IN THE IOWA DISTRICT COURT FOR POLK COUNTY

MSC INDUSTRIAL DIRECT CO., and ACE AMERICAN INSURANCE CO., Petitioners/Defendants, vs. **WILLIAM BAKER,** Respondent/Claimant.	**Case No. CVCV061747** **RULING ON PETITION FOR JUDICIAL REVIEW**

A petition for judicial review came before the court from a final decision of the Iowa Workers' Compensation Commission. The court held a hearing on this matter on August 13, 2021. Petitioners MSC Industrial Direct Company and ACE American Insurance Company were represented by attorney Jean Dickson. Randall Schueller appeared for respondent William Baker (claimant or Baker). Having heard the arguments of counsel and having reviewed the court file, including the briefs provided by the parties, the certified administrative record, and being otherwise fully advised in the premises, the court now enters the following ruling.

I. INTRODUCTION

A. Factual Background

Respondent William Baker was a 42-year-old man at the time of the arbitration hearing.[1] Baker is a high school graduate and completed some college credits at Hawkeye Community College.[2] His classes related to industrial maintenance, business management, and computer

[1] Arbitration Decision (Arb. Dec.) at 3.
[2] Transcript (Tr.) at 13.

science.[3] He was hired by MSC on February 19, 2016, as a solution sales representative.[4] Most of his duties at MSC included setting up new job sites.[5]

On April 17, 2017, Baker was setting up a new job site in Marshalltown, Iowa.[6] He was stocking a cabinet, that was anywhere from 750 to 1,000 pounds, when the cabinet fell on him.[7] It struck him in the head and pushed him to the ground.[8] After this incident, Baker was on leave from April 17, 2017, through his termination on March 12, 2018.[9] He has not worked at MSC or anywhere else since the day of the accident on April 17, 2017.[10] Petitioners paid for his medical treatment until February/March 2020.[11] They also selected, authorized, and chose all the medical treatments for Baker.[12] He had 26 different providers and 474 medical appointments.[13] He was paid workers' compensation benefits every week since April 14, 2017, until he received a letter that he would no longer be receiving benefits after March 2020.[14] Baker's main complaints involve cognitive, memory, and seizure-like issues.[15] As well as issues involving his left arm and back pain.[16]

After the accident, Baker visited the Grundy County Memorial Hospital (GRU) Emergency Department on April 14, 2017.[17] He stated he did not lose consciousness but complained of left

[3] Arb. Dec. at 3.
[4] Defense Exhibit (DE) G at 33.
[5] Arb. Dec. at 3; Tr. at 17.
[6] Arb. Dec. at 3; Tr. at 19.
[7] Arb. Dec. at 3.
[8] *Id.*
[9] DE G at 34; Claimant Exhibit (CE) 26 at 117.
[10] Tr. at 18, 73.
[11] CE 15 at 33; Tr. at 20.
[12] Tr. at 10.
[13] *Id.* at 21, 73.
[14] *Id.* at 21.
[15] Arb. Dec. at 3.
[16] *Id.*
[17] Joint Exhibit (JE) 2 at 7.

knee and elbow pain.[18] The medical history indicates he had no neck pain/neck stiffness and no dizziness, syncope, and headaches.[19] The notes do state he may have had a mild concussion when the cabinet hit him but no residual symptoms or headaches.[20] Baker returned to GRU Emergency Room: (1) April 16, 2017; (2) October 4, 2017; and (3) December 13, 2018.[21] At his April 16, 2017 visit he complained of neck pain and headaches.[22] Baker still denied losing consciousness but he did have one episode of emesis and nausea.[23] He had no memory issues, but did feel constantly tired and complained of upper back pain.[24] Baker reported no numbness, tingling, or weakness.[25] Overall, he rated his pain as moderate.[26] On October 4, 2017, Baker presented to GRU Emergency Department with complaints of daily headaches, nausea, and vomiting.[27] Baker also complained of seizure-like activity including being unresponsive and eye fluttering.[28] He reported he had two seizure-like episodes in July 2017.[29] On December 13, 2018, he was admitted to the ER for seizure-like activity.[30] It was noted it did not appear to be in a period of postictal state because he woke up quite quickly.[31]

On April 27, 2017, Baker was referred to Dr. Nakita Stephens at UnityPoint Clinic Neurology in Waterloo by his primary care physician for an evaluation of post-concussion

[18] *Id.*
[19] JE 2 at 8.
[20] *Id.* at 10.
[21] *Id.* at 11-12, 14.
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] *Id.* at 13.
[31] *Id.* at 14.

syndrome.[32] His complaint was current headaches that intensify throughout the day.[33] Baker complained of constant headaches with tightness coming from the back of his neck that radiated into his entire head.[34] He stated his pain intensity was 6/10 but can be 10/10.[35] Baker also complained of left eye blurred vision.[36] He also complained of short and long-term memory recall.[37] He also stated after the accident, he had difficulty with the articulation of words, but that this improved with time.[38] Baker was diagnosed with post-concussion syndrome and post-concussion headache.[39] The doctor recommended that Baker have a brain MRI to evaluate any focal/structural changes.[40] Also, Dr. Stephens recommended cognitive rehabilitation given his cognitive symptoms.[41] The doctor referred Baker for a physical medicine and rehabilitation evaluation.[42]

Baker was examined by Dr. Eric Neverman at UnityPoint Clinic Family Medicine in Grundy Center on May 18, 2017.[43] The doctor reviewed Baker's most recent neurology MRI which was normal.[44] In Dr. Neverman's medical opinion, Baker was allowed to return to work but with restrictions.[45] Baker complained of headaches, nausea, vision disturbance, and right ankle pain.[46] Dr. Neverman diagnosed Baker with post-concussive syndrome, acute right ankle pain, and

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[32] JE 3 at 15.
[33] *Id.*
[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] *Id.*
[38] *Id.*
[39] *Id.* at 18.
[40] *Id.* at 19.
[41] *Id.*
[42] *Id.*
[43] JE 5 at 31.
[44] *Id.*
[45] *Id.*
[46] *Id.* at 33.

decreased peripheral vision of the left eye.[47] The doctor recommended he obtain a formal ophthalmologic evaluation.[48] Dr. Neverman opined that "he can return to work on a part-time basis as long as he has a quiet area to work a non-exterional job, and that he gets frequent breaks."[49] He also opined that he should not drive at this time due to Baker's concern regarding his attention.[50]

On June 2, 2017, Baker presented to Dr. Manshadi on a referral from Dr. Stephens for further evaluation for rehabilitation.[51] Baker continued to report short and long-term memory issues, peripheral vision loss, headaches, anxiety, and light-headedness.[52] Dr. Manshadi's impressions were: (1) traumatic brain injury with left-sided weakness and loss of sensation in left upper extremity and left lower extremity; (2) peripheral vision loss; (3) post-concussive headaches; (4) myofascial pain involving the neck; (5) cognitive deficits with memory issues; and (6) episodic symptoms.[53] The doctor recommended Baker see a neuropsychologist and Dr. Fitzgerald for vision loss.[54] He recommended medication and for him to follow up for fascial distortion treatment.[55] Dr. Manshadi also recommended physical therapy for his left-sided weakness.[56]

