BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KELLI WAUGH, Claimant, vs. IOWA MASONIC NURSING HOME, Employer, and WEST BEND MUTUAL INSURANCE COMPANY, Insurance Carrier, Defendants.	File No. 5058212 ARBITRATION DECISION Head Note Nos.: 1800, 1803, 2200, 2500, 2500, 2700, 3000, 3001, 3002, 4000, 4000.2

STATEMENT OF THE CASE

The claimant, Kelli Waugh, filed a petition for arbitration seeking workers' compensation benefits from Iowa Masonic Nursing Home ("Iowa Masonic"), and its insurer West Bend Mutual Insurance Company. Jenna Green appeared on behalf of the claimant. Ed Rose appeared on behalf of the defendants.

The matter came on for hearing on January 4, 2021, before deputy workers' compensation commissioner Andrew M. Phillips. An order issued on March 13, 2020, and updated June 1, 2020, August 14, 2020, October 12, 2020, and February 2, 2021, by the Iowa Workers' Compensation Commissioner, In the Matter of Coronavirus/COVID-19 Impact on Hearings (Available online at: https://www.iowaworkcomp.gov/order-coronavirus-covid-19 (last viewed March 8, 2021) amended the hearing assignment order in each case before the Commissioner scheduled for an in-person regular proceeding hearing between March 18, 2020, and June 18, 2021. The amendment makes it so that such hearings will be held by Internet-based video, using CourtCall. The parties appeared electronically, and the hearing proceeded without significant difficulties. The matter was fully submitted on February 5, 2021, after briefing by the parties.

The record in this case consists of Joint Exhibits 1-11, Claimant's Exhibit 1-7, and Defendants' Exhibits A-C. Testimony under oath was also taken from the claimant, Kelli Waugh, and witness Jodi Hippler. Also present was defendants' representative, Deann Milefchik. Amy Pedersen was appointed the official reporter and custodian of the notes of the proceeding.

STIPULATIONS

Through the hearing report, as reviewed at the commencement of the hearing, the parties stipulated and/or established the following:

1. There was an employer-employee relationship at the time of the alleged injury.

2. The claimant sustained an injury arising out of, and in the course of, employment, on September 24, 2016.

3. The alleged injury is a cause of temporary disability during a period of recovery.

4. The alleged injury is a cause of permanent disability.

5. The disability is an industrial disability.

6. The claimant was married, and entitled to two exemptions.

7. With regard to disputed medical expenses:

    a. The fees or prices charged by providers are fair and reasonable.
    b. Although disputed, the medical providers would testify as to the reasonableness of their fees and/or treatment set forth in the listed expenses and defendants are not offering contrary evidence.

8. Prior to the hearing, the claimant was paid 50 weeks of compensation at five hundred forty-one and 18/100 dollars ($541.48) per week.

9. The costs requested by the claimant have been paid.

Additionally, entitlement to temporary disability and/or healing period benefits is no longer in dispute. The defendants waived their affirmative defenses.

The parties are now bound by their stipulations.

ISSUES

The parties submitted the following issues for determination:

1. The extent of permanent disability, if any is awarded.

2. Whether the commencement date for permanent partial disability benefits is April 16, 2019, as alleged by the defendants, or July 31, 2019, as alleged by the claimant.

3. Whether the claimant's gross earnings were eight hundred thirty-six and 65/100 dollars ($836.65) per week, as alleged by the defendants, or eight hundred ninety-six and 69/100 dollars ($896.69) per week, as alleged by claimants. Thus, whether the claimant's weekly rate of compensation is five hundred forty-one and 48/100 dollars ($541.48) or five hundred seventy-five and 82/100 dollars ($575.82).

4. Whether the claimant is entitled to payment of medical expenses as listed in Claimant's Exhibits 5 and 6. With regard to the medical expenses:

    a. Whether the treatment claimed was reasonable and necessary.
    b. Whether the listed expenses were causally connected to the work injury.
    c. Although causal connection of the expenses cannot be stipulated, whether the listed expenses were at least causally connected to the medical conditions upon which the claim of injury was based.
    d. Whether the requested expenses were authorized by the defendants.

5. Whether the claimant is entitled to an assessment of costs.

FINDINGS OF FACT

The undersigned, having considered all of the evidence and testimony in the record, finds:

Kelli Waugh, the claimant, was 52 years old at the time of the hearing. (Testimony). She resides with her husband in Woodhull, Illinois. (Testimony). At the time of the work injury at issue in this case, Ms. Waugh worked as an LPN charge nurse at Iowa Masonic Home. (Defendants' Exhibit C:3). Iowa Masonic Home is a skilled care and long term care facility. (DE C:3). As an LPN charge nurse, she oversees care of residents, and oversees some staff members. (DE C:3). She assists in the transferring and transporting of patients. (Testimony). She generally oversaw two to three staff members at a time. (DE C:3). These other staff members assist with lifting when needed. (Testimony). She generally works from 6:00 a.m. to 2:30 p.m., which gives her a 35-hour workweek. (Testimony).

Ms. Waugh earned her GED, and later received an EMT/B certificate from Carl Sandburg College. (Testimony; DE C:2). She later received an LPN degree from Scott Community College in 1992. (Testimony; DE C:2). She also has a certification as a Firefighter II and Hazmat Tech A from the University of Illinois Fire Service Institute. (Testimony; DE C:2). Ms. Waugh served as a volunteer firefighter and EMT. (DE C:6).

Ms. Waugh worked at Country Corner from 2005 to 2006. (DE C:6). She then worked at the Kahl Home. (DE C:6). She moved to Iowa Masonic from the Kahl Home. (DE C:6). She took time off from Iowa Masonic in 2016. (DE C:6). She resumed employment with Iowa Masonic in July of 2016. (DE C:6). She left Iowa Masonic because her mother was in ill health. (Testimony). During her time away, she was able

to provide end of life care and prepare her mother's funeral. (Testimony). She testified that she left Iowa Masonic in order to draw from her 401k to provide for her mother's care. (Testimony). After her mother died, she reapplied, and was rehired by Iowa Masonic. (Testimony). Ms. Waugh also worked part time at UnityPoint Trinity. (DE C:6). She still worked at that job in August of 2018. (DE C:6). The job at UnityPoint required her to work 24 hours per month and one weekend day. (DE C:6).

At the time of her deposition in August of 2018, she worked full time. (DE C:6). She earned twenty and 57/100 dollars ($20.57) per hour at the time of the incident, and made twenty-one and 80/100 dollars ($21.80) per hour at the time of her deposition. (DE C:6). At the time of the hearing, she earned twenty-five and 00/100 dollars ($25.00) per hour. (Testimony). She estimated that at the time of the hearing, she was working less hours, on average, as she was no longer picking up extra shifts. (Testimony).

She previously testified that she could use a computer to answer e-mails, use the internet, and to chart at work. (DE C:2).

A job description was included with the joint exhibits, claimant's exhibits and defendants' exhibits. (Joint Exhibit 10:8-10; Claimant Exhibit 2:1-3; DE A:1-3). As a primary LPN, Ms. Waugh oversaw and participated in the provision of resident care. (JE 10:8). Some of the duties of her job included executing physicians' orders, consulting with a registered nurse on provision of care, implementing care plans as directed, administering medications and treatments as prescribed, assisting the residents with activities of daily living, serving and collecting food, and changing bed linens, among other duties. (JE 10:8-9). As an LPN, Ms. Waugh was required to perform moderate to heavy lifting. (JE 10:9). She also needed to walk and stand for extended periods of time. (JE 10:9). Her position required a valid LPN license, experience in a nursing home, an ability to communicate emotional and psychological support to residents, and an ability to lift and carry a minimum of 100 pounds. (JE 10:10).

Ms. Waugh completed a pre-employment screening with Genesis in June of 2010. (JE 1:1). As a part of her pre-employment screening she met a number of goals, including: lifting a 50-pound box from floor to waist five times, transferring a 50-pound weight from a chair to a bed five times, squatting fifteen times, kneeling for a three-minute duration, a 90-pound right hand grip, and a 75 pound left hand grip. (JE 1:1). Ms. Waugh answered a series of questions indicating that she had no muscle tendon or ligament injuries, and no spinal injuries or diseases. (JE 1:2). An examination by Rick Garrels, M.D., showed normal results. (JE 1:2). Dr. Garrels certified that Ms. Waugh was medically qualified for the essential functions of her job at Iowa Masonic Health Facilities. (JE 1:3).

