

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TERESA MORISTON,

Claimant,

vs.

LONGHOUSE NORTHSHIRE
NURSING HOME,

Employer,

and

TRAVELERS INSURANCE CO.,

Insurance Carrier,
Defendants.

File No. 5022912

A P P E A L
D E C I S I O N

FILED

JUL 24 2009

WORKERS' COMPENSATION

Head Note Nos.: 1803; 4000.2

Upon written delegation of authority by the workers' compensation commissioner pursuant to Iowa Code section 86.3, I render this decision as a final agency decision on behalf of the Iowa workers' compensation commissioner.

Pursuant to Iowa Code sections 86.24 and 17A.15, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision of October 20, 2008 and the ruling on application for rehearing of November 12, 2008 filed in this matter that relate to issues properly raised on intra-agency appeal and cross-appeal with the following additional analysis:

The hearing deputy adequately dealt with the issues raised by both parties on appeal, with the exception of a couple of costs issues:

First, the award of costs for the MRI of the brain was appropriate. The costs of diagnostic testing and imaging by the treating physician which the physician felt was necessary to diagnose the treat the cause of claimant's symptoms, even if that test is to rule out other problems that the work-related condition constitutes reasonable and necessary treatment of a work injury. In any event, this agency has long held that employers are to pay for the medical care they authorized. Becker v. Clinton Engineering, Inc., No. 1205139 (App. July 3, 2001); Janssen v. U.P.S., No. 1019753 (App. April 29, 1994).

Second, the award of the costs of one report that was requested by claimant that had been excluded at hearing was appropriate. Our administrative rule 876 IAC 4.33(6) which allows the reimbursement for two doctor reports does not require that the report be actually placed in evidence to qualify for the reimbursement.

Third, the award of an extra meal for transportation to attend the IME examination was also appropriate. Claimant testified without contradiction that she needed a driver to help her travel to this examination, because she is limited in the amount of time she can drive herself because of her back problems. (Transcript, page 41)

The hearing deputy based his decisions in part on his assessment that claimant was a credible witness. While I performed a de novo review, I give considerable deference to findings of fact that are impacted by the credibility findings, expressly or impliedly, made by the deputy who presided at the hearing. The deputy who presided at the hearing had the best opportunity to evaluate the demeanor of the persons who testified at the hearing. The presiding deputy has the ability to include the demeanor of a witness when weighing credibility to find the true facts of the case. My ability to find the true facts that are affected by witness demeanor and credibility cannot be expected to be superior to that of the deputy who presided at the hearing. If anything, my ability when reviewing a transcript is likely inferior because I do not have the tool of witness demeanor to use in my evaluation.

Since both the appeal and cross-appeal were unsuccessful claimant and defendants shall share equally the costs of the appeal including transcription of the hearing. Defendants shall pay all other costs.

Signed and filed this 24th day of July, 2009.



LARRY WALSHIRE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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