Dr. Manshadi has been Baker's treating physician since June 2017.[57] He has seen Baker 40 times.[58] He has monitored and helped Baker learn how to maintain and work around his pain.[59] Dr. Manshadi provided fascial distortion treatment, anticonvulsant medication, anti-anxiety

[47] JE 5 at 33-34.
[48] *Id.* at 34.
[49] *Id.*
[50] *Id.*
[51] JE 6 at 35.
[52] *Id.*
[53] *Id.* at 36.
[54] *Id.*
[55] *Id.*
[56] *Id.*
[57] Tr. at 26; JE 6 at 35-112
[58] Tr. at 28.
[59] *Id.* at 26.

medication, Botox, and a home exercise program.[60] He recommended physical therapy, occupational therapy, speech therapy, psychotherapy, seeing an ENT doctor, neuropsychologist, craniosacral treatment, referral to a pulmonologist, and a referral to neuropathy.[61] He also states he needs 24-hour supervision as well as transportation to and from medical appointments.[62] It is Dr. Manshadi's opinion that Baker requires 24/7 supervision and that Baker's fiancé, Kristin Hestness, is the best and most reasonable option for providing that supervision.[63] He found him to be at maximum medical improvement (MMI) on September 6, 2019.[64] He opined that even though Baker is at MMI, "he needs to continue to follow with Dr. Hines and Dr. Gallagher and gradually reduce the visits with Dr. Fitzgerald."[65] Overall, Dr. Manshadi's diagnoses included: (1) post-concussive headaches; (2) chronic migraine headaches with aura; (3) myofascial pain involving the neck and upper back; (4) partial complex seizures; (5) peripheral vision loss with resolution; (6) seizure disorder; and (7) traumatic brain injury with left-sided weakness and loss of sensation, with word-finding issues and memory issues related to traumatic brain injury (TBI).[66] He recommended that Baker not drive and not return to work.[67] He also recommended 24-hour supervision.[68]

On June 22, 2017, Baker was examined by Dr. DeAnn Fitzgerald for his trouble with vision, memory, speech, and balance.[69] Dr. Fitzgerald noted there was a severely constricted field

[60] *See generally* JE 6 at 35-111.
[61] *Id.* at 40, 44, 62, 85, 100, 106, 111.
[62] *Id.* at 50.
[63] *Id.* at 79.
[64] *Id.* at 106.
[65] *Id.*
[66] *Id.* at 113.
[67] *Id.*
[68] *Id.*
[69] JE 8 at 121.

of vision.[70] Dr. Fitzgerald recommended he have vision treatment or motion occupational therapy.[71] On September 11, 2019, Dr. Fitzgerald provided her opinions concerning Baker.[72] She agreed he had a traumatic brain injury and that based on her review of the records and her examinations of Baker it was caused by the work incident on April 14, 2017.[73] She also opined he sustained a permanent head injury as a result.[74] She agreed that he will be unable to be gainfully employed as a result and is also unable to drive.[75] Dr. Fitzgerald also stated Baker cannot be left alone.[76] She opined that all the treatment provided by her is reasonable and necessary.[77] Baker will continue to need future vision, vestibular, and auditory care from her.[78]

From July 31, 2017, to August 11, 2017, Baker visited Cedar Rapids Vision in Motion Occupational Therapy on an almost daily basis. He received craniosacral treatment while he was there.[79] At the end of the 12-days, Baker was given a light box to take home to use.[80] He was instructed to use it in the morning and then again in the evening for 20 minutes for 18 consecutive days.[81] He stated these light therapy sessions helped him sleep but as soon as they stopped his sleep quality deteriorated.[82] Baker returned to CR Vision in Motion three more times on April 30, 2018, October 5, 2018, and July 10, 2019.[83] Light therapy and a driving simulator were completed

[70] *Id.*
[71] JE 8 at 121.
[72] *Id.* at 131.
[73] *Id.*
[74] *Id.* at 132.
[75] *Id.*
[76] *Id.*
[77] *Id.* at 131.
[78] *Id.* at 132.
[79] *Id.* at 129.
[80] *Id.*
[81] *Id.*
[82] JE 6 at 42.
[83] JE 16 at 231-33

in the April visit.[84] In July, visual therapy was performed and he was told to continue neuro rehab.[85]

Baker began occupational therapy with Taylor Physical Therapy Associates on July 20, 2017.[86] He reported on his medical history that he had physical problems performing job tasks.[87] He complained of balance issues, vision issues, numbness, and headaches.[88] He rated his pain as a 6/10.[89] At its best, it was 4/10 and at its worst, it was 10/10.[90] He rated himself as 10/10 for how restricted he is in his normal activities.[91] He complained of having these symptoms constantly (24 hours/day).[92] He reported that he had issues with his head, neck, shoulders, mid-back, and left hand.[93] Baker noted he has headaches, difficulties with vision and coordination, and had episodes of seizures.[94] He was referred to physical therapy by Dr. Manshadi for strengthening and coordination.[95] During his assessment, he was noted to have impairments with gripping and pinching.[96] He also demonstrated apraxia and limited coordination with gross and fine motor skills.[97] On March 1, 2018, Baker's overall progress was slow and complicated by his unrelenting headaches and difficulty processing commands.[98] On March 29, 2018, it was noted that Baker was not able to demonstrate significant functional improvements over the past two to three months in therapy.[99] As a result, he was discharged from therapy and it was recommended he start a home

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[84] *Id.*
[85] *Id.* at 233.
[86] JE 9 at 188.
[87] *Id.*
[88] *Id.*
[89] *Id.* at 189.
[90] *Id.*
[91] *Id.*
[92] *Id.*
[93] *Id.*
[94] *Id.* at 190.
[95] *Id.*
[96] *Id.* at 191.
[97] *Id.*
[98] *Id.* at 192.
[99] *Id.* at 193.

exercise program.[100] Baker returned on July 24, 2018, because his grip strength had not increased.[101] It was recommended that be seen for two sessions to update and implement the home exercise program.[102]

Baker saw Dr. Derek Campbell for an initial neuropsychological evaluation on August 17, 2017.[103] Baker reported cognitive symptoms of (1) memory difficulty, (2) word-finding difficulty, (3) and trouble with multi-tasking.[104] Cognitive rehabilitation was planned.[105] Baker also reported emotional symptoms of (1) frustration, (2) morbid imagery triggered by innocuous statements, (3) diminished affective response, (4) depression, and (5) anxiety.[106] He also reported peripheral vision loss, fatigue, and headaches.[107] Dr. Campbell opined that it is "more likely than not that Baker is experiencing mild post-concussion symptomatology and significant clinical improvement would be anticipated in the next few months.[108] However, Dr. Campbell opined that "his suggested response bias characterized by modest symptom magnification seriously constrains clearly detecting deficits referable to the injury with this exam."[109] He recommended: (1) antidepressant medication; (2) psychotherapy to improve coping and relaxation; and (3) a professional providing cognitive rehabilitation services, such as a speech-language pathologist.[110]