Kevin Bleehle, D.O., completed a health examination of Ms. Waugh on July 31, 2014. (JE 2:1). Dr. Bleehle opined that Ms. Waugh had no condition which represented a hazard to the health of residents. (JE 2:1).

On March 23, 2016, Andrew Philip, M.D., of Genesis Health Group Surgical Associates issued a release for Ms. Waugh. (JE 1:4). Dr. Philip released Ms. Waugh to "all activities as tolerated" effective March 23, 2016. (JE 1:4).

In April of 2016, Ms. Waugh began employment with UnityPoint Trinity. (DE B:1). She was a licensed practical nurse at the transitional care unit at Trinity Medical Center. (DE B:2-8). At Trinity, Ms. Waugh's job description included extremely heavy physical effort (lifting and carrying 50 pounds or more). (DE B:3). Her job also required frequent and prolonged standing and walking. (DE B:3). She also needed to lift, position, push or transfer patients. (DE B:3).

On July 22, 2016, Dr. Garrels certified that Ms. Waugh could meet the physical demands of an LPN job without accommodations. (JE 1:5).

An incident report was filled out on September 24, 2016, indicating that Ms. Waugh pulled up a patient in a wheelchair. (CE 3:1). Ms. Waugh twisted and strained her back when she pulled the patient up. (CE 3:1). She noted an aching pain. (CE 3:1). The report indicated that Ms. Waugh was sent to Trinity emergency room and then was told to follow up at Genesis Occupational Health. (CE 3:1). She testified that she did not have anyone assist her because the other staff in her charge were assisting other residents. (Testimony).

Ms. Waugh went to QCB Emergency on September 24, 2016, complaining of a new onset of back pain. (JE 3:1-5). Her pain began when she assisted with the transfer of a patient when the patient began to slide out of her chair. (JE 3:1). Ms. Waugh grabbed the patient's pants to pull them up, and felt pain in her lower back. (JE 3:1). She completed her shift prior to reporting to the emergency room. (JE 3:1). She described her pain as a throbbing ache to her bilateral lower back which radiated into her bilateral hips. (JE 3:1). The examining provider indicated that Ms. Waugh appeared uncomfortable while sitting on a stretcher. (JE 3:2). She was discharged with instructions to follow up with her occupational medicine doctor. (JE 3:4).

On September 26, 2016, Ms. Waugh reported to Genesis at Work for an Occupational Medicine Clinic Visit with Jane Anderson, PA-C. (JE 1:6-8). Ms. Waugh noted that she repositioned a resident in her wheelchair and felt a twisting, pulling, sharp pain in her back. (JE 1:6). She previously sought treatment at the emergency room. (JE 1:6). She rated her pain 7 out of 10. (JE 1:6). Ms. Waugh denied radicular symptoms, numbness, and tingling. (JE 1:6). She reported a history of chronic low back pain. (JE 1:6). She told Ms. Anderson that she continued to work, but delegated heavier tasks to CNAs. (JE 1:6). Ms. Anderson noted that Ms. Waugh walked with a slow and antalgic gait. (JE 1:7). Ms. Anderson also found no significant muscular tenderness over the lower paralumbar muscles. (JE 1:7). Ms. Anderson released Ms. Waugh to work restricted duty. (JE 1:7). Ms. Waugh was restricted to alternating sitting, standing, and walking as tolerated, lifting 10 pounds maximum, and pushing or pulling 20 pounds. (JE 1:7). She also was to avoid squatting, kneeling, crawling, or climbing ladders. (JE 1:7). Ms. Waugh should also rarely bend or twist her back. (JE 1:7). Ms. Anderson recommended ice three times per day for 20 minutes, as well as

continued use of Voltaren gel, Flexeril, and Tylenol. (JE 1:7). She declined physical therapy, as she was leaving town until October 2, 2016. (JE 1:6).

On September 29, 2016, Ms. Waugh received a notification of misconduct from the employer for moving a resident in a wheelchair and injuring herself due to a failure to use a gait belt. (DE A:9). The employer deemed this an improper transfer. (DE A:9). The form noted that Ms. Waugh was expected to always follow facility policies. (DE A:9).

Ms. Waugh returned to Genesis at Work Occupational Medicine Clinic for examination by Dr. Garrels on October 4, 2016. (JE 1:10-11). Ms. Waugh expressed continued complaints of right lower back pain. (JE 1:10). She continued working light duty, and noted that she had no leg pain. (JE 1:10). Upon examination, Dr. Garrels found moderate right low back tenderness, and a slightly diminished range of motion with flexion. (JE 1:10). Dr. Garrels diagnosed Ms. Waugh with low back pain, and continued her restrictions. (JE 1:11). Dr. Garrels recommended therapy "to get her on the right track." (JE 1:11).

Ms. Waugh began physical therapy on October 7, 2016, at Genesis PT – Moline HealthPlex. (JE 4:1-5). She improved, but had bad days with activities. (JE 4:3). Ms. Waugh presented with an L3 radicular pattern with "no hard neurological findings." (JE 4:4). The therapist noted that they expected the case to resolve with core control and symptom management tasks. (JE 4:4).

Ms. Waugh had additional sessions of physical therapy on October, 10, 2016, October 11, 2016, October 14, 2016, and October 17, 2016. (JE 4:7-8).

On October 21, 2016, Ms. Waugh returned to Genesis at Work Occupational Medicine for a follow up visit with Dr. Garrels. (JE 1:13-14). Ms. Waugh complained of more prominent leg pain with activity. (JE 1:13). Ms. Waugh did not want surgery, but felt the need to know what is causing her pain. (JE 1:13). Dr. Garrels examined her, and found mild low back tenderness, a slightly diminished range of motion with flexion, and extension limitation to about 20 degrees. (JE 1:13). She also demonstrated a normal gait. (JE 1:13). Dr. Garrels diagnosed Ms. Waugh with low back pain and lumbar radiculopathy. (JE 1:14). Dr. Garrels prescribed Gabapentin, Tylenol, and Cyclobenzaprine. (JE 1:14). Dr. Garrels continued the work restrictions originally provided by Ms. Anderson. (JE 1:14). Ms. Waugh told Dr. Garrels that she saw benefits from therapy, but continued to experience radiating pain into the leg. (JE 1:14). Dr. Garrels ordered an MRI to "sort out what we are treating." (JE 1:14).

Ms. Waugh had a 90-day evaluation on October 27, 2016. (Defendants' Exhibit A:5-6). Ms. Waugh was noted to be quick to understand and learn. (DE A:5). She was noted to be warm, friendly, and sociable. (DE A:5). Her attendance was regular, and "very prompt." (DE A:5). She was noted to be always polite and willing to help. (DE A:6). There are some handwritten notes on this review, which are largely illegible. (DE A:6).

Ms. Waugh had a lumbar MRI at Genesis Health System on October 31, 2016, based upon the orders of Dr. Garrels. (JE 1:16-17; JE 5:1-2). Robert Danielson, M.D., interpreted the results of the MRI. (JE 1:17; JE 5:2). Dr. Danielson opined that the MRI showed moderate to large sized right paracentral disc protrusions at L5-S1, which extend inferiorly from the disc to contact the S1 nerve root tear. (JE 1:17; JE 5:2). Dr. Danielson also found a slight loss of disk signal with no protrusion at L4-5. (JE 1:17; JE 5:2).

Ms. Waugh continued physical therapy on October 31, 2016. (JE 4:16-17). She continued to have a high symptom response to L3 and lower lumbar pressure. (JE 4:17).

On November 2, 2016, Ms. Waugh returned to Genesis at Work Occupational Medicine to visit Dr. Garrels. (JE 1:18-19). Dr. Garrels told Ms. Waugh that the MRI showed a disc herniation. (JE 1:18). Her symptoms remained unchanged, and she continued to have pain into her leg. (JE 1:18). Dr. Garrels found mild low back tenderness, and issues with range of motion to the low back. (JE 1:18). Dr. Garrels diagnosed Ms. Waugh with low back pain, lumbar radiculopathy, and lumbar intervertebral disc disorders with radiculopathy. (JE 1:19). Dr. Garrels provided additional prescriptions of therapy, Gabapentin, Tylenol, and Cyclobenzaprine. (JE 1:19). He continued Ms. Waugh's previous work restrictions. (JE 1:19). Dr. Garrels noted, "[t]he MRI is showing a herniated disc. Given the size and location I will first have her see Dr. Ridenour." (JE 1:19).

Ms. Waugh had additional physical therapy on November 8, 2016, November 14, 2016, and November 16, 2016. (JE 4:20-28). On November 16, 2016, Ms. Waugh reported abdominal muscle soreness. (JE 4:23).

