

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BONNIE HOFFMAN,

Claimant,

vs.

CARE INITIATIVES, INC., d/b/a
HERITAGE NURSING AND REHAB,

Employer,
Self-Insured,
Defendant.

FILED

MAY 25 2016

File No. 5032353

WORKERS COMPENSATION PARTIAL COMMUTATION DECISION

Head Note No.: 3303.20

STATEMENT OF THE CASE

Bonnie Hoffman, claimant, filed a petition for partial commutation seeking payment of a lump sum of all but one week of the permanent total disability benefits that were awarded to her in an appeal decision rendered on July 27, 2012. The case was appealed to the District Court of Iowa and affirmed on appeal April 26, 2013. The matter was then appealed to the Iowa Court of Appeals who issued an affirmance on February 19, 2014.

The hearing was conducted on February 25, 2016. The record consists of claimant's exhibits 1 through 10, defendant's exhibits A through N, and the testimony of the claimant and Kevin Forristall.

ISSUE

Whether a partial commutation of all but the last week of permanent total disability benefits is in the best interest of the claimant.

STIPULATIONS

Claimant had sustained an injury on August 25, 2007 which arose out of and in the course of her employment. She was awarded permanent total disability benefits at the weekly benefit rate of \$637.76 per week.

FINDINGS OF FACT

At the time of the partial commutation hearing, claimant was a 70-year-old person. She was divorced and had one daughter, age 43, and 2 adult grandchildren.

She graduated from high school in 1963. After high school she attended classes at Cox College and ultimately received her nursing degree. Her current level of income is matched by her current level of expenses. Part of the income that she receives is in

the form of a workers' compensation disability check. A partial commutation would reduce the claimant's monthly income.

Her largest monthly expense is her mortgage, which is \$760.00 per month. She has approximately \$10,000.00 in savings. Her total monthly expenses total \$2,520.00. (Exhibit 6, page 19) Her monthly income, including the workers' compensation check, is \$3,183.68. If the partial commutation is granted, monthly income would be reduced to \$1,483.00 per month, which would result in a \$1,037.00 per month shortfall.

The claimant testified that with the partial commutation, she would pay off the mortgage and be left with expenses in the amount of \$1,760.00. That amount would exceed her monthly income, which would only be the Social Security benefit.

The interest rate on her home mortgage is 3.75 percent and she has a payoff of approximately \$86,000.00. In addition to the mortgage, the claimant anticipates paying for the repair of the sidewalk in front of her home ranging anywhere from \$2,888.00 to \$3,588.00.

With the balance of her funds, it is claimant's intention to purchase an annuity. Claimant's expert witness, Brian Murphy, calculated the annual budget shortfall of \$8,234.42. (Ex. 2, p. 5) He provided two different options for an annuity. A single life immediate annuity for 10 years at the cost of \$132,957.96 leaving \$20,000.00 to be added to an emergency fund or a single life immediate annuity required to produce \$8,234.42 a year which would cover the shortfall, at a cost of \$160,908.19 with a remainder of \$36,049.77 to be added to the savings and/or emergency fund.

Claimant's primary goal, other than to pay off her house, is to provide an inheritance for her daughter and grandchildren. She would also like to purchase a car and make some repairs to her home in addition to the sidewalk.

Claimant's more distant past includes 3 bankruptcies, the most recent occurring in the 80s. In 2013, her father passed away and claimant was left an inheritance of approximately \$50,000.00. \$10,000.00 went into checking and \$40,000.00 into savings. According to her bank accounts, she had regular withdrawals. Claimant testified at hearing that she shared her inheritance with her daughter and grandkids but used \$10,000.00 as a down payment for purchase of her \$96,000.00 home.

She currently has one secured credit card that she pays off monthly and she just received a new credit card approximately three months ago. It is her intention to pay that off monthly as well.

She does not gamble but rather enjoys going to auctions and antiques. She sews, making drapes, dresses and other items for friends and family.

She has no history of savings or investment. She was not able to accumulate savings over her decades of work. Within a year and a half, she spent through her inheritance, giving her daughter approximately \$20,000.00.

Prior to her home purchase, claimant rented for 23 years. Kevin Forristall, the chief investment officer of TSA Banking Group, testified at a hearing that a purchase of an annuity would be unwise and that claimant's best financial decision would be to sell her home and continue to rent.

Mr. Forristall was critical of Mr. Murphy's plans because the annuity could be canceled but only at a high fee, the house requires several updates and could become present a financial liability, and the reduction in monthly income would eliminate the income buffer.