Baker returned to Dr. Campbell on September 13, 2018, but Baker perceived a very mild improvement in cognitive processing in the last year.[111] Baker still reported memory issues, speech

[100] *Id.*
[101] JE 9 at 194.
[102] *Id.*
[103] JE 10 at 195.
[104] *Id.*
[105] *Id.*
[106] *Id.*
[107] *Id.* at 196.
[108] *Id.* at 197.
[109] *Id.*
[110] *Id.* at 198.
[111] *Id.* at 199.

issues, morbid imagery, forgetfulness, severe anxiety, strange behavior, numerous spells of staring and/or other signs of altered mental status, and unexplained loss of consciousness.[112] Dr. Campbell found moderate cognitive improvement over the last year, a continuing degree of symptom magnification, psychogenic contribution to cognitive complaints, and grossly abnormal psychological profile.[113] He recommended Baker continue to participate in psychotherapy.[114]

From September 19, 2017, to November 7, 2019, Baker saw Patricia Munson eight times for speech therapy.[115] Ms. Munson opined that it appeared he continued to have difficulty with working memory, attention especially when there are distractions present, and executive function.[116] Baker also continued to report severe headaches making it difficult to complete the program.[117] Ms. Munson stated in her report that his speech therapy will continue but with the limited access, his progress will be slow and limited.[118]

Baker also went to Dr. Jon Towley for psychotherapy six times from November 2, 2017, to November 15, 2018.[119] Dr. Towley noted that Baker sustained a major concussion.[120] Baker reported he was depressed and anxious.[121] He reported he was up late nightly.[122] Dr. Towley diagnosed Baker with anxiety and a head injury.[123] He also noted he had severe psychological stressors.[124] Baker followed up with Dr. Towley on July 19, 2018.[125] He reported that he struggles

[112] JE 10 at 199-200.
[113] *Id.* at 202.
[114] *Id.*
[115] JE 11 at 204.
[116] *Id.*
[117] *Id.*
[118] *Id.*
[119] JE 12 at 211-20.
[120] *Id.* at 211.
[121] *Id.*
[122] *Id.* at 212.
[123] *Id.* at 215.
[124] *Id.*
[125] *Id.* at 218.

with someone coming into the home to provide care. *Id.* He knows it is not safe for him to be left alone.[126]

On March 21, 2018, Baker saw Dr. Darko Zdilar for psychiatric care due to his depression and anxiety.[127] He told Dr. Zdilar that he did not suffer from depression before the injury, but did a few months after the injury.[128] Baker noted part of his depression is because he knew his life was not going to go back to normal and his whole life had changed.[129] One of the stressors was his work injury.[130] Baker reported that he had a change in personality after the accident.[131] Dr. Zdilar diagnosed Baker with major depressive disorder, generalized anxiety disorder, gastroesophageal reflux disease (GERD), and post-concussion syndrome.[132] The treatment plan was to continue with medication, continue with therapy, and supportive therapy.[133]

Baker visited Dr. Mark Zlab at The Iowa Clinic Ear, Nose, and Throat on April 10, 2018.[134] Baker complained of a head injury with a concussion, right ear pain, and hearing loss.[135] An audiometry test showed Baker had moderate to severe right ear sensorineural hearing loss and moderate left ear sensorineural hearing loss.[136] It was noted that he had cranial nerve abnormalities.[137] Dr. Zlab assessed that Baker had asymmetrical sensorineural hearing loss and smell disorder.[138] However, Dr. Zlab could not "say without any medical doubt the injury accounts

[126] JE 12 at 218.
[127] JE 14 at 222.
[128] *Id.*
[129] *Id.*
[130] *Id.* at 223.
[131] *Id.* at 224.
[132] *Id.* at 226.
[133] *Id.* at 226-27.
[134] JE 15 at 228.
[135] *Id.*
[136] *Id.* at 229.
[137] *Id.*
[138] *Id.*

for his loss."[139] Dr. Zlab thought Baker would benefit from hearing aids and should protect himself from noise.[140] He calculated his hearing loss of 4% for the left ear and 43% for the right ear with binaural hearing loss of 10%.[141]

On May 15 and July 3, 2018, Baker had a psychiatric progress visit with Shawn Plunkett.[142] This was a follow-up appointment for his depression and anxiety.[143] Baker reported frequent headaches and severe pain in his neck and shoulders.[144] Baker noted his speech had improved and there had been a decrease in seizure activity.[145] He reported his sleep was improving with light therapy.[146] Mr. Plunkett diagnosed Baker with moderate episode of recurrent major depressive disorder, generalized anxiety disorder, post-concussive syndrome, and injury of the head.[147] His medication was increased and it was recommended he continue therapy.[148] In July, he reported still being depressed and anxious and that he was not sleeping well.[149] His depression had improved subtly and his main concern was his anxiety.[150]

From May 17, 2018, to December 16, 2019, Baker went to Dr. Mark Hines nine times for treatment.[151] Baker's chief complaint was a traumatic brain injury.[152] Dr. Hines reviewed Baker's entire medical history and also examined Baker.[153] Dr. Hines assessment was that Baker had: (1)

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[139] *Id.*
[140] JE 15 at 229.
[141] *Id.* at 230.
[142] JE 17 at 234, 237.
[143] *Id.* at 234.
[144] *Id.*
[145] JE 17 at 234.
[146] *Id.*
[147] *Id.*
[148] *Id.* at 235-34.
[149] *Id.* at 237.
[150] *Id.*
[151] JE 18 at 241-92.
[152] *Id.* at 241.
[153] *Id.* at 241-55.

a closed head injury with post-traumatic stress reaction; (2) post-traumatic anxiety; (3) post-traumatic depression; (4) cervical myofascial dysfunction; (5) post-traumatic migraine; and (6) possible post-traumatic partial seizures with complex symptomatology.[154] The plan was for Baker to (1) do EMDR, (2) continue current therapies, (3) trigger point injections, (4) monitor and alter anticonvulsants as needed, and (5) Botox injections.[155] Baker reported to Dr. Hines that he thought the Botox injections were helping.[156]

In June of 2018, Baker reported to Dr. Hines for trigger point injections.[157] He reported that he did not have any spells that were seizure-like but continued to have headaches.[158] In July 2018, he reported only nominal improvement from the trigger point injections and had only one episode of staring.[159] Baker saw Dr. Hines again on August 14, 2018.[160] He stated the medication was helping him but his pain was still 5/10 all day long.[161] Baker reported to Dr. Hines that he was "doing odd things."[162] Some of the odd things Baker reported doing were leaving the fridge open or putting the milk in the cupboard.[163] Dr. Hines opined that Baker was making definite progress but he believes he needs to change his anticonvulsants after some fairly clear partial complex seizures.[164] His diagnoses remained essentially unchanged.[165] In June 2019, Dr. Hines reviewed Dr. Campbell's neuropsychological report and suggested he may have psychogenic epilepsy.[166] In

[154] JE 18 at 256.
[155] *Id.*
[156] *Id.* at 257.
[157] *Id.* at 257.
[158] *Id.*
[159] *Id.* at 258.
[160] *Id.* at 263.
[161] *Id.*
[162] *Id.*
[163] *Id.*
[164] *Id.*
[165] *Id.* at 272.
[166] *Id.* at 274.