Ms. Waugh returned to Genesis at Work Occupational Medicine and Dr. Garrels on November 17, 2016. (JE 1:21-22). Ms. Waugh continued to have lower back pain. (JE 1:21). She continued to attend physical therapy and take medication. (JE 1:21). She complained of lower back pain with exertion or menstrual periods, but she had that prior to her injury. (JE 1:21). She also noted periodic dragging of her right foot. (JE 1:21). Dr. Garrels prescribed continued therapy, Gabapentin and Tylenol. (JE 1:22). Dr. Garrels also continued the restrictions previously issued. (JE 1:22). Dr. Garrels reviewed Ms. Waugh's history of back pain and noted, "it was more activity related and not anything that required care." (JE 1:22). Dr. Garrels opined that Ms. Waugh was doing better. (JE 1:22).

On November 18, 2016, Ms. Waugh arrived late, and had reduced physical therapy. (JE 4:30). Overall, she reported lower symptoms and decreased activities at work in an effort to remain under restrictions. (JE 4:30). She was discharged from physical therapy on November 18, 2016, "due to insurance denial." (JE 4:31-32).

Ms. Waugh began chiropractic care with Hudson Chiropractic on December 1, 2016, for complaints of occasional headaches, and lower back pain. (JE 6:1-4). The chiropractor found point tenderness at L2-L4. (JE 6:2). Ms. Waugh indicated that it was

painful to look after herself, that her pain was severe, and that her pain was very disturbed. (JE 6:3). Many of the chiropractic records are handwritten and difficult to read.

Ms. Waugh visited the chiropractor six additional times during the month of December. (JE 6:5-7). She reported improvement through mid-December. (JE 6:5-6). By late December, she complained of a constant headache. (JE 6:6).

On December 27, 2016, a claims adjuster from West Bend Mutual sent a letter to Ms. Anderson requesting further clarification as to her note indicating that Ms. Waugh had a history of lower back pain. (JE 1:24-25). Ms. Anderson indicated that the statement was in error and that the note should state that Ms. Waugh had no history of chronic back pain. (JE 1:24). Ms. Anderson commented that if Ms. Waugh had a history of lower back pain, she would have asked additional questions. (JE 1:24).

Ms. Waugh continued her chiropractic care at Hudson Chiropractic on January 3, 2017. (JE 6:7). She reported doing well after her last treatment in late December. (JE 6:7). Ms. Waugh had an additional eight visits to Hudson Chiropractic throughout January of 2017. (JE 6:13-14). She noted some continued improvement throughout January. (JE 6:13-14). She complained of an occasional “catch” pain that wrapped around her lateral hips to her groin. (JE 6:13). She reported increased pain by the end of the month. (JE 6:14).

Ms. Waugh received a six-month evaluation from the employer on January 23, 2017. (Defendants’ Exhibit A:4). Her supervisor noted that Ms. Waugh was a good nurse and knowledgeable. (DE A:4). The only area that was noted as unsatisfactory was that Ms. Waugh was not punctual and was tardy at times. (DE A:4).

On February 15, 2017, Ms. Waugh reported to Genesis Health, where Todd Ridenour, M.D., examined her. (JE 7:1-5). Ms. Waugh complained of an injury to her lower back that occurred while she worked. (JE 7:1). She told Dr. Ridenour that she had immediate low back pain, and eventually started to have right anterior thigh and medial shin to hallux pain. (JE 7:1). She also had numbness and tingling in her foot. (JE 7:1). If she walked for a longer period of time, she felt that her right foot dropped. (JE 7:1). Ms. Waugh was able to keep working, but delegated lifting duties. (JE 7:1). She told Dr. Ridenour that she volunteered as a firefighter and EMT, but that she could not do that since the onset of her symptoms. (JE 7:1). Dr. Ridenour found intact lumbar range of motion and no tenderness to palpation or percussion. (JE 7:4). Dr. Ridenour reviewed prior medical records, and the lumbar MRI performed on October 31, 2016. (JE 7:4). Dr. Ridenour diagnosed Ms. Waugh with lumbar spondylosis, right-sided herniated disc herniation at L5-S1, and lateral recess stenosis at L5-S1. (JE 7:4). Dr. Ridenour discussed surgery with Ms. Waugh, but emphasized the need to exhaust conservative treatment measures first. (JE 7:4). Dr. Ridenour also did not recommend surgery at this appointment, as Ms. Waugh’s subjective symptoms did not resemble those associated with a right sided disc herniation at L5-S1. (JE 7:4). Dr. Ridenour allowed Ms. Waugh to continue light duty at her job, provided she did not experience an

exacerbation of her subjective symptoms. (JE 7:4). Dr. Ridenour ordered physical therapy, and a pain clinic evaluation. (JE 7:5).

In February of 2017, Ms. Waugh's chiropractic treatment continued. (JE 6:16-21). She reported continued improvement and less pain throughout the month. (JE 6:20-21). In March of 2017, her chiropractic care continued. (JE 6:21-26). In late March, she reported that she was doing "pretty good." (JE 6:26). Ms. Waugh only had two chiropractic visits in April. (JE 6:26). During one visit, she noted that her ongoing physical therapy provided relief. (JE 6:26).

In March of 2017, Ms. Waugh had a performance review at Trinity. (DE B:11-13). She met her goals and was deemed competent. (DE B:12).

Ms. Waugh visited Nathan C. Meloy, D.O., on April 5, 2017, for an L5-S1 epidural steroid injection. (JE 8:1). Dr. Meloy indicated diagnoses of lumbago with right greater than left radicular pain, and lumbar stenosis. (JE 8:1).

On May 19, 2017, Ms. Waugh returned to Genesis at Work Occupational Medicine for a follow-up visit with Dr. Garrels. (JE 1:26-27). Ms. Waugh noted that she saw Dr. Ridenour and Dr. Meloy for an L4-5 epidural steroid injection. (JE 1:26). Ms. Waugh completed therapy, and did not require surgery. (JE 1:26). Dr. Garrels found that Ms. Waugh had a normal range of motion in her lumbar spine. (JE 1:26). Dr. Garrels diagnosed Ms. Waugh with low back pain, lumbar radiculopathy, and lumbar intervertebral disc disorder with radiculopathy. (JE 1:27). Dr. Garrels advised that Ms. Waugh could cease therapy, and recommended she return to regular duty. (JE 1:27). Dr. Garrels opined that Ms. Waugh reached maximum medical improvement ("MMI"). (JE 1:27).

Ms. Waugh reported to Jennifer Hook, A.P.N. on May 25, 2017, with concerns regarding a sinus infection and bronchitis. (JE 9:1-2). Ms. Hook diagnosed Ms. Waugh with acute sinusitis and acute bronchitis with bronchospasm. (JE 9:1).

Ms. Waugh continued chiropractic therapy in May and June of 2017. (JE 6:26-27).

On June 11, 2017, Ms. Hook examined Ms. Waugh again. (JE 9:3-4). Ms. Hook diagnosed Ms. Waugh with possible thrush. (JE 9:3). Ms. Hook diagnosed her with glossitis and pharyngitis. (JE 9:3-4). Ms. Waugh did not mention back pain during this visit. (JE 9:3-4). Ms. Waugh testified that she did not inform Ms. Hook of her back issues, as she tired "to keep that separate" as long as she could. (Testimony).

On July 14, 2017, Hudson Chiropractic released Ms. Waugh, indicating she reached maximum medical improvement. (JE 6:27). During her July 14, 2017, appointment with Hudson Chiropractic, Ms. Waugh explained that her overall improvement significantly slowed. (JE 6:29). She felt that she would benefit from "supportive care" every two to three weeks. (JE 6:29).

Ms. Waugh had examination and discussed an asthma exacerbation on July 17, 2017, with Ms. Hook. (JE 9:5-6). She continued to smoke one to two packs per day. (JE 9:5). She mentioned no back pain. (JE 9:5).

Ms. Waugh had another chiropractic visit on July 28, 2017. (JE 6:32). She indicated that she felt better after seeing the chiropractor every other week. (JE 6:32). Her pain remained about the same. (JE 6:32).

The chiropractor treated Ms. Waugh again on August 14, 2017. (JE 6:32). Ms. Waugh continued to complain of "some" lower back pain and right leg pain. (JE 6:32). She indicated improvement after treatment. (JE 6:32).

On August 24, 2017, Dr. Garrels issued an impairment rating based upon the AMA Guides to Permanent Impairment, Fifth Edition. (JE 1:29). Dr. Garrels indicated that his rating showed a normal range of motion, symmetric patella and Achilles reflexes, and symmetric muscle strength. (JE 1:29). Based upon Dr. Garrels' examination, he provided a 5 percent permanent impairment rating. (JE 1:29).

