

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED

SEP 23 2015

JASMINKA BEGANOVIC, Guardian
and Conservator of SENAD
BEGANOVIC,

Claimant,

vs.

PJ FOOD SERVICE, INC., a/k/a
PAPA JOHN'S INTERNATIONAL, INC.,

Employer,

and

NEW HAMPSHIRE INSURANCE CO.,

Insurance Carrier,
Defendants.

File No. 5034136 WORKERS' COMPENSATION

A P P E A L

D E C I S I O N

Head Note No.: 3303.2

Defendants, PJ Food Service, Inc. a/k/a Papa John's International, Inc., and New Hampshire Insurance Company, appeal from a partial commutation decision filed on October 28, 2014. The case was heard on September 9, 2014, and it was considered fully submitted on October 9, 2014, in front of the deputy workers' compensation commissioner.

In the partial commutation decision, the deputy commissioner granted claimant's petition for a partial commutation. Defendants assert on appeal that the deputy commissioner erred in determining that the partial commutation was proper and in claimant's best interest. Claimant asserts that the decision of the deputy commissioner should be affirmed.

The record, including the transcript of the hearing before the deputy and all exhibits admitted into the record, has been reviewed de novo on appeal. Pursuant to Iowa Code sections 86.24 and 17A.15, I affirm and adopt as the final agency decision those portions of the proposed partial commutation decision of October 28, 2014, filed in this matter that relate to issues properly raised on intra-agency appeal with the following analysis:

The injured worker in this case is Senad Beganovic. At the time of his work injury on January 5, 2010, Senad suffered an anoxic brain injury which rendered him permanently and totally disabled. He requires 24-hour a day custodial and nursing care. He cannot read, speak, or otherwise communicate. Because he does not have the capability to manage his own affairs, a guardianship and conservatorship was established in 2010 to pursue the workers' compensation claim and this claim for a partial commutation. Attorney DuWayne Dalen was appointed by the court and continues to be Senad's guardian ad litem.

Approximately one year before the partial commutation hearing, Senad returned home from a long-term care facility. His wife, Jasminka, became his primary caregiver. At times Jasminka has received assistance from outside nursing service workers paid for by defendants. At the time of the partial commutation hearing, Jasminka was being paid approximately \$60,000.00 per year by defendants for her nursing services. Jasminka pays one-half of the household expenses.

Defendants argue that the deputy's decision was erroneous because he assumed the payments to Jasminka for her care services would continue. Defendants assert that this assumption is incorrect because they contend the evidence demonstrates that going forward, Jasminka will have no income because the employer has provided her with notice that it will be replacing her services with 24-hour-per-day care by an outside nursing service. However, this argument is not persuasive.

At the partial commutation hearing, Jasminka testified that just a few days prior to the partial commutation hearing, she was notified by defendants they were no longer going to pay her for her services. Rather, they were going to provide Senad with 24-hour a day nursing care by an outside service. The outside service was to have started the day before the hearing. However, no one from the nursing service reported to claimant's home. Jasminka testified this was not the first time outside nursing services failed to appear. Jasminka testified that almost every Saturday and almost every Sunday, no one from the nursing service reported to work. (Transcript pages 99-101) Because of her experience with nurses failing to show up to care for her husband, Jasminka is understandably not confident that defendants will provide care for her husband.

For approximately one year prior to the hearing, defendants paid Jasminka to provide care for her husband. This resulted in an annual income of \$60,000 for Jasminka. It is troubling to the undersigned that just a few days prior to hearing, after claimant has gathered their reports for the partial commutation hearing, defendants telephoned Jasminka to advise her they would no longer pay her for her services. Instead they were going to provide 24-hour a day care by an outside nursing service. That care was to begin the day before the hearing; however, no nurse showed up to care for Senad. As of the time of hearing, defendants were not providing 24-hour a day care. As of the time of hearing Jasminka was still providing the care for Senad and therefore, there would not have been any change in her income. Furthermore, even if

defendants do provide reliable consistent care, Jasminka could then feel comfortable obtaining a job in the workforce and thus still have an income.

Defendants also contend that the plan for using the potential commutation proceeds is in flux and, therefore, is not in claimant's best interest. However, based on the record, it is found that Jasminka has a reasonable plan for utilizing the lump sum proceeds from the partial commutation. The plan is to use the funds to pay off their existing mortgage, purchase a van to transport Senad, sell their existing home to purchase a more suitable home, and save and invest the remaining funds. Jasminka has managed the conservatorship for the past four years. She has demonstrated she is capable of doing so in a prudent manner. Furthermore, the conservatorship in this case provides an additional layer of protection for the injured worker. The conservatorship builds in multiple legal safeguards to ensure that the investments and expenditures of the remaining funds are in Senad's best interests. Additionally, Jasminka has also posted a conservatorship bond to help protect Senad's funds in the event of impropriety. (Ex. 17, p. 34)

Claimant has shown by a preponderance of the evidence that the benefits of the partial commutation outweigh the potential detriments. A partial commutation of all but the last week of benefits would be in Senad's best interest.

ORDER

IT IS THEREFORE ORDERED that the partial commutation decision of October 28, 2014, is AFFIRMED in all respects.

Defendants shall pay the costs of the appeal, including the preparation of the hearing transcript.

Signed and filed this 23rd day of September, 2015.



JOSEPH S. CORTESE II
IOWA WORKERS'
COMPENSATION COMMISSIONER

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