

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

NOHELY MEDINA,

Claimant,

vs.

ROTARY SENIOR LIVING,

Employer,

and

IOWA LONG TERM CARE RISK
MANAGEMENT ASSOCIATION,Insurance Carrier,
Defendants.

File No. 20007881.01

A P P E A L

D E C I S I O N

Head Notes: 1402.20; 1402.40; 1403.10;
1802; 1803; 2206; 2701;
2907; 3001; 3002; 5-9998

Defendants Rotary Senior Living, employer, and its insurer, Iowa Long Term Care Risk Management Association, appeal from an arbitration decision filed on April 5, 2022. Claimant Nohely Medina responds to the appeal. The case was heard on September 29, 2021, and it was considered fully submitted in front of the deputy workers' compensation commissioner on November 16, 2021.

In the arbitration decision, the deputy commissioner found claimant met her burden of proof to establish she sustained an injury to her low back on April 26, 2020, which arose out of and in the course of her employment with defendant-employer. The deputy commissioner found claimant is entitled to receive 12 days of healing period benefits for the work injury between the date of injury and June 22, 2020. The deputy commissioner found claimant sustained 20 percent industrial disability as a result of the work injury, which entitles claimant to receive 100 weeks of permanent partial disability benefits commencing on July 9, 2020. The deputy commissioner found claimant's gross average weekly wage for the work injury is \$432.00, and the deputy commissioner found claimant's weekly benefit rate for the work injury, classification married with five exemptions, is \$311.41. The deputy commissioner found claimant is entitled to alternate medical care for the work injury as directed by claimant's primary care physician Dustin Smith, M.D. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is entitled to reimbursement from defendants in the amount of \$3,262.50 for the cost of the independent medical evaluation (IME) of claimant performed by Mark Taylor, M.D. The deputy commissioner ordered

defendants to pay claimant's costs of the arbitration proceeding in the amount of \$139.52.

Defendants assert on appeal that the deputy commissioner erred in finding claimant sustained anything more than a temporary aggravation of her pre-existing low back condition. Defendants assert the deputy commissioner erred in finding claimant is entitled to receive any temporary disability benefits or any permanent disability benefits. Defendants assert the deputy commissioner erred in finding claimant is entitled to alternate medical care or any ongoing medical treatment. Defendants assert it should be found that claimant's correct gross average weekly wage for the work injury is \$181.31, and defendants assert it should be found that claimant's correct weekly benefit rate for temporary disability benefits is \$167.15, and defendants assert it should be found that claimant's correct weekly benefit rate for permanent disability benefits is \$232.32. Defendants assert it should be found on appeal that the correct commencement date for permanent disability benefits is May 10, 2021, instead of July 9, 2020. Defendants assert it should be found that claimant is not entitled to reimbursement for her costs of the arbitration proceeding.

Claimant asserts on appeal that the arbitration decision should be affirmed in its entirety. In the alternative, claimant asserts it should be found that claimant's gross average weekly wage for the work injury is \$548.50, and it should be found that claimant's weekly benefit rate for the work injury, classification married with five exemptions, is \$391.05.

Those portions of the proposed arbitration decision pertaining to issues not raised on appeal are adopted as part of this appeal decision.

I have performed a de novo review of the evidentiary record and the detailed arguments of the parties, and I reach the same analysis, findings, and conclusions as those reached by the deputy commissioner.

Pursuant to Iowa Code sections 17A.5 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on April 5, 2022, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all the issues raised in the arbitration proceeding. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to those issues.

I affirm the deputy commissioner's finding that claimant proved she sustained a work-related injury to her low back on April 26, 2020. I affirm the deputy commissioner's finding that claimant is entitled to receive 12 days of healing period benefits for the work injury between the date of injury and June 22, 2020. I affirm the deputy commissioner's finding that claimant sustained 20 percent industrial disability as a result of the work injury. I affirm the deputy commissioner's finding that the correct date for commencement of claimant's permanent disability benefits is July 9, 2020. I

affirm the deputy commissioner's finding that claimant's gross average weekly wage for the work injury is \$432.00, and I affirm the deputy commissioner's finding that claimant's weekly benefit rate for the work injury, classification married with five exemptions, is \$311.41. I affirm the deputy commissioner's finding that claimant is entitled to alternate medical care for the work injury as directed by claimant's primary care physician, Dr. Smith. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is entitled to reimbursement from defendants for the cost of Dr. Taylor's IME. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$139.52.

I affirm the deputy commissioner's findings, conclusions, and analysis regarding the above-stated issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on April 5, 2022, is affirmed in its entirety.

Defendants shall pay claimant twelve (12) days of healing period benefits between the date of injury and June 22, 2020, at the weekly rate of three hundred eleven and 41/100 (\$311.41).

Defendants shall pay claimant one hundred (100) weeks of permanent partial disability benefits commencing July 9, 2020, at the weekly rate of three hundred eleven and 41/100 (\$311.41).

Defendants shall receive credit for one (1) week of benefits previously paid.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

Future medical care for the work injury shall be directed by claimant's treating physician, Dustin Smith, M.D.

Pursuant to Iowa Code section 85.39, defendants shall reimburse claimant in the amount of three thousand two hundred sixty-two and 50/100 dollars (\$3,262.50) for the cost of Dr. Taylor's IME.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of one hundred thirty-nine and 52/100 dollars (\$139.52), and defendants shall pay the costs of the appeal, including the cost of the hearing transcript.

Pursuant to rule 876 IAC 3.1(2), defendants shall file subsequent reports of injury as required by this agency.

Signed and filed on this 16th day of August, 2022.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Gary Nelson (via WCES)

Emily Schott Hood (via WCES)

Alison Stewart (via WCES)