Ms. Waugh had another chiropractic appointment on August 28, 2017. (JE 6:32). She told the chiropractor that her low back was "a little sore," but that her left foot caused her to limp. (JE 6:32).

On September 27, 2017, Ms. Waugh returned to Ms. Hook's office for an annual wellness visit. (JE 9:7-9). She took albuterol for her asthma. (JE 9:7). She reported coughing, which caused a pop in her abdomen and resulted in a mild to moderate achy pain. (JE 9:7). She reported no back pain. (JE 9:7). She reported no numbness or tingling. (JE 9:7-8).

Ms. Waugh continued chiropractic care at Hudson Chiropractic approximately every two weeks from late September of 2017 through late October of 2017. (JE 6:33). During this time, she continued to complain of low back soreness, and lingering leg issues. (JE 6:33). Ms. Waugh missed a scheduled appointment in late November of 2017. (JE 6:33).

On November 5, 2017, Ms. Waugh returned to Ms. Hook's office. (JE 9:10-11). Ms. Waugh complained of a cough and headache. (JE 9:10). Ms. Waugh made no mention of back or neck pain. (JE 9:10).

Ms. Waugh returned to Ms. Hook's office on November 30, 2017, for depression due to use of Chantix. (JE 9:12-13). Ms. Waugh did not report back pain. (JE 9:12).

On January 4, 2018, Ms. Hook examined Ms. Waugh again to recheck her tobacco cessation program. (JE 9:14-15). She noted some depression as a side effect of Chantix, but that subsided. (JE 9:14). She reported no back pain. (JE 9:14).

Hudson Chiropractic continued to see Ms. Waugh throughout early 2018. (JE 6:34). She continued to complain of lower back pain. (JE 6:34).

In March of 2018, Ms. Waugh had her 2017 performance evaluation at Trinity. (DE B:13-16). Ms. Waugh met her goals, and was a high performer. (DE B:13).

On April 7, 2018, Ms. Waugh returned to Ms. Hook's office. (JE 9:16-17). She continued to smoke two to three packs per week over the past month. (JE 9:16). She also continued to use Chantix. (JE 9:16). The record is silent as to back pain. (JE 9:16).

Ms. Waugh underwent an IME with Mark C. Taylor, M.D., M.P.H., C.I.M.E., F.A.C.O.E.M. on April 11, 2018. (Claimant's Exhibit 1:1-8). Dr. Taylor is a certified medical review officer, and is board certified in occupational medicine. (CE 1:20). He is also a member of the American College of Occupational and Environmental Medicine, and is a previous member of the board of directors of the American College of Occupational and Environmental Medicine. (CE 1:21). Dr. Taylor issued his report on May 8, 2018. (CE 1:1). Dr. Taylor reviewed Ms. Waugh's job functions with her, and also reviewed her medical history. (CE 1:1-3). At the time of the IME, Ms. Waugh noted persistent low back pain, and symptoms that extend into her hips. (CE 1:3). She especially noticed pain in the right leg, more than the left. (CE 1:3). She noted that a week or two prior to the IME, she experienced an episode of tingling down her entire right leg, which resolved. (CE 1:3). Dr. Taylor examined Ms. Waugh and found that Ms. Waugh's knees caused her more of an issue than her back; however, while squatting she complained of "at least mild back discomfort." (CE 1:5). Extension of her back was more painful than flexion of her back. (CE 1:5). Dr. Taylor diagnosed Ms. Waugh with a low back injury with disc protrusion, as seen on MRI, and chronic lumbago and occasional lower extremity pain and paresthesias. (CE 1:5). Dr. Taylor opined that the low back injury was directly and causally related to the September 24, 2016, work injury. (CE 1:5). Dr. Taylor recommended ongoing treatment with a physiatrist, or a pain management specialist. (CE 1:6). Dr. Taylor placed Ms. Waugh at MMI as of May 19, 2017. (CE 1:6). Dr. Taylor agreed with Dr. Garrels' usage of Table 15-3, and placement of Ms. Waugh within the DRE Lumbar Category II. (CE 1:6). Based upon his examination, Dr. Taylor assigned a 7 percent whole person impairment rating. (CE 1:6). Dr. Taylor noted that, if Ms. Waugh had the ability to self-restrict when necessary and/or obtain help when necessary, she could continue her current position. (CE 1:6). Dr. Taylor further opined that Ms. Waugh could not tolerate significant lifting on a routine basis. (CE 1:6). Dr. Taylor recommended restrictions including lifting 50 pounds on a rare basis, and 30 to 40 pounds on an occasional basis. (CE 1:6). Lifting should be done between knee and chest level whenever possible. (CE 1:6). Dr. Taylor continued in noting that Ms. Waugh should alternate sitting, standing, and walking as needed for her comfort. (CE 1:6). Ms. Waugh should also squat on a rare to occasional basis. (CE 1:6).

On June 28, 2018, Ms. Waugh was absent from work. (DE A:10).

In July of 2018, Ms. Waugh returned for chiropractic care with Hudson Chiropractic. (JE 6:35). The notes for July are very difficult to read, as they are handwritten. (JE 6). On July 20, 2018, she reported that she started to get tingling in

her right great toe again. (JE 6:35). By July 23, 2018, she was not limping "quite as bad." (JE 6:35).

Ms. Waugh returned to Ms. Hook's office for continued tobacco cessation treatment, and pain to her right knee on July 14, 2018. (JE 9:18-19). Her right knee had sharp, achy pain that was moderate to severe, and affected her ability to walk and work. (JE 9:18). The medical record appears silent as to back pain. (JE 9:18).

On July 18, 2018, Ms. Waugh followed up with Ms. Hook regarding ongoing right knee pain. (JE 9:20-21). She had continuous, sharp and achy pain in her right knee. (JE 9:20). Her right knee gave out on her while working. (JE 9:20). Ms. Waugh also requested FMLA paperwork. (JE 9:20).

Ms. Waugh was off work on July 26, 2018, due to illness, and a knee injection. (DE A:11). She received FMLA. (DE A:11).

Ms. Hook examined Ms. Waugh on August 2, 2018. (JE 9:22-23). Ms. Waugh complained of lower back pain radiating down to the right leg, with pain that was sharp to dull to mild. (JE 9:22). She also complained of numbness in the right leg below the knee that radiated around the posterior leg to the medial leg. (JE 9:22). She had a history of lower back pain since November of 2016, and an injury the week prior when she exited a vehicle. (JE 9:22). Ms. Hook found a normal range of motion with grimacing. (JE 9:23). Ms. Hook diagnosed Ms. Waugh with lumbar spine radiculopathy that was uncontrolled and worsening. (JE 9:23). Ms. Hook recommended that Ms. Waugh follow up with her chiropractor. (JE 9:23). Ms. Hook also diagnosed Ms. Waugh with neuropathy of the leg. (JE 9:23). Ms. Hook ordered an MRI of the lower back. (JE 9:23). Ms. Hook requested that Ms. Waugh return to the clinic as needed or as symptoms worsen. (JE 9:23). Ms. Hook indicated that she would review the MRI results and then discuss a plan of care. (JE 9:23).

On August 2, 2018, Ms. Waugh had another lumbar MRI, as ordered by Jennifer Hook. (JE 5:3-4). Dr. Danielson interpreted this repeat MRI. (JE 5:4). The MRI showed a slight loss of disc signal with minimal disc bulging at L4-5. (JE 5:3). It also showed posterior facet arthropathy with mild lateral recess stenosis at L4-5. (JE 5:3). The L5-S1 level showed a loss of disc height and disc signal. (JE 5:3). Dr. Danielson noted that this was an abnormal MRI with a right paracentral disc protrusion at L5-S1. (JE 5:3). Dr. Danielson saw additional abnormal soft tissue deforming the thecal sac at the L5-S1 level. (JE 5:3). Dr. Danielson was unsure what this was, and noted it could be a large extruded fragment, disc material with blood products, or disc material with an associated atypical synovial cyst. (JE 5:3-4).

Ms. Waugh continued chiropractic care into August of 2018. (JE 6:37-38). These notes are also handwritten, so they are difficult to read. (JE 6). Ms. Waugh indicated that she did better after an adjustment, but that the relief did not last long. (JE 6:38).