August 2019, Baker was diagnosed with sleep apnea and a CPAP machine was recommended.[167] In October 2019, Baker reported having a seizure in late August, constant headaches, and continued cognitive problems.[168] In December 2019, Baker visited Dr. Hines for his seizures, head injury, headaches, and PTSD.[169] Dr. Hines' diagnoses of Baker remained unchanged.[170] Dr. Hines ordered an MRI.[171]

Baker saw Dr. James Gallagher 23 times from August 28, 2018, to February 19, 2020.[172] He was referred by Dr. Manshadi to Dr. Gallagher for psychiatric treatment for his depression and anxiety.[173] Dr. Gallagher completed an examination of Baker's records and an evaluation of Baker.[174] Dr. Gallagher agreed with Dr. Manshadi's findings and diagnosis of a mild traumatic brain injury.[175] He also noted that Baker suffered from significant depressive disorder that had not adequately responded to antidepressants.[176] The overall goal remained to progress Baker towards independence as much as possible.[177] Dr. Gallagher agreed with the diagnoses of Baker having traumatic brain injury, anxiety, depression, and post-traumatic stress disorder.[178] He also agreed that these diagnoses were caused by the work-related injury on April 14, 2017.[179] Further, Dr. Gallagher stated all of the treatment Baker had with him was necessary, reasonable, and causally related to the work injury that occurred on April 14, 2017.[180] Dr. Gallagher also agreed he will

[167] JE 18 at 281.
[168] *Id.* at 286.
[169] *Id.* at 292.
[170] *Id.* at 298.
[171] *Id.* at 299.
[172] JE 19 at 302-57.
[173] *Id.* at 302-03.
[174] *Id.* at 302-11.
[175] *Id.* at 310.
[176] *Id.*
[177] *See generally Id.* at 302-57.
[178] *Id.* at 342.
[179] *Id.*
[180] *Id.*

require 24-hour supervision and is unable to be gainfully employed.[181]

On March 31, 2018, Dr. Michael Kitchell performed a records review at petitioners' request of Baker's head injury on April 14, 2017.[182] His final impression after reviewing all the records was that Baker sustained a minor head injury on April 14, 2017.[183] However, Dr. Kitchell assessed that there was no evidence Baker had a significant injury if even a minor concussion.[184] He opined that the symptoms, including his visual loss, left-sided weakness and numbness, and pseudo seizures, are consistent with a psychogenic cause and not with his injury.[185] Dr. Kitchell's opinion is that the treatments Baker received were not necessary because he is suffering from psychological problems not related to his injury.[186] Further, he opined that Baker will not need any more treatment as a result of his injury on April 14, 2017.[187] Dr. Kitchell provided a supplemental review of Baker's medical records on December 18, 2019.[188] He concluded most of Baker's difficulties are related to some psychological disturbances.[189]

Dr. Robert Jones completed a neuropsychological assessment of Baker on November 9, 2019.[190] He interviewed Baker and also reviewed all of Baker's records.[191] Dr. Jones opined that the results of this exam must be interpreted with caution due to the less than optimal effort by Baker in responding.[192] Dr. Jones would not diagnose him with a post-concussive syndrome or

[181] JE 19at 343.
[182] DE A at 1.
[183] DE A at 2.
[184] *Id.* at 2-3.
[185] *Id.* at 3.
[186] *Id.*
[187] *Id.*
[188] *Id.* at 4.
[189] *Id.* at 5.
[190] DE D at 9.
[191] *Id.* at 9-10.
[192] *Id.* at 12.

traumatic brain injury.[193] This diagnosis is based on the fact that there was no evidence of confusion, disorientation, or difficulties with cognition that might reflect a concussion.[194] Dr. Jones's impression was Baker's neuropsychological profile is due to his severe psychological distress.[195] However, this psychological distress would not be expected from his injury in April 2017.[196] Dr. Jones's recommendation was to continue psychiatric/psychological care.[197]

On December 18, 2019, Dr. Randy Kardon, performed a record review for petitioners regarding Baker's visual condition.[198] His opinion is that his testing does not "specifically reveal cerebellar or parietal lobe dysfunction in the absence of neurological findings associated with dysfunction in these locations of the brain."[199] Dr. Kardon also did not agree with the diagnoses made by Dr. Fitzgerald regarding Baker's vision symptoms and test results.[200] His opinion is that "no testing results consistently support visual dysfunction due to the incident he experienced at work."[201] Dr. Kardon further opined Dr. Fitzgerald's treatments are not accepted by the medical community and are not reasonable and necessary.[202] He concludes Baker's vision problems are "most likely due to a non-organic, psychogenic problem" and not from the injury at work.[203] There also is no reason he should not be able to drive.[204]

Dr. Michael Cullen also completed a records review for petitioners on December 20,

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[193] DE D at 13.
[194] *Id.*
[195] *Id.*
[196] *Id.*
[197] *Id.* at 14.
[198] DE E at 17.
[199] *Id.* at 20.
[200] *Id.*
[201] *Id.*
[202] *Id.*
[203] *Id.* at 21.
[204] *Id.*

2019.[205] Dr. Cullen opined there is no convincing evidence Baker suffered from a concussion or a traumatic brain injury.[206] He only suffered blunt trauma that would be a self-limited condition.[207] Dr. Cullen's opinion is Baker's current symptoms are due to "a functional/nonorganic explanation with pseudo seizures/nonepileptic seizures present."[208] Additionally, any of the treatment Baker has been receiving is based on the subjective reports by him without any objective clinical or diagnostic support.[209]

On February 13, 2020, Dr. Joseph Chen completed an independent medical evaluation.[210] It was his medical opinion that Baker's current diagnoses are: (1) chronic myofascial head, neck, and low back pain; (2) severe anxiety; and (3) depression.[211] However, these diagnoses are not causally related to his work injury on April 14, 2017.[212] Dr. Chen also opined that Baker experiences high fear avoidance beliefs and has a high pain catastrophization.[213] He states Baker only experienced minimal trauma to his head and neck and there was no objective evidence of structural injury.[214] He did not suffer significant trauma to his brain that has led to any permanent brain damage.[215] It is his medical opinion Baker can be gainfully employed again.[216] Dr. Chen opined Baker does not require 24-hour supervision due to his work injury on April 14, 2017.[217] Further, Dr. Chen would not recommend any supervised medical treatment.[218] Dr. Gallagher's

