, reasonable, and necessary" under the Compensation Act. A few years later the insurance carrier "suggested to Harris that he consider a global settlement of his claim. Harris said he would want too much money. Beginning in 2005 a series of disagreements arose, and the employer set up an employer's independent medical evaluation (EIME)..." The disagreements continued thereafter which on June 1, 2007 led to Harris filing a workers' compensation claim "for unfair or frivolous controversions, as well as for a number of benefits that had been controverted." I will generally refer to controversions as challenges.

The Board ruled that some of the challenges by the carrier were in bad faith "because the adjuster did not have adequate evidence in her possession" at the time of those challenges to justify them. Challenges involving one of the beds and for the "treatment for diabetes, sleep apnea, and hypertension" were found to be in "bad faith and, therefore, unfair and frivolous."

The Alaska Supreme Court stated that a notice challenging certain workers' compensation benefits must be filed in good faith to protect the employer and its carrier from imposition of a penalty. The good faith standard is an objective one. The test is whether the employer possessed sufficient evidence supporting its challenge such that if the Claimant failed to introduce any opposing evidence "the Board would find that the Claimant is not entitled to benefits." Stated differently, the employer must possess sufficient evidence to prevail on its challenge even if the Claimant does not introduce any evidence in opposition. The Court did not require an inquiry into the motives of the challenging author. Bad faith penalties are imposed for the purpose of "giving the insurer 'an incentive' to pay medical bills promptly." However, even a payment challenged in bad faith which does not delay the actual payment cannot result in a penalty. The Court stated that "without the possibility of a penalty, an insurer would be able to controvert expensive medical care for no reason and escape without a sanction, even when the care is critical to an employee's health." The Court further held that a penalty is appropriate whenever an insurer's challenge of either the treatment itself or the payment for that treatment "delays medical care that is reasonable and necessary." The Alaska Supreme Court further relied for support on decisions by the courts in Louisiana and Pennsylvania.

The Supreme Court of Alaska stated that:

- If employer can choose to controvert, without good reason, treatment that it has been providing for years, as M-K Rivers did here with Harris' hypertension medication, and does not suffer a penalty, it had no incentive to consider carefully whether it should controvert. We therefore hold that the Commission erred in deciding that as a matter of law no penalty can be imposed for the bad faith controversion of the Clinitron bed.

In ruling on the attorney's fee issue, the Court merely noted that because it had reversed the "main part of the Commission's decision," the Commission's decision on attorney's fees was vacated and it was instructed to reinstate the Board's attorney fee award and to calculate Harris' fees related to his appeal to the Commission.

M-K Rivers' insurance carrier, Ace Indemnity Insurance Company, was confronted with an extremely costly claim as a result of Mr. Harris' paraplegia and numerous complicated medical conditions. Its desire to fully conclude the claim by way of a global settlement seems reasonable, but the record suggests that it challenged Harris' treatment plan, including a treatment plan for which there had been a stipulation entered a few years before, as well as challenging other parts of the care and treatment before its adjuster was fully aware of all facts governing the matter. Because of challenges to prior agreements, as well as challenges to treatment before the adjuster had sufficient information to support its challenge, the Board imposed penalties which the Supreme Court of Alaska deemed to be sufficiently supported by the facts before the Board, as well as by Alaska law. As with many cases, taking actions adverse to a workers' compensation claimant before having the facts to justify such a challenge can easily lead to the imposition of bad faith penalties and attorney's fees in Alaska.

By Anthony L. Martin

Martin, A found or type unknown