Ms. Waugh returned to Dr. Ridenour's office on September 5, 2018. (JE 7:6-10). Ms. Waugh reported increased severe pain in her lower back that radiated to the right hip and lateral thigh. (JE 7:6). She continued to tell Dr. Ridenour that she had paresthesias to the left lateral thigh, lateral calf, and foot. (JE 7:6). The epidural steroid injection performed by Dr. Meloy helped her pain. (JE 7:6). She continued working as a nurse at Iowa Masonic, and took Tramadol, Aleve, Flexeril, and Vicodin. (JE 7:6). Dr. Ridenour reviewed the newest MRI from August of 2018. (JE 7:9). Dr. Ridenour diagnosed Ms. Waugh with lumbar spondylolisthesis at L5-S1, and lumbar spondylosis. (JE 7:9). Dr. Ridenour noted that the August 2, 2018, MRI showed degenerative spondylotic changes that were typical with aging. (JE 7:9). Dr. Ridenour also noted an increase in herniation at L5-S1, which explained "the increased disc material pushed out of the vertebrae." (JE 7:9). Dr. Ridenour again discussed conservative treatment and surgery. (JE 7:10). Dr. Ridenour informed Ms. Waugh that surgery "does not help with back pain and in some cases may exacerbate back pain." (JE 7:10). Ms. Waugh agreed to pursue surgery. (JE 7:10). Thus, Dr. Ridenour recommended that Ms. Waugh consult with physical therapy for pre-surgical strengthening exercises. (JE 7:10).

On September 21, 2018, Dr. Taylor issued a supplemental letter based upon additional records provided to him by claimant's counsel. (CE 1:9-10). Dr. Taylor opined that Ms. Waugh needed surgery due to her September of 2016 work injury. (CE 1:10). Dr. Taylor noted that the findings on imaging, and Ms. Waugh's symptoms were on the same side as her previous examinations. (CE 1:10). He also noted that her symptoms were consistent. (CE 1:10).

Dr. Ridenour responded to a letter from defendants' counsel on September 25, 2018, by indicating that the initial work injury of September 24, 2016, was "probably" a substantial factor in causing the need for the proposed surgery. (JE 7:11). Dr. Ridenour hand wrote, "[n]ot certain. Disk is now larger than it was in 2016." (JE 7:11).

On October 16, 2018, Dr. Ridenour performed a right sided L5-S1 hemilaminectomy, partial medial facetectomy with canal exploration, and open microdiscectomy at the right side L5-S1 on Ms. Waugh. (JE 5:9-11). The pre and postoperative diagnoses were right side L5-S1 large disk extrusion, and severe S1 radiculopathy. (JE 5:9). Dr. Ridenour opined that surgery was a necessity, as Ms. Waugh failed conservative treatment. (JE 5:9).

Ms. Waugh had a rehab visit at Genesis on October 16, 2018, after a right L5-S1 hemilaminectomy, partial medial facetectomy with canal exploration, and open microdiskectomy at right L5-S1. (JE 5:5-8). She was able to ambulate two stairs, and her husband was going to assist her at home. (JE 5:15).

On October 24, 2018, Ms. Waugh returned to Dr. Ridenour's office for suture removal after her October 16, 2018, surgery. (JE 7:13-18). Alyssa Uker, A.R.N.P. examined her and removed the sutures. (JE 7:13-18). Ms. Waugh rated her lower back pain 6 out of 10. (JE 7:13). She reported no new weakness. (JE 7:13). Ms. Uker reviewed the post-operative restrictions including no lifting 10 pounds for one more

week, and no excessive bending or twisting. (JE 7:18). Ms. Uker instructed Ms. Waugh to remain off work until a subsequent follow up. (JE 7:18).

Ms. Uker examined Ms. Waugh for a postoperative follow up appointment on November 20, 2018. (JE 7:19-24). Her right hip pain was 2 to 8 out of 10. (JE 7:19). She had intermittent right lower extremity pain, but no new weakness. (JE 7:19). Ms. Waugh went to physical therapy three times per week, and pursued a home exercise plan. (JE 7:19). Ms. Uker opined that Ms. Waugh was improving and progressing as expected. (JE 7:23). Ms. Uker recommended that Ms. Waugh remain off work until another scheduled follow up. (JE 7:24).

On December 17, 2018, Ms. Waugh returned for a two month postsurgical follow up with Ms. Uker. (JE 7:25-30). Ms. Waugh complained of constant low back pain varying in intensity. (JE 7:25). The right hip pain was 2 to 9 out of 10. (JE 7:25). Her leg fatigued and she felt like she dragged it at times. (JE 7:25). Ms. Uker opined that Ms. Waugh was improving and progressing as expected. (JE 7:30). Ms. Uker told Ms. Waugh to continue physical therapy. (JE 7:30). Ms. Uker requested a new physical therapy note to allow her to return to work with restrictions. (JE 7:30).

Ms. Waugh reported to Cottage Rehabilitation & Sports Medicine on January 8, 2019, for her complaints of low back pain. (JE 10:1-4). Erin Grondin, P.T.A. examined and evaluated Ms. Waugh. (JE 10:1-4). Ms. Waugh noted that her back pain worsened in July of 2018 from a September of 2016 work injury. (JE 10:1). Ms. Waugh explained that she repositioned a resident in her wheelchair and felt instant pain that almost took her breath away. (JE 10:1). Ms. Waugh informed Ms. Grondin of the rest of her medical history to date. (JE 10:1). Ms. Waugh explained that she occasionally had sharp pain in the hip and groin. (JE 10:1). When she ascended stairs, heaviness began, and tingling began after about 30 minutes of walking. (JE 10:1). She indicated that she could tolerate 15 minutes of standing. (JE 10:1). Ms. Grondin noted that Ms. Waugh had an antalgic gait. (JE 10:2). Ms. Waugh displayed mild to moderate pain with lumbar flexion. (JE 10:2). She continued to improve. (JE 10:2).

Ms. Uker issued a letter on January 9, 2019, allowing Ms. Waugh to return to sedentary or light duty work. (JE 7:31). Ms. Uker also recommended no pushing, pulling, or lifting. (JE 7:31). Ms. Uker also noted that Ms. Waugh should be allowed to sit or stand as able for comfort, and that her physical therapy appointments should be accommodated. (JE 7:31).

Ms. Waugh continued therapy at Cottage Rehabilitation & Sports Management on January 14, 2019. (JE 10:5-7). Ms. Waugh continued to report symptoms down her right lower extremity. (JE 10:5). She indicated that it felt better than when she started physical therapy. (JE 10:5). Ms. Waugh questioned whether or not she would ever return to normal. (JE 10:5). Ms. Waugh could push and pull light weight, but felt some pressure in her lower back with unilateral pushing of the upper extremity. (JE 10:5). Ms. Grondin noted that Ms. Waugh continued to perform work hardening and simulation exercises. (JE 10:7).

On January 16, 2019, Ms. Waugh visited Ms. Uker for a three month postsurgical follow up. (JE 7:32-37). Ms. Waugh returned to work on January 15, 2019, and worked ten hours overnight. (JE 7:32). After working, she was stiff and tired. (JE 7:32). She continued physical therapy. (JE 7:32). Ms. Uker allowed Ms. Waugh to increase her activity as tolerated and continue physical therapy. (JE 7:37). Ms. Uker allowed Ms. Waugh to return to light duty with no lifting greater than 20 pounds. (JE 7:39). Ms. Uker recommended working six hours per day for one week, and then 8 hours per day for the following week. (JE 7:39). Ms. Uker also recommended no overtime hours until further physical therapy is completed. (JE 7:39).

Ms. Grondin performed additional physical therapy on Ms. Waugh on February 1, 2019, for her continued lower back complaints. (JE 10:11-13). Ms. Waugh continued to get radiating symptoms in her left and right lower extremities that increased when doing heavier work. (JE 10:11). She reported dragging the left leg when she had radiating symptoms. (JE 10:11). She attempted to push a 130-pound patient down a ramp, which caused increased symptoms. (JE 10:11). Ms. Grondin found that Ms. Waugh made progress with physical therapy with overall functional mobility and core strength. (JE 10:13).

Ms. Waugh requested a new work note on February 13, 2019, as she told Ms. Uker that her boss told her that she was no longer allowed light duty. (JE 7:40-42). Ms. Waugh felt that she needed to continue the light duty work. (JE 7:40-42). She updated the restrictions to include a 30 pound lifting restriction, a 15 pound holding and carrying restriction, and pushing or pulling 30 pounds. (JE 7:40-42). Ms. Waugh should also be allowed to sit and stand as she was able for her comfort. (JE 7:42). Ms. Waugh required a follow up MRI, according to Ms. Uker. (JE 7:40-42).