Mr. Forristall; however, was unaware of a few key facts. First, Mr. Forristall cited attorney's fees as a financial waste, however attorney's fees are deducted from the claimant's check weekly. Second, he was unaware that should claimant outlive the ten-year life expectancy, the workers' compensation benefits would restart on a weekly basis. Third, he testified that beneficiaries of claimant would have to pay taxes on inherited sums. But, as the claimant's counsel pointed out, some benefit even if taxed, was better than no benefit at all. Fourth, the single premium immediate annuities recommended by Mr. Murphy do not have insurance commissions and fees that Mr. Forristall advises against. (Ex. 4, pp.1, 2) Fifth, even with the lump sum benefit, claimant's income levels would still be low enough to surpass the "Low Income Threshold." (Ex. 4, p. 12)

CONCLUSIONS OF LAW

The sole issue for resolution in this case is whether a partial commutation is in the best interest of the claimant. The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence.

When the period of future compensation to which the claimant is entitled is definitely determinable, and claimant's work-related medical condition is stable, claimant may receive a lump sum, discounted payment of future benefits, provided claimant establishes that commutation of benefits is in claimant's best interest. Iowa Code section 85.45. The commissioner may order either full or partial commutation of benefits.

Iowa Code section 85.48 provides that commutation may be ordered when the commutation is shown to be in the best interest of the person entitled to compensation. Diamond v. Parsons Co., 256 Iowa 915, 129 N.W.2d 608 (1964). The factors for determining if a commutation is in the best interest of the claimant include, but are not limited to: The claimant's age, education, mental and physical condition and actual life expectancy; the claimant's family circumstances, living arrangements, and responsibility to dependents; the claimant's financial condition, including sources of income, debts and living expenses; and the claimant's ability to manage the funds or arrange for someone else to manage them. Dameron v. Neumann Bros., Inc., 339 N.W.2d 160 (Iowa 1983). The above-recited factors, with claimant's preference and the benefit of claimant receiving a lump sum payment, are balanced against the potential detriment that could result if claimant invests unwisely, spends foolishly.

The claimant seeks a partial commutation of all but the last week of benefits to pay off her house, purchase a new vehicle, fund repairs to her house and the land around her house, and leave an inheritance for her daughter and grandchildren.

During the hearing, claimant was able to articulate the purpose of the partial commutation. She understood the ramifications. There is no evidence that she suffered from any brain damage, learning disability or other mental challenges which would inhibit her ability to make recent decisions. She had a good grasp of her finances. She did not indicate exactly what direction she would take investing the lump sum. There is no way for the agency to force the claimant to purchase an annuity or even if she did purchase one, force her to keep it.

It is with that in mind, the defendants argue that the claimant is likely to spend down that lump sum in a quick fashion, leaving her without sufficient funds to provide for herself.

Her past history does indicate that she tends to spend money when it is available to her. She exhausted almost all of her inheritance money within a year and one-half of her father's death. She has provided no savings or investment history. Expensive repairs loom on the horizon for her home including sidewalk repair work, sewer and plumbing problems, and a brick façade. The defendant characterizes her as a poor money manager and incapable of making wise investment decisions.

Since the 80s, the claimant had not been in debt. She has maintained some balance in her savings account for the last three years, albeit on a declining basis. She has modest expenses, which can be mostly covered by her Social Security income supplemented by an annuity which would fund the annual budget shortage.

Despite the defendant's exhaustive work combing through the claimant's financial records, claimant had met her burden that the partial commutation is in her best interest so that she can pay off the mortgage to her home, purchase a new vehicle, and still have funds sufficient to cover the budget shortage.

Claimant also seeks reimbursement of the entirety of Mr. Murphy's bill in the amount of \$1,600.00. Claimant argues that the holding of Dart v. Young applies only to medical experts. The undersigned disagrees.

Under the recent Supreme Court decision in Des Moines Area Regional Transit Authority v. Young, 876 N.W.2d 839 (2015), parties can recover costs "incurred in the hearing." A physician's report becomes a cost incurred in a hearing when it is used as evidence in lieu of the doctor's testimony. The report is separate from the examination. The underlying medical expenses associated with the examination do not become costs of a report needed for a hearing, just as they do not become costs of the testimony or deposition.

The court does discuss a physician's report, but the holding pertains to costs incurred in a hearing. The underlying research would not be considered costs of a testimony or deposition.

Therefore, claimant would be entitled to the report creation of 1.5 hours at \$200.00 per hour.

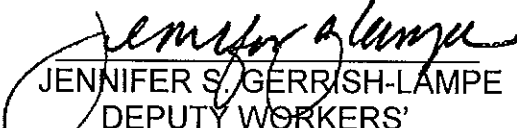
ORDER

THEREFORE IT IS ORDERED

That defendant shall pay claimant a lump sum payment of future weekly benefits, except for the last week, discounted to the present value based on a number of weeks to be commuted and the interest rate for determining the discount as of the date of this decision.

That the defendant shall pay the cost of this matter as required under rule 876 Iowa Administrative Code 4.33 including the filing fee, service fee and the cost of the first report of Mr. Murphy of four hundred and 00/100 dollars (\$400.00).

Signed and filed this 25th day of May, 2016.


JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
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Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876 4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.