[205] DE F at 23.
[206] *Id.* at 29.
[207] *Id.*
[208] DE F at 29.
[209] *Id.* at 30.
[210] DE O at 66.
[211] *Id.* at 74.
[212] *Id.* at 76.
[213] *Id.* at 74.
[214] *Id.* at 74-75.
[215] *Id.* at 76.
[216] *Id.*
[217] *Id.* at 77.
[218] *Id.* at 78.

counseling has been appropriate but it is not his opinion it should be lifelong counseling.[219] It would be more appropriate if counseling was for a time-limited period that is monthly.[220]

B. Procedural History

Baker filed his original notice and petition for benefits on September 28, 2018.[221] On October 4, 2018, petitioners filed their answer where they admitted the injury on April 14, 2017, but denied causation as well as nature and extent.[222] The arbitration hearing was held on March 9, 2020.[223] On July 31, 2020, Deputy Andrew Phillips issued an arbitration decision.[224] The deputy found: (1) the reasoning presented by Drs. Kardon, Jones, Chen, Kitchell, and Cullen to be more persuasive, therefore, Baker did suffer an injury on April 14, 2017, but it did not result in a permanent disability; (2) claimant failed to meet the burden that he is permanently and totally disabled; (3) Baker is not entitled to 24-hour supervision because of the finding Baker did not suffer from permanent impairment; (4) 24-hour supervision is not reasonable based on the evidence, and (5) defendants do not owe for past 24/7 nursing care services or ongoing medical care.[225]

Baker appealed the deputy's arbitration decision. On March 17, 2021, Commissioner Cortese reversed the deputy's arbitration decision.[226] The commissioner found: (1) claimant carried his burden of proof to establish he sustained a permanent injury to his head; (2) the opinions of Drs. Manshadi, Gallagher, and Fitzgerald were more persuasive; (3) claimant has proven entitlement to ongoing medical care, including 24-hour supervision; and (4) defendants are

[219] DE O at 78.
[220] *Id.*
[221] Petitioners' Brief at 2.
[222] *Id.*
[223] Arb. Dec. at 1.
[224] *Id.*
[225] *Id.* at 37, 39.
[226] Appeal Decision at 12.

responsible for providing reasonable and necessary treatment related to the work injury.[227] Commissioner Cortese ordered defendants to compensate claimant's girlfriend for the services she provided since July 30, 2018, at an hourly rate of $14.61.[228] The commissioner did not agree that claimant had reached maximum medical improvement (MMI) as to his anxiety and depression.[229] As a result, he ordered a running award of healing period benefits from April 14, 2017, until claimant reached MMI.[230]

Petitioners filed an application for rehearing on March 30, 2021. Commissioner Cortese issued his ruling on defendants' application for rehearing on April 29, 2021. The commissioner clarified his opinion in regards to medical causation and the expert opinions.[231] He granted rehearing to reduce the amount of benefits owed for supervision services.[232] The commissioner ordered defendants to compensate claimant's supervisor for 112 hours per week since July 30, 2018, at an hourly rate of $14.61.[233]

Petitioners filed their petition for judicial review on April 26, 2021. Petitioners argue the commissioner erred as a matter of law in finding (1) claimant's condition of ill-being was the result of the injury on April 14, 2017, and (2) in awarding supervisory care under section 85.27.[234]

II. STANDARD OF REVIEW

The Iowa Administrative Procedure Act, Iowa Code chapter 17A, governs the scope of the court's review in workers' compensation cases.[235] "Under the Act, we may only interfere with the

[227] Appeal Decision at 6-8.
[228] *Id.* at 12.
[229] *Id.*
[230] *Id.*
[231] Rehearing Ruling at 1-3.
[232] *Id.* at 6.
[233] *Id.*
[234] Petitioners' Brief at 1.
[235] Iowa Code § 86.26 (2019); *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 218 (Iowa 2006).

commissioner's decision if it is erroneous under one of the grounds enumerated in the statute, and a party's substantial rights have been prejudiced."[236] A party challenging agency action bears the burden of demonstrating the action's invalidity and resulting prejudice.[237] This can be shown in a number of ways, including proof the action was ultra vires; legally erroneous; unsupported by substantial evidence in the record when that record is viewed as a whole; or otherwise unreasonable, arbitrary, capricious, or an abuse of discretion.[238] The district court acts in an appellate capacity to correct errors of law on the part of the agency.[239]

"If the claim of error lies with the agency's findings of fact, the proper question on review is whether substantial evidence supports those findings of fact" when the record is viewed as a whole.[240] Factual findings regarding the award of workers' compensation benefits are within the commissioner's discretion, so the court is bound by the commissioner's findings of fact if they are supported by substantial evidence.[241] Substantial evidence is defined as evidence of the quality and quantity "that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance."[242] "When reviewing a finding of fact for substantial evidence, we judge the finding 'in light of all the relevant evidence in the record cited by any party that detracts from that finding as well as all of the relevant evidence in the record cited by any party that supports it.'"[243] "Evidence is not insubstantial merely because different

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[236] *Meyer*, 710 N.W.2d at 218.
[237] Iowa Code § 17A.19(8)(a).
[238] *See id*. § 17A.19(10).
[239] *Grundmeyer v. Weyerhaeuser Co*., 649 N.W.2d 744, 748 (Iowa 2002).
[240] *Meyer*, 710 N.W.2d at 219.
[241] *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 464-65 (Iowa 2004).
[242] Iowa Code § 17A.19(10)(f)(1); *Mycogen*, 686 N.W.2d at 464
[243] *Cedar Rapids Cmty. Sch. Dist. v. Pease*, 807 N.W.2d 839, 845 (Iowa 2011) (quoting Iowa Code § 17A.19(10)(f)(3)).

conclusions may be drawn from the evidence."[244] "To that end, evidence may be substantial even though we may have drawn a different conclusion as fact finder."[245] "Judicial review of a decision of the [Commission] is not de novo, and the commissioner's findings have the force of a jury verdict."[246]

The application of the law to the facts is also an enterprise vested in the commissioner.[247] Accordingly, the court will reverse only if the commissioner's application was "irrational, illogical, or wholly unjustifiable."[248] "A decision is "irrational" when it is not governed by or according to reason."[249] A decision is "illogical" when it is "contrary to or devoid of logic."[250] "A decision is "unjustifiable" when it has no foundation in fact or reason" or is "lacking in justice."[251] This standard requires the court to allocate some deference to the commissioner's application of law to the facts, but less than it gives to the agency's findings of fact.[252] However, when the legislature has not vested the agency with such authority, the court reviews an agency's interpretation of a statute for correction of errors at law.[253]

III. MERITS

A. Whether the Commissioner erred as a matter of law in finding that Claimant's current condition was the result of the injury on April 14, 2017.

