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**FORT PECK COURT OF APPEALS  
ASSINIBOINE AND SIOUX TRIBES  
FORT PECK INDIAN RESERVATION  
POPLAR, MONTANA**

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ELMER CLARK,  
Appellant,

VS.

**Appeal No. 196**

NEW MEDICO ASSOCIATES, INC.,  
A corporation,  
Appellee.

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**ORDER AFFIRMING TRIBAL COURTS DECISION**

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**COMES NOW** the Fort Peck Assiniboiné and Sioux Tribes Court of Appeals and finds the following to be the facts established in the Tribal Court:

1. The Appellant herein, Elmer Clark, was injured in an automobile accident in 1982. From that accident he received an insurance settlement which pays him \$1,250 per month for necessities of life and [for the payment of medical treatment]. Said insurance settlement payments will continue for his lifetime. As a result of his injuries, Mr. Clark, is mentally incompetent and unable to care for himself.
2. Tribal Court Judge, A.T. Stafne, post Mr. Clark's initial involuntary commitment at Warm Springs State Hospital, ordered the Additional Commitment of Mr. Clark to Warm Springs on August 7, 1989, under the supervision of Indian Health Service. In that order A.T. Stafne found Mr. Clark to be seriously mentally ill and dangerous to himself and to others and further ordered that the patient be placed on a conditional release status to allow him to enter in the New Medico treatment program. That the conditional release be conditioned, inter alia, on Elmer Clark providing the necessary assurances of financing the program.
3. A. T. Stafne further ordered that Rusty Cantrell be appointed Guardian Ad Litem and that he be responsible for receiving the Defendant's [Mr. Clark] monthly insurance payments, which

shall be placed in an escrow account to be monitored by the Court. Further, all said funds will be used for the personal needs of Elmer Clark, such as transportation, as well as funding of a rehabilitation program, such as New Medico.

4. A.T. Stafne further ordered; since Indian Health Services is presently funding Elmer Clark's treatment and detention at Warm Springs Hospital, that funding shall continue even if Elmer Clark qualifies for conditional release status; and that an alternative rehabilitation program, such as New Medico, will be funded by Indian Health Services, ... and by the private insurance monies of Elmer Clark...

5. It is an undisputed fact that the order of A.T. Stafne dated August 7, 1989 has never been appealed.

6. In accordance with the court order of August 7, 1989, Mr. Clark obtained rehabilitation treatment services from New Medico, services between August 10, 1989 and December 1, 1989. There has been no dispute as to the quality or cost of the services provided by New Medico.

7. New Medico sought payment from Indian Health Service and was denied payment, due to an untimely filing of claim. New Medico then appealed to Director of Indian Health Service, Everett R. Rhoades, M.D. Dr. Rhoades upheld the decision by Mr. Duane Jeanotte, Director, Billings Area, Indian Health Service stating:

IHS cannot authorize CHS funds to reimburse New Medico for services provided because:

1.) New Medico did not obtain prior authorization as required by 42 CFR 36.24(b) [1986];

2.) the services provided by New Medico are not within medical priorities pursuant to 42 CFR 36.23(e) [1986]; and

3.) tribal court lacks jurisdiction to order the IHS to pay for services provided by New Medico. United States v. White Mountain Apache, 784 F. 2d 917 (9th Cir. 1980).

8. The issue of payment of services provided by New Medico was brought in Tribal Court before the Honorable Judge Robert Welch on May 7, 1993.

9. Tribal Court issued its findings of fact and found:

New Medico sought payment of its services and rehabilitation of Elmer Clark from

Indian Health Services and, upon initial denial of its payment by Indian Health Services, took the matter through appeal. New Medico has made all reasonable efforts to obtain payment of its services and treatment of Elmer Clark from Indian Health Services.

10. Tribal Court ordered that:

...the remaining debt to New Medico Associates, Inc. for the care, treatment and rehabilitation services of Elmer Clark in the amount of \$34,439.50 be paid from the IM fund account of Elmer Clark maintained by the Bureau of Indian Affairs/ Fort Peck Tribes which receives and accumulates his monthly insurance settlement proceeds of \$1,250 per month. New Medico will receive from the IM fund the sum of \$15,000 in an initial lump sum partial payment and the remainder of the debt \$19,439.50 in monthly payments of \$650 per month for 30 months. The lump sum payment shall be paid and monthly payments commence sixty (60) days after the date of this Order unless this Order is appealed...(J. Robert Welch, Order May 12, 1993 . )

## OPINION

The opinion of this court is unanimous, there is no dissenting opinion.

On May 14, 1993 petition for review was filed in this court by Appellant, Elmer Clark. In Appellant's Brief in Support of Appeal and at oral argument Appellant seeks a remedy in equity. This court now finds that New Medico acted in accordance with the Tribal Court order of A.T. Stafne and provided rehabilitation treatment to Mr. Clark in expectation of payment by Indian Health Service **and** by the patient Elmer Clark. It is hereby the finding of this Court that there was no overreaching on the part of New Medico, Mr. Clark had the benefit of the appointment of a Guardian Ad Litem and entered into rehabilitation treatment with New Medico with the knowledge of and the expectation of paying New Medico for those services. Mr. Clark was granted conditional release from Warm Springs in order to enter into New Medico on the condition of providing New Medico- the necessary assurance of financing the program. Mr. Clark's insurance settlement was secured for the purpose of not only providing for his necessities of life but also for his medical treatment. The debt arising from services provided by New Medico is a debt incurred for medical treatment.

The Tribal Court may have erred in requiring Indian Health Service to pay for the debt incurred by Mr. Clark, however, this Court is not deciding that issue.

The issue of whether New Medico complied with the collection procedures of Indian Health Service is a question of fact addressed in the Tribal Court, wherein Judge Welch found that New Medico made reasonable efforts to obtain payment from IHS.

This Court can find now basis in law or equity to overturn the lower courts decision.

**ORDER**

**NOWTHEREFORE IT IS THE ORDER OF THIS COURT** that Judge Welch's order of May 12, 1993 be affirmed.

DATED this 8th day of Octeber, 1993.

**BY THE COURT OF APPEALS:**

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Gary M. Beaudry, Chief Justice

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Gary J. Melbourne, Associate Justice

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Joni McClammy, Associate Justice

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