On February 15, 2019, Ms. Waugh returned to Cottage Rehabilitation & Sports Medicine for continued physical therapy. (JE 10:14-16). Brandon Tyrrell, A.T.C. examined Ms. Waugh. (JE 10:16). Ms. Waugh reported continued radiating symptoms into her left and right lower extremities. (JE 10:14). The radiation increased when pushing heavier carts. (JE 10:14). Mr. Tyrrell noted that she did not complain of lower back pain, but presented with symptoms consistent with piriformis syndrome radiating from the right hip down her posterior leg. (JE 10:16). Mr. Tyrrell recommended continued physical therapy for four weeks. (JE 10:16).

On February 21, 2019, Ms. Waugh had another MRI of her lower back due to continued lower back pain. (JE 5:20-21). Ms. Uker ordered the MRI, and it was compared with the August 2, 2018, MRI. (JE 5:20-21). The impressions of the MRI by the reviewer were:

1. Abnormal L5-S1 discectomy and right L5 laminotomy with enhancement of the right half of the epidural space at the L5-S1 level, consistent with scar or granulation tissue.
2. While most of the previous right paracentral L5-S1 disc extrusion is no longer present, there is a small amount of remaining disc material which is recurrent or residual.

3. Moderate right L5-S1 foraminal stenosis.
4. New L4-5 small disc bulge and severe bilateral facet arthropathy, with mild central canal narrowing.
5. A 1.4 cm enhancing lesion immediately posterior to the left L5-S1 facet joint, probably a synovial cyst which is mostly decompressed or contains debris.

(JE 5:21).

Ms. Uker reviewed the February 21, 2019, MRI and provided a letter on February 28, 2019, summarizing the results. (JE 7:43). Neither Ms. Uker, nor Dr. Ridenour felt Ms. Waugh had "a classic residual/recurrent disk herniation." (JE 7:43). Ms. Uker indicated that Ms. Waugh had some mild degenerative changes and mild lateral recess narrowing at L4-5, but no evidence of tight central stenosis. (JE 7:43). Ms. Uker indicated that there was nothing further to offer from a surgical perspective and noted that she encouraged core strengthening with physical therapy and weight loss. (JE 7:43).

Theresa Marie Brokaw, D.P.T. discharged Ms. Waugh from therapy on February 22, 2019. (JE 10:17-20). Ms. Waugh indicated that she felt much stronger, and had less pain overall. (JE 10:17). Her pain still increased with sitting or standing for long periods of time. (JE 10:17). She still took pain medication, but it was on a less regular basis. (JE10:17). She continued to show increased bilateral lower extremity weakness with "significant deficits remaining for R hip extension." (JE 10:19). Ms. Brokaw recommended that Ms. Waugh continue a home exercise and wellness program. (JE 10:19).

On March 1, 2019, Ms. Waugh returned to Ms. Uker's office for a four month postsurgical follow up. (JE 7:44-51). Ms. Waugh continued to complain of lower back pain, pain in her left lateral leg, and decreased sensation in her foot. (JE 7:44). Ms. Uker allowed Ms. Waugh to return to activity as tolerated. (JE 7:50). Ms. Uker also recommended Ms. Waugh continue physical therapy. (JE 7:50). Ms. Uker also ordered an x-ray of the lumbar spine. (JE 7:51). Ms. Uker continued work restrictions to include light duty with no lifting greater than 30 pounds. (JE 7:53). Ms. Waugh could push a medical cart, and patients weighing less than 130 pounds in a wheelchair. (JE 7:53). Ms. Waugh was prohibited from working overtime hours until her physical therapy progressed. (JE 7:53). Ms. Waugh was also to be allowed to sit and stand for her comfort. (JE 7:53).

On March 27, 2019, Ms. Waugh returned to the pain management clinic where Cynthia Lira, A.R.N.P. examined her. (JE 8:2-3). Ms. Waugh complained of lower back pain radiating into her bilateral hips and buttocks and intermittent right leg pain since July of 2018. (JE 8:2). She also had right leg weakness from the waist down, and lack of sensation in the left first and second toes. (JE 8:2). She had a lumbar epidural steroid injection in April of 2017 that provided 80 percent relief. (JE 8:2). She did well until summer of 2018, which led to surgery. (JE 8:2). Surgery helped her lumbar range of motion and leg heaviness. (JE 8:2). Numbness and tingling worsened after

prolonged sitting or standing. (JE 8:2). Valium helped the most with her symptoms. (JE 8:2). She rated her pain 7 out of 10. (JE 8:2). Ms. Lira assessed Ms. Waugh with right lumbar radiculopathy, lumbar stenosis, lumbar spondylosis, and status post lumbar surgery. (JE 8:3). Ms. Lira recommended a lumbar epidural steroid injection midline at L5-S1. (JE 8:3).

Ms. Waugh returned to visit Dr. Meloy on April 17, 2019. (JE 8:4). Dr. Meloy continued to diagnose Ms. Waugh with lumbago with bilateral lumbar radiculopathy, and lumbar spondylosis/epidural fibrosis. (JE 8:4). Dr. Meloy performed a repeat L5-S1 lumbar epidural steroid injection. (JE 8:4).

On May 15, 2019, Ms. Lira examined Ms. Waugh again for a follow up to her previous epidural steroid injection. (JE 8:5-6). Ms. Waugh reported a 50 percent relief of lower back and right leg pain. (JE 8:5). Her pain began in her lower back and radiated to her right hips, lateral shin and foot. (JE 8:5). She tolerated working two to three days. (JE 8:5). Her pain was also tolerable when she stayed home. (JE 8:5). She rated her pain 5 out of 10. (JE 8:5). Ms. Lira continued to diagnose Ms. Waugh with right lumbar radiculopathy, lumbar stenosis, and lumbar spondylosis. (JE 8:6). Ms. Lira discussed a repeat injection, but indicated that they would hold off and see how much improvement Ms. Waugh had with physical therapy. (JE 8:6).

Ms. Waugh had another epidural steroid injection at L5-S1 on July 3, 2019. (JE 8:7). Dr. Meloy performed the injection. (JE 8:7).

Ms. Waugh followed up with Dr. Ridenour on July 31, 2019, for continued complaints of intermittent lower back pain. (JE 7:56-62). Her pain radiated to bilateral hips, posterior thigh, and lateral calf. (JE 7:56). She also had constant paresthesias on the top of the feet extending through the feet. (JE 7:56). She wanted to return to volunteer firefighting. (JE 7:56). Physical therapy and work hardening helped, but Ms. Waugh wished to discuss surgery. (JE 7:56). Dr. Ridenour's diagnoses included lumbar disc herniation, diskectomy, spondylolisthesis at L4-5, and neurogenic claudication. (JE 7:62). Dr. Ridenour indicated that Ms. Waugh could have another surgery, but that he recommended physical therapy with a chance that it could not improve her symptoms. (JE 7:62).

On August 15, 2019, Ms. Waugh returned to Ms. Lira's office for a repeat examination. (JE 8:8-9). Ms. Waugh reported 70 percent to 80 percent relief that lasted about one week. (JE 8:8). Her primary complaint continued to be low back pain radiating down her right leg to her right foot. (JE 8:8). She also complained of radiation down her left side. (JE 8:8). She rated her pain 3 out of 10. (JE 8:8). Ms. Lira indicated that Ms. Waugh could call and schedule an injection when she was ready. (JE 8:9).

Curtis Witt, P.T., performed a functional capacity evaluation ("FCE") at Genesis Physical Therapy on August 22, 2019. (JE 11:2-5). Mr. Witt opined that Ms. Waugh showed a consistent and maximal effort with all of the FCE activities. (JE 11:2). Mr. Witt found good effort and motivation, and that Ms. Waugh could work a medium level job. (JE 11:2). He also found that Ms. Waugh demonstrated the ability to work a

medium-heavy level job. (JE 11:2). Mr. Witt found that overt pain responses were absent. (JE 11:2). Upon concluding testing, Ms. Waugh reported pain of 8 out of 10 and also complained of increased "heaviness" in her right leg. (JE 11:5).

Jennifer Paluso-Miller, P.T., M.P.T., C.E.A.S. II, C.F.C.E., an FCE Clinical Reviewer from One Call Care Physical Therapy conducted an independent review of the FCE. (JE 11:1). Ms. Paluso-Miller opined that the FCE results demonstrated a consistent effort. (JE 11:1). Additionally, Ms. Paluso-Miller opined that Ms. Waugh demonstrated the ability to perform within the medium-heavy physical demand category. (JE 11:1). Ms. Waugh lifted 56 pounds from the floor to her waist, 55 pounds from her waist to her shoulder height, and 33 pounds from her waist to waist height. (JE 11:1). Ms. Waugh two-hand carried 59 pounds, and one-hand carried 36 pounds per side. (JE 11:1). She could push and pull 157 pounds. (JE 11:1). She demonstrated an occasional tolerance for bending. (JE 11:1). Ms. Waugh could frequently squat, kneel, climb stairs, sit, stand, and walk. (JE 11:1). She could constantly balance. (JE 11:1).