Petitioners argue Baker failed to prove by a preponderance of the evidence that his condition was causally related to his work injury. They are not disputing that Baker sustained an

[244] *Pease*, 807 N.W.2d at 845.
[245] *Id.*
[246] *Holmes v. Bruce Motor Freight*, 215 N.W.2d 296, 297-98 (Iowa 1974).
[247] *Mycogen*, 686 N.W.2d at 465.
[248] *Id.*; Iowa Code § 17A.19(10)(l).
[249] *Christensen v. Iowa Dep't. of Revenue*, 944 N.W.2d 895 at 905 (Iowa 2020).
[250] *Id.*
[251] *Id.*
[252] *Larson Mfg. Co. v. Thorson*, 763 N.W.2d 842, 850 (Iowa 2009).
[253] *Westling v. Hormel Foods Corp.*, 810 N.W.2d 247, 251 (Iowa 2012).

injury on April 14, 2017. However, they claim the commissioner's finding that Baker carried his burden of proof in finding a permanent impairment was not supported by substantial evidence. More specifically petitioners dispute the commissioner's finding Baker suffered a concussion and/or a traumatic brain injury on April 14, 2017, and that he is still experiencing the effects today. Petitioners argue it was a minor head injury that was resolved shortly after the incident. Instead, they argue Baker's ongoing condition is psychogenic in nature and unrelated to the work injury. Petitioners advance two arguments to support their claim: (1) objective medical evidence did not support a finding of permanent impairment and (2) the commissioner should not have given additional weight to the evidence of the treating physician.

Petitioners support their first argument by contending that the findings by Drs. Chen, Jones, Kardon, Cullen, and Mitchell were more persuasive when it came to causation and liability. These doctors opined that Baker's alleged condition was not the result of the work accident and that Baker had not sustained a traumatic brain injury.[254] Petitioners claim there is overwhelming objective evidence to support that Baker's symptoms were not consistent with a head injury.[255] When he was admitted to the emergency room he did not complain of any musculoskeletal or neurological symptoms.[256] Additionally, they claim Baker's testimony and his fiancé's testimony regarding his limitations were inconsistent with the history in the medical evidence.[257]

As to the second argument, petitioners contend the commissioner erred in giving additional weight to the treating physicians' opinions.[258] They cite an Iowa Supreme Court case that rejected the notion that a treating physician's testimony should be given greater weight than that of a

[254] Petitioners' Brief at 18.
[255] *Id.* at 19.
[256] *Id.*
[257] *Id.* at 20.
[258] *Id.* at 22.

physician that examines the person in anticipation of litigation.[259] Their non-treating physicians still reviewed the treating physicians' opinions and their notes.[260] Petitioners argue that some of claimant's physicians based their medical opinion on incomplete or inaccurate medical history.[261]

"A claimant must prove by a preponderance of the evidence that the injury is a proximate cause of the claimed disability."[262] Proximate cause is established if it is a substantial factor.[263] The preponderance of the evidence is established when the causal connection is probable, rather than merely possible.[264] Usually, the determination of causation by the Agency is established through expert testimony.[265] Specifically, expert testimony is necessary to establish the causal connection between the injury and the disability for which benefits are claimed.[266] With regard to expert testimony,

> [t]he commissioner must consider [such] testimony together with all other evidence introduced bearing on the causal connection between the injury and the disability. The commissioner, as the fact finder, determines the weight to be given to any expert testimony. Such weight depends on the accuracy of the facts relied upon by the expert and other surrounding circumstances. The commissioner may accept or reject the expert opinion in whole or in part.[267]

The commissioner's decision must "include an explanation of why the relevant evidence in the record supports each material finding of fact . . . . Each conclusion of law shall be supported by cited authority or by a reasoned opinion."[268] This requirement is not meant to be burdensome instead, it is meant to allow a reviewing court to ascertain what evidence was considered and the

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[259] Petitioners' Brief at 22; *See Rockwell Graphic Sys., Inc. v. Prince,* 366 N.W.2d 187, 192 (Iowa 1985).
[260] *Id.* at 25.
[261] *Id.*
[262] *Grundmeyer.*, 649 N.W.2d at 752.
[263] *Ayers v. D & N Fence Co.*, 731 N.W.2d 11, 17 (Iowa 2007).
[264] *Blacksmith v. All-American, Inc*., 290 N.W.2d 348, 354 (Iowa 1980).
[265] *Grundmeyer*, 649 N.W.2d at 752.
[266] *Id.*
[267] *Id.*
[268] Iowa Code § 17A.16(1).

reasoning behind the commissioner's findings.[269] The court may only reverse the commissioner's findings if they are not supported by substantial evidence.[270] Under Iowa Code section 17A.19(10)(f)(1), substantial evidence is defined as "the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance."

As to both of petitioners' arguments, Commissioner Cortese explained why he was not persuaded by petitioners' doctors' medical opinions. There were conflicting medical opinions as to the cause of Baker's current condition.[271] Baker relies upon the medical opinions of his authorized treating physicians, which consisted of Drs. Manshadi, Gallagher, and Fitzgerald. Petitioners rely on the independent medical opinions of Drs. Chen, Cullen, Jones, Kardon, and Kitchell. The commissioner noted Drs. Cullen, Kardon, and Kitchell never physically examined or saw Baker, therefore, they cannot understand the significance of his disabilities.[272] Commissioner Cortese explained Dr. Chen and Dr. Jones only conducted one-time evaluations for the purposes of litigation.[273] The commissioner reasoned it was "difficult to afford significant weight to the opinions of Drs. Chen and Jones, who evaluated claimant on a one-time basis, when compared to the opinions of three, well qualified authorized treating physicians who observed claimant on multiple occasions over three years."[274] The commissioner opined it is difficult to diagnose concussions and traumatic brain injuries so it follows it would be hard to give significant

[269] *Schutjer v. Algona Manor Care Center*, 780 N.W.2d 549, 560 (Iowa 2010).
[270] *See Univ. of Iowa Hosp. & Clinics v. Waters*, 674 N.W.2d 92, 95 (Iowa 2004).
[271] Appeal Decision at 3.
[272] *Id.*
[273] *Id.*
[274] *Id.*

weight to the opinions of Drs. Cullen, Kardon, and Kitchell because they never examined Baker.[275] Additionally, the commissioner found defendants' expert reports weakened their argument because there was a lack of general consensus on whether Baker suffered a concussion or a traumatic brain injury on April 14, 2017.[276]

The commissioner also contended Drs. Chen, Cullen, and Jones did not appear to have a firm understanding of the contemporaneous medical records. Dr. Jones's opinion erred in stating Baker's contemporaneous medical records "found no evidence of confusion, disorientation, or difficulties with cognition that might reflect a concussion."[277] The commissioner found the contemporaneous medical records did reflect Baker was complaining of disorientation and difficulties with cognition shortly after the work injury.[278] As to Dr. Chen, he opined that Baker only sustained minimal trauma to his head and neck on the date of injury.[279] Dr. Chen stated it would be hard for him to diagnosis it as a traumatic brain injury because Baker's contemporaneous medical records on April 14 do not indicate any suspicion of loss of consciousness or neurological symptoms.[280] Commissioner Cortese disagreed and found Dr. Chen's opinion to be discredited by contemporaneous medical records and text messages sent by Baker to his employer where he asserted neurological symptoms.[281] Dr. Cullen opined that "concurrent descriptions failed to identify convincing evidence of a traumatic brain injury/concussion although with evolving complaints, he was offered this diagnosis"[282] The commissioner found this statement was

