In the Missouri Court of Appeals
Eastern District

DIVISION TWO

UNITED STATES DEPARTMENT OF VETERANS AFFAIRS,	)	No. ED97042
Appellant,	)	Appeal from the Circuit Court of the City of St. Louis
v.	)	Cause No. 1122-CC000008
	)	Honorable Mark H. Neill
KARLA O. BORESI, CHIEF ADMINISTRATIVE LAW JUDGE,	)	
Respondent.	)	Filed: March 20, 2012

Facts and Procedural History

Veteran Mark Hollis ("Hollis") has a pending workers' compensation claim before the Missouri Labor and Industrial Relations Commission, Division of Workers' Compensation ("DWC") alleging injuries sustained while working for employer United Homecraft, Inc ("Employer"). Without authorization from Employer, a medical facility for Appellant U.S. Department of Veteran's Affairs ("VA") provided care to Hollis totaling $18,958.53.

On 15 June 2010, the VA filed a motion to intervene in the workers' compensation case under 38 U.S.C. 1729 (2006). The Administrative Law Judge ("ALJ") denied the motion. The VA filed a petition for writ of mandamus with the

circuit court requesting the ALJ be directed to rescind the denial and allow the VA to intervene as a party in the case. The circuit court denied the writ by order and judgment on 13 June 2011. Aggrieved, the VA now appeals.

Standard of Review

Mandamus will lie only upon an unequivocal showing that a public official failed to perform a ministerial duty imposed by law. *Bergman v. Mills*, 988 S.W.2d 84, 88 (Mo. App. W.D. 1999). To be entitled to relief, the applicant must show a clear, unequivocal, specific, and positive right to have performed the act demanded. *State ex rel. Nixon v. Kinder*, 129 S.W.3d 5, 7 (Mo. App. W.D. 2003). "The standard of review for writs of mandamus and prohibition . . . is abuse of discretion, and an abuse of discretion occurs where the circuit court fails to follow applicable statutes." *State ex rel. City of Jennings v. Riley*, 236 S.W.3d 630, 631 (Mo. banc 2007).

Discussion

In the VA's sole point on appeal, it argues that the plain language of 38 U.S.C 1729 requires that the VA be allowed to intervene as a party in a Missouri worker's compensation claim to assert a claim for payment of unpaid medical expenses that the employee has a right to assert under Missouri law. Because the employee, Veteran Hollis, would not be entitled to receive payment under Missouri law, the VA's point lacks merit.

The DWC is an administrative agency, and a cardinal principle of all administrative law cases is that an administrative tribunal is a creature of statute that exercises only the authority invested by legislative enactment. *Farmer v. Barlow Truck Lines, Inc.*, 979 S.W.2d 169, 170 (Mo. banc 1998). The statutes relating to a particular

tribunal are those to be examined. As this case involves a workers' compensation claim, the relevant statutes are those contained in chapter 287.

Under chapter 287, an employer has a statutory right to select the medical providers to provide treatment to an injured employee.[1] This right may be waived if the employer refuses to provide necessary care. *Schneidler v. Feeder's Grain & Supply, Inc.*, 24 S.W.3d 739 (Mo. App. E.D. 2000). An employee also maintains a right to select his own medical treatment, but if such care has not been authorized by the employer or waived, the employee bears the expense of the treatment.[2] Nowhere under Missouri workers' compensation law is the ALJ permitted to allow private providers of such unauthorized medical care to intervene or participate in a workers' compensation case. There is no dispute that VA's medical facility provided unauthorized treatment of Hollis's injuries. Therefore, under Missouri law, the VA is effectively a private provider of unauthorized medical care that is not entitled to intervene in Hollis's worker's compensation case.

The VA nevertheless asserts that an independent federal statute provides the right to intervene. 38 U.S.C. § 1729(a)(1) states:

> Subject to the provisions of this section, in any case in which a veteran is furnished care or services under this chapter for a non-service-connected disability described in paragraph (2) of this subsection, the United States has the right to recover or collect reasonable charges for such care or services (as determined by the Secretary) from a third party to the extent that the veteran (or the provider of the care or services) would be eligible to receive payment for such care or services from such third party if the care or services had not been furnished by a department or agency of the United States.

38 U.S.C. § 1729(b)(2)(A) provides:

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[1] MO. REV. STAT. § 287.140.10 (2006).
[2] *Id.*

> In order to enforce any right or claim to which the United States is subrogated under paragraph (1) of this subsection, the United States may intervene or join in any action or proceeding brought by the veteran (or the veteran's personal representative, successor, dependents, or survivors) against a third party.

Viewing these provisions together, the VA asserts that the United States has a right to intervene to recover or collect reasonable charges from a third party to the extent that veteran would be entitled to receive payment from the third party. However, because Hollis received unauthorized medical care at the VA's medical facility, under Missouri law he is not entitled to receive any payment from Employer or Employer's insurance company. So even if the VA was allowed to step into Hollis' shoes, the VA would still not be entitled to receive payment. Thus, the federal statute cannot supply the VA with a right to intervene.

Because the VA cites no authority permitting the ALJ grant intervention, we cannot say that the circuit court erred in not issuing the writ of mandamus. The order and judgment of the circuit court is affirmed.

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Kenneth M. Romines, J.

Kathianne Knaup Crane, P.J. and Lawrence E. Mooney, J., concur.