On December 5, 2019, Dr. Ridenour responded to a "check box" type of letter from Christopher Spielbauer at Argent/West Bend Insurance. (JE 7:63-64). Dr. Ridenour indicated that Ms. Waugh reached MMI on April 16, 2019, as MMI is usually reached six months after surgery. (JE 7:63). Dr. Ridenour agreed that Ms. Waugh could perform medium to heavy work, as is the opinion of the functional capacity evaluation ("FCE") and Dr. Schmitz. (JE 7:63). Dr. Ridenour also agreed that Ms. Waugh should be placed in DRE Category III with a 10 percent whole person impairment rating. (JE 7:63). With regard to future medical treatment, Dr. Ridenour noted:

> This is difficult to say as she may require further surgery in future we previously discussed laminectomies L4-5, DLIF L4-S1 with pedicle screws as she has spondylolisthesis which would be related to previous surgery done 10/16/18 from prior injury. She may continue to do well and further surgery may not be done however if conservative measures (PT/pain clinic) prove unsuccessful we may need to do further surgery in the future.

(JE 7:63-64).

On March 17, 2020, Ms. Waugh returned to Dr. Meloy's office for another L5-S1 epidural steroid injection. (JE 8:10). Ms. Waugh tolerated the procedure well. (JE 8:10).

Ms. Waugh had a telehealth visit with Ms. Lira on April 15, 2020. (JE 8:11-12). The previous injection "helped immensely" to decrease the intensity, especially to the left side. (JE 8:11). She continued to take Gabapentin, and tried to wean herself down, but her pain worsened. (JE 8:11). She would follow up as needed. (JE 8:12).

Dr. Taylor performed another IME on May 20, 2020, and issued a report on May 28, 2020. (CE 1:11-19). Dr. Taylor noted the previous IME and records review in 2018. (CE 1:11). Dr. Taylor reviewed medical records from the previous IME and records

review to the date of the subsequent IME. (CE 1:11-14). Ms. Waugh indicated that she had constant pain across her lower back that averaged between 4 and 5 out of 10. (CE 1:14). At its worst, the pain increased to 8 out of 10. (CE 1:14). Ms. Waugh also experienced numbness that extended down the right posterior leg all the way to the foot. (CE 1:14). She also told Dr. Taylor that her leg felt heavy and started to drag. (CE 1:14). She sometimes had numbness on the left, but did not have "heaviness" that occurred on the right side. (CE 1:14). Ms. Waugh continued working for Iowa Masonic Nursing Home, but had not worked for UnityPoint Hospital since about February of 2020. (CE 1:14). Dr. Taylor noted the restrictions as issued by the FCE, and opined that the permanent restrictions continued. (CE 1:14). He further recommended the following restrictions: a lifting limit up to approximately 50 pounds to waist level and between waist and shoulder level on an occasional basis; most lifting preferred at or above the knee level; and, 30 pounds above shoulder level. (CE 1:17). Ms. Waugh should also have the ability to alternate sitting, standing, and walking as needed for her comfort. (CE 1:17). She could continue to squat, bend, kneel, and climb stairs occasionally. (CE 1:17). Dr. Taylor opined that Ms. Waugh could benefit from a lumbar roll in a chair if she had to sit for prolonged periods of time. (CE 1:17). Ms. Waugh reported difficulties with sleeping due to her back pain. (CE 1:15). Physical examination showed issues with range of motion. (CE 1:15). She did not complain of radicular symptoms. (CE 1:15). Dr. Taylor diagnosed Ms. Waugh with a low back injury with disc herniation, persistent lumbago with lower extremity paresthesias worse on the right than the left. (CE 1:16). Dr. Taylor also mentioned Ms. Waugh's surgery. (CE 1:16). Dr. Taylor referenced his previous IME report and records review with regards to his opinion on causation. (CE 1:16). Dr. Taylor did not have additional treatment recommendations, other than medication management. (CE 1:16). He also noted that Ms. Waugh may need periodic injections, but that he would defer to Ms. Waugh's treating medical providers. (CE 1:16). Dr. Taylor also deferred to Dr. Ridenour regarding the possibility of surgery. (CE 1:16). Dr. Taylor placed Ms. Waugh at MMI on July 31, 2019. (CE 1:16). Dr. Taylor changed his permanent impairment rating, and indicated that Ms. Waugh should be assessed within the DRE Lumbar Category III, and in light of her ongoing symptoms and needed medications, assigned a 13 percent whole person impairment. (CE 1:16).

On November 18, 2020, Ms. Waugh returned to pain management and Ms. Lira. (JE 8:13-15). She had COVID in July, and ever since had "weird vibrations" in her left leg. (JE 8:13). She complained of pain across the low back radiating to the posterior leg into the foot. (JE 8:13). Her pain was stronger, and pain was longer. (JE 8:13). She averaged 8,000 to 10,000 steps per day at work, and stood eight to ten hours per day. (JE 8:13). She achieved relief from pain management injections. (JE 8:14). If injections stopped working, Ms. Lira recommended additional imaging. (JE 8:14).

Ms. Waugh had another L5-S1 lumbar epidural steroid injection with Dr. Meloy on November 25, 2020. (JE 8:16).

At the time of the hearing, Ms. Waugh indicated that she continued to receive steroid injections from Dr. Meloy. (Testimony). The injections provided some relief, and made her pain more tolerable for longer amounts of time. (Testimony). She continued

to take Gabapentin and diazepam. (Testimony). She testified that she continued to have muscle spasms in her lower back. (Testimony). She continued to take Flexeril, tramadol, and Naproxen for these spasms. (Testimony).

Ms. Waugh testified that she still provides patients at Iowa Masonic with treatments, medications, and their care within the nursing process. (DE C:3). She gets assistance with hands-on care such as transferring and toileting patients, among other things. (DE C:3). She requests assistance from her CNA staff to perform these tasks, as they can be painful. (DE C:3). She acknowledged that no doctor had her on any permanent restrictions in her August of 2018 deposition. (DE C:3). This changed with her FCE. Ms. Waugh testified that Iowa Masonic was aware of her restrictions. (Testimony). She noted that she could not perform her job within her restrictions. (Testimony). She felt that she could not do certain things by herself, but explained that there were times that she went out of her way to get her job done, and that that created additional pain at the end of the day. (Testimony). She further noted that when she arrives home from work, she has difficulty exiting her vehicle due to the pain. (Testimony). There were times prior to her injury that she required assistance in lifting. (DE C:3). These were dependent on the patient's plan of care. (DE C:3).

Ms. Waugh further testified that she can no longer serve as a volunteer firefighter or EMT due to the lifting required in those positions. (Testimony). She is still able to work at UnityPoint Trinity with her restrictions, but has not worked there in some time. (Testimony). This is due to restrictions surrounding COVID-19. (Testimony). She intends to resume working at UnityPoint Trinity when she is allowed. (Testimony). Ms. Waugh identified several of her former jobs, including working in management at a plasma center, and working as a CNA. (Testimony). She felt that she could work at the plasma center, but could no longer be a CNA since it requires lifting. (Testimony). She also placed her resume on Indeed.com in 2018 in an effort to look for additional part time work. (Testimony).

Jodi Hippler also testified. (Testimony). She is a registered nurse, and the director of nursing at Iowa Masonic. (Testimony). She has worked at Iowa Masonic for 18 years. (Testimony). She has supervised Ms. Waugh since 2010. (Testimony). Ms. Waugh testified that she communicated with Ms. Hippler on a daily basis. (Testimony). Ms. Hippler testified that she observes Ms. Waugh on a daily basis for three to four hours. (Testimony). Ms. Waugh testified that if something came up that she needed to tell Ms. Hippler, she would "[a]bsolutely" do so. (Testimony). Ms. Hippler agreed that Ms. Waugh could always come to her with questions or concerns. (Testimony). Ms. Hippler testified that Ms. Waugh did the same job that other LPNs at Iowa Masonic performed. (Testimony). Ms. Hippler did not believe that Ms. Waugh required more assistance than other LPNs at Iowa Masonic. (Testimony). Ms. Hippler noted no decline or deficiencies in Ms. Waugh's work performance. (Testimony). Ms. Hippler agreed that Ms. Waugh worked comparable hours at the time of the hearing to those that she worked before her injury. (Testimony). Ms. Hippler agreed that Ms. Waugh was a good nurse, and that she was happy with her performance. (Testimony).