[275] Appeal Decision at 3.
[276] *Id.* a 4.
[277] Defense Exhibit (DE) at 13.
[278] Appeal Decision at 5.
[279] DE O at 74.
[280] *Id.*
[281] Appeal Decision at 5; *see* JE 2 at 10; *see also* Claimant Exhibit (CE) 27 at 127.
[282] DE F at 29.

inaccurate because after Baker was examined in the ER, the ER doctor expressly suggested Baker may have sustained a mild concussion.[283]

Ultimately, the commissioner concluded Baker carried his burden of proof to establish his conditions from the injury to his head were work-related.[284] He found petitioners' suggestion that Baker's "contemporaneous medical records do not justify a diagnosis of a concussion or traumatic brain injury defies logic."[285] Commissioner Cortese found petitioners have an "unrealistically narrow interpretation of the term 'contemporaneous'" because such interpretation is "unreasonably restrictive and would not provide a reliable or representative understanding of claimant's condition following the work injury."[286] The commissioner also accepted the deputy's assessment that Baker was a credible witness.[287] This finding by the deputy lent to the credibility of Baker's testimony regarding his symptoms in the hours and days that followed the work injury.[288]

As to Baker's anxiety and depression, the commissioner found Dr. Gallagher is the only physician in the evidentiary record that is uniquely qualified to diagnose and provide an opinion regarding Baker's mental health conditions.[289] Dr. Gallagher has consistently diagnosed Baker with depression, anxiety, and a head injury.[290] Dr. Gallagher's opinion is that his work injury is causally related to his depression and anxiety. The commissioner found Dr. Gallagher's records and reports were well-reasoned and consistent with the record.[291] Commissioner Cortese determined "the opinions of a psychiatrist to be entitled to greater weight than the opinion of an

[283] Appeal Decision at 5; JE 2 at 10.
[284] Appeal Decision at 7.
[285] *Id.* at 6.
[286] *Id.*
[287] *Id.*
[288] *Id.*
[289] *Id.* at 7; see JE 19 at 302.
[290] Appeal Decision at 7.
[291] *Id.*

occupational physicians, neuropsychologists, neurologists, and physiatrists.[292] The commissioner concluded Baker carried his burden of proof in establishing his work injury caused or materially aggravated, accelerated, or lit up his pre-existing conditions of anxiety and depression.[293]

The commissioner found there to be objective evidence through Baker's testimony and by the records and reports of his doctors to support his conclusion. The commissioner did not err as a matter of law when he gave greater weight to Drs. Manshadi, Gallagher, Hines, and Fitzgerald. Commissioner Cortese's appeal decision provided a sufficiently detailed explanation of the evidence and the material facts, in addition to him providing a reasoned opinion for his conclusions of law.[294] He clarified in this ruling on rehearing that there were many factors that he detailed in his appeal decision why he found the treating physicians to be more persuasive. The commissioner as the fact-finder determined the weight to give each expert and explained why he was more persuaded by Drs. Manshadi, Gallagher, and Fitzgerald compared to Drs. Chen, Cullen, Jones, and Kitchell regarding Baker's work injury being causally related to his current head and mental health conditions.[295] The court's task is not to determine whether there is evidence supporting a different finding, but rather, viewing the record as a whole, the evidence supports the findings actually made.[296] As a result, the court concludes Commissioner Cortese's findings are supported by substantial evidence.

[292] Appeal Decision at 7.
[293] *Id.*
[294] *See* Iowa Code § 17A.16(1).
[295] *See Grundmeyer*, 649 N.W.2d at 752.
[296] *Meyer*, 710 N.W.2d at 218.

B. Whether the Commissioner erred as a matter of law in awarding supervisory care under section 85.27.

Petitioners contend the award of 24/7 supervisory care by Baker's girlfriend, Ms. Hestness, is not supported by substantial evidence.[297] They argue generalized, nonmedical supervision 24-hours a day is not reasonable and necessary treatment related to his work injury.[298] Petitioners state there is no evidence that Ms. Hestness is providing medical care and that this care is reasonable.[299] Ms. Hestness has been known to leave Baker at home by himself.[300] She also let him go to appointments and the bathroom by himself even though he needs constant supervision.[301] Ms. Hestness also has never received any specialized medical training to provide this care to Baker.[302] The only training she received is from Dr. Manshadi when he told her to shake or hit Baker and, if necessary, provide an emergency injection when he experiences a seizure-like episode.[303] Most of her supervision is watching him, performing physical tasks for him, and providing moral support.[304] Petitioners argue that typically compensable services under section 85.27 require some sort of specialized medical training.[305]

The commissioner awarded 24/7 supervisory care due to the recommendation by both Dr. Manshadi and Dr. Gallagher.[306] Even though Ms. Hestness does not provide typical nursing home or home attendant care, Dr. Manshadi opined Ms. Hestness was a reasonable option for 24/7

[297] Petitioners' Brief at 25.
[298] *Id.* at 25-26.
[299] *Id.* at 26.
[300] *Id.*; JE 6 at 48.
[301] Petitioners' Brief at 26; Tr. at 95.
[302] Petitioners' Brief at 27.
[303] Petitioners' Brief at 27; Tr. at 91-93.
[304] Petitioners' Brief at 27; Tr. at 86; CE T at 132.
[305] Petitioners' Brief at 26; *See Henry v. Iowa-Illinois Gas & Electric Co.*, 552 N.W.2d 301, 303 (Iowa 1994).
[306] Rehearing Ruling at 9.

supervision due to her understanding of Baker's medical history.[307] The commissioner's finding is based upon Iowa Code section 85.27(1). Section 85.27(1) states,

> The employer, for all injuries compensable under this chapter or chapter 85A, shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies therefor and shall therefor and shall allow reasonably necessary transportation expenses incurred for such services. The employer shall also furnish reasonable and necessary crutches, artificial members and appliances but shall not be required to furnish more than one set of permanent prosthetic devices.

The commissioner granted rehearing for the limited purpose of reducing the amount of benefits owed for supervision services.[308] He determined that compensation for supervision services by Ms. Hestness should be reduced by 56 hours per week for a total of 112 hours per week compensation.[309] His finding was based on the limitations placed on spousal compensation by the agency and by the supreme court.[310] The agency and the Iowa Supreme Court have limited expenses to matters of medical necessity.[311] Additionally, the supreme court has limited expenses to services and appliances that were necessitated by the work injury and expenses actually provided to claimant.[312] Most of the services performed by Ms. Hestness are watching claimant, providing moral support, and performing physical tasks or chores around the house. Based on the limitations placed on spousal compensation, the commissioner determined providing moral support and performing chores around the house are not compensable activities in this case.[313] The

[307] *Id.*
[308] Rehearing Ruling at 6.
[309] *Id.* at 5-6.
[310] *Id.* at 5.
[311] *Id.* at 4; *See Manpower Temp. Serv. v. Sioson*, 529 N.W.2d 259, 264 (Iowa 1995).
[312] Rehearing Ruling at 4; *see Quaker Oats Co. v. Ciha*, 552 N.W.2d 143 (Iowa 1996); *see also BTR Dunlop v. Cline*, 695 N.W.2d 504 (Iowa Ct. App. 2005).
[313] Rehearing Ruling at 5.

commissioner did affirm his earlier finding that supervision in case Baker has a seizure-like episode is medically necessary based on the opinions of three physicians.[314]

The correct question for the court is whether there is substantial evidence to support the award of 112 hours per week of supervisory care. The legislature has not defined "nursing" in section 85.27. However, the Iowa Supreme Court addressed this issue in *Henry v. Iowa-Illinois Gas & Elec. Co*.[315] Petitioners argue that *Henry* and *Quaker Oats Co. v. Ciha* should control the court's analysis and determination.[316] In *Henry*, the court held:

> The statute includes nursing as one of many specialized professional services, such as surgical, medical, dental, ambulance and hospital, for which a claimant can receive compensation. Thus, we believe "nursing" denotes professional services "grouped with [the services of] physicians and surgeons and not with [the services of] cooks, chambermaids, etc., employed in purely ministerial and administrative functions."[317]

In *Henry*, claimant asserted that respondent employer needed to compensate his mother and sister under section 85.27 for the services they performed after his injury.[318] The supreme court found that the services provided by Henry's family were outside the scope of "nursing" services under the statute.[319] This finding was based on the fact the services provided to Henry did not require medical training or licensure and were "almost entirely household chores."[320] Also, neither of the people providing services were registered nurses or licensed practical nurses.[321] In *Ciha*, the court held the services provided by the spouse were compensable under section 85.27 even though claimant's spouse was not a nurse or LPN.[322] Her services were compensable because she had to

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[314] Appeal Decision at 5.
[315] 522 N.W.2d 301 (Iowa 1994).
[316] *See* Petitioners' Brief at 26; 522 N.W.2d at 303; 552 N.W.2d 143, 156 (Iowa 1996).
[317] 522 N.W.2d at 303.
[318] *Id.* at 301
[319] *Id.* 303
[320] *Id.*
[321] *Id.*
[322] 552 N.W.2d at 156.

receive special training to perform them.[323] Specifically, she had to receive special training "in areas including suprapubic catheterization, bowel care, skin care, and recognizing potentially dangerous or life-threatening conditions that may confront Ciha as a quadriplegic."[324] Her services were "not general care services such as dressing, bathing, feeding, etc."[325]

After considering the above cases and the administrative record, the court concludes there is substantial evidence to support the commissioner's finding. Petitioners' reliance on the fact that Ms. Hestness is not a registered nurse or LPN and has not received special training is misplaced. In *Henry*, there was "no medical testimony or other medical evidence … [indicating] that [the injured worker] required 'nursing' services."[326] Here, three doctors opined 24/7 supervision was reasonable and medically necessary, not for general care services, but for someone to be present in case Baker has a seizure.[327] Dr. Manshadi stated this "supervision may be provided by way of a home health care aide as long as that person is adequately trained to identify Mr. Baker's episodes and how to care for him. That Mr. Baker's significant other be the sole provider of that supervision is not necessary or required."[328] This suggests that there needs to be some special training in order to recognize Baker's episodes. Additionally, their assertion that the commissioner erred as a matter of law in his finding because Ms. Hestness was not even providing the care petitioners were ordered to provide is also misplaced. Petitioners contend Ms. Hestness has not been providing care because: (1) she left Baker at home for 45 minutes; (2) she did not go to some of Baker's appointments; and (3) she allowed Baker to go to the bathroom with their young son while at a

[323] *Id.*
[324] 552 N.W.2d at 147.
[325] *Id.* at 156.
[326] *Henry*, 522 N.W.2d at 303.
[327] *See Ciha*, 552 N.W.2d at 156; *see also* JE 6 at 42-43, 74.
[328] DE B at 6.

doctor's appointment.[329] However, the commissioner never ordered Ms. Hestness to be the particular service provider. Their reliance on these two arguments is misplaced because the question is not whether Ms. Hestness's services are reasonable under section 85.27. The question is whether the finding that petitioners need to provide supervisory care of Baker is reasonable for his work injury.

The deputy commissioner in an alternate care ruling filed on November 20, 2017, and the commissioner in his appeal ruling determined 24/7 supervision care was reasonable and necessary treatment related to the work injury. In the alternate care ruling, which was not appealed by petitioners, the deputy commissioner concluded defendants were interfering in claimant's care and did not provide care authorized by a treating physician. The deputy concluded the care was reasonable because the petitioners "are failing to provide reasonable and medical care in this case. This is one of extraordinary type of injuries that requires a number of medical services to allow claimant to recover and provide him with a degree of safety."[330] The commissioner also reasoned that this supervision was reasonable and necessary based on the recommendation of Drs. Manshadi, Gallagher, and Fitzgerald. All three doctors have stated Baker requires 24-hour supervision in the event that he experiences one of his seizure-like episodes.[331] In both rulings, petitioners were ordered to provide 24-hour supervision as long as it is required by Dr. Manshadi.[332] The commissioner later reduced this to 112 hours a week to account for when Ms. Hestness would be sleeping and not supervising Baker.[333] If petitioners' are not satisfied with Ms.

[329] Petitioners' Brief at 26 (citing to JE 6 at 48, JE 9 at 314, 319, JE 18 at 275, Tr. at 95).
[330] Alternate Care Ruling at 10.
[331] JE 6 at 43, 50, 74, 79, 108, 113; JE 8 at 132; JE 19 at 313, 341-43.
[332] Appeal Decision at 8; Alternate Care Ruling at 10.
[333] Rehearing Ruling at 5.

Hestness's qualifications or performance of Baker's supervisory care, then petitioners' under section 85.27(4) can change who will be the provider of this care.

As a result, there is substantial evidence to support the commissioner's finding that supervision for 112 hours a week is reasonable and necessary care.

III. CONCLUSIONS AND DISPOSITIONS

For all the reasons set forth above, the court concludes there is substantial evidence to support the commissioner findings as to (1) Baker's current condition being causally related to his work injury on April 14, 2017, and (2) supervision of Baker for 112 hours a week is reasonable and necessary care.

IT IS THEREFORE ORDERED the Iowa Workers' Compensation Commission's decision is **AFFIRMED.**

IT IS FURTHER ORDERED costs are assessed to petitioners.

State of Iowa Courts

Case Number	**Case Title**
CVCV061747	MSC INDUSTRIAL DIRECT CO V WILLIAM BAKER
Type:	OTHER ORDER

So Ordered

L. P. McLellan

Lawrence P. McLellan, District Court Judge,
Fifth Judicial District of Iowa

Electronically signed on 2021-10-26 17:18:58