CONCLUSIONS OF LAW

Extent of Permanent Disability

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss of use of a scheduled member under Iowa Code 85.34(2)(a)-(t) or for loss of earning capacity under Iowa Code 85.34(2)(u). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998). The fact finder must consider both medical and lay evidence relating to the extent of the functional loss in determining permanent disability resulting from an injury to a scheduled member. Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 272-273 (Iowa 1995); Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420 (Iowa 1994).

An injury to a scheduled member may, because of after effects or compensatory change, result in permanent impairment of the body as a whole. Such impairment may in turn be the basis for a rating such impairment may in turn be the basis for a rating of industrial disability. It is the anatomical situs of the permanent injury or impairment which determines whether the schedules in Iowa Code 85.34(a) – (t) are applied. Lauhoff Grain Co. v. McIntosh, 395 N.W.2d 834 (Iowa 1986); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Dailey v. Pooley Lumber Co., 233 Iowa 758, 10 N.W.2d 569 (1943); Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936).

In this case, Ms. Waugh sustained an injury to her lower back. The parties agree that this is not an injury to a scheduled member, and that an industrial disability analysis should apply.

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined Diederich v. Tri-City Ry. Co. of Iowa, 219 Iowa 587, 258 N.W. 899 (1935) as follows: "[i]t is therefore plain that the Legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in terms of percentages of the total physical and mental ability of a normal man."

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted, and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.S.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Iowa Code 85.34.

Ms. Waugh was 52 years old at the time of the hearing. She received a GED. She later received an LPN degree from Scott Community College in 1992. She also has certifications as an EMT, a Firefighter II, and a Hazmat Tech A, which she used as a volunteer firefighter. From 1992 to the present, Ms. Waugh worked as an LPN. She worked as a manager and nurse at a plasma center. She also worked as an LPN at the Kahl Home, and later at Iowa Masonic and UnityPoint Trinity. She continues to work at Iowa Masonic on a full time basis, which is 32 hours per week, or more. She also remains employed with UnityPoint Trinity, although she has not worked there since the beginning of the COVID-19 pandemic. Ms. Waugh's testimony and her record since her injuries indicates that she remains motivated to work. She experiences pain while working, and after work, but has missed minimal work and remains an exemplary employee. Ms. Waugh alleges that she is working less hours now than before her injury; however, she is making more money per hour than she was at the time of the injury. She made twenty and 57/100 dollars ($20.57) per hour at the time of the incident, and is currently earning twenty-five and 00/100 dollars ($25.00) per hour. The result is a reduction in earnings due to the reduction in hours, even though she earns more per hour.

Ms. Waugh sustained an injury to her lower back. She immediately complained of lower back pain after attempting to lift a patient at Iowa Masonic. Her pain eventually radiated into her bilateral hips. She pursued a course of conservative care beginning with chiropractic care. She eventually reported to Dr. Ridenour for her lower back complaints. Dr. Ridenour recommended epidural steroid injections, which Dr. Meloy performed beginning in April of 2017. In May of 2017, Dr. Garrels, of Genesis at Work Occupational Medicine recommended that Ms. Waugh cease therapy and return to regular duty. During the time between May of 2017, and September of 2018, Ms. Waugh continued her chiropractic care. She returned to Dr. Ridenour in September of 2018 with complaints of severe lower back pain radiating to the right hip and lateral thigh. In October of 2018, Dr. Ridenour performed a right L5-S1 hemilaminectomy, partial medial facetecomy with canal exploration, and open microdiskectomy at right L5-S1. Following this surgery, Ms. Waugh had another round of physical therapy. She continued to have injections through 2020. Ms. Waugh continues to experience low back pain, and numbness in her right leg, and foot. She also has some "heaviness" and foot drop on the right side. When she arrives home from work, she has difficulty exiting her vehicle. She also cannot do certain things by herself.

Ms. Waugh received work restrictions from the FCE, and also from her May of 2020 IME with Dr. Taylor. Dr. Taylor recommended the following restrictions: a lifting limit up to approximately 50 pounds to waist level and between waist and shoulder level on an occasional basis; most lifting preferred at or above the knee level; and, 30 pounds above shoulder level. Ms. Waugh should also have the ability to alternate sitting, standing, and walking as needed for her comfort. She could continue to squat, bend, kneel, and climb stairs occasionally. Dr. Taylor further opined that Ms. Waugh could

benefit from a lumbar roll in a chair if she had to sit for prolonged periods of time. The restrictions from the FCE allowed Ms. Waugh to carry out activities classified as medium-heavy. The lifting restrictions from the FCE allowed Ms. Waugh to lift 30 to 50 pounds on an occasional basis, 10 to 20 pounds on a frequent basis, and up to 10 pounds on a constant basis. She could occasionally bend, and frequently squat, kneel, and climb stairs. She also could frequently sit, stand, and walk. She could constantly balance. Dr. Taylor endorsed the FCE restrictions. Ms. Waugh testified that she provided these restrictions to Iowa Masonic, and that she at times went outside of her restrictions. She required assistance in lifting certain patients, but would receive this from the CNA on staff. Ms. Hippler contradicted this testimony in noting that Ms. Waugh continued to do the same job as other LPNs at Iowa Masonic, and that she did not believe Ms. Waugh required more assistance than other LPNs at Iowa Masonic. Ms. Waugh remained able to perform her job, although she experienced increased pain. With her restrictions, and the job descriptions provided by Iowa Masonic, and UnityPoint Trinity, there are serious questions as to whether Ms. Waugh could work as an LPN at an employer that is not Iowa Masonic or UnityPoint Trinity.

Finally, the impairment ratings provided in this case should be considered. Dr. Garrels provided a 5 percent whole person impairment rating on August 24, 2017. This rating occurred before much of Ms. Waugh's treatment. It does not take into consideration her surgical history, or any other treatment after 2017. I am disregarding this rating for the purposes of this analysis. The next rating was by claimant's retained IME physician, Dr. Taylor. Dr. Taylor is board certified. He issued an initial impairment rating in April of 2018 of 7 percent to the whole body. This impairment rating is not considered, as it is prior to the October of 2018 surgery. The two impairment ratings that are considered are from the treating physician, Dr. Ridenour, and the claimant's IME doctor, Dr. Taylor. Dr. Ridenour issued a 10 percent whole person impairment on December 5, 2019. This was part of a check box letter wherein Dr. Ridenour agreed with a report from Dr. Schmitz. There is no report of Dr. Schmitz included with the record in this case. Therefore, it is difficult to tell what Dr. Ridenour considered in coming to his conclusion. This hurts the credibility of Dr. Ridenour's opinion on this issue. While the claimant retained Dr. Taylor, he examined Ms. Waugh on two occasions, and performed a record review on another occasion. This allowed Dr. Taylor to establish a thorough knowledge of Ms. Waugh's condition and history in arriving at a 13 percent whole person impairment rating. I find Dr. Taylor's rating to be most persuasive considering the examinations, and the fact that his opinion is thoroughly considered and elucidated, rather than a simple check box opinion letter.

Based upon the foregoing, and considering the applicable factors in an industrial disability analysis, I find that Ms. Waugh sustained a 55 percent industrial disability. This represents 275 weeks (55 percent x 500 weeks = 275 weeks).

Date of Maximum Medical Improvement/Commencement of Benefits

Next, we must turn to the commencement date of benefits. The defendants argue that April 16, 2019 is the appropriate commencement date. The claimant argues that the appropriate commencement date is July 31, 2019.

This case predates significant changes made to Iowa Code chapter 85 in 2017. Iowa Code section 85.34(2) states: "[c]ompensation for permanent partial disability shall begin at the termination of the healing period provided in subsection 1." Iowa Code section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or, (3) the worker has achieved maximum medical recovery. The healing period can be considered the period during which where is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d 60 (Iowa App. 1981).

Dr. Ridenour opined that Ms. Waugh achieved MMI on April 16, 2019. He indicated that MMI was usually reached six months after surgery. Dr. Taylor placed Ms. Waugh at MMI on July 31, 2019. In this case, I found the opinions of Dr. Taylor to be more persuasive. I find that Dr. Taylor's opinion is more persuasive as it relates to MMI. Dr. Ridenour's opinion lacks detail and did not provide a specific reasoning for placing Ms. Waugh at MMI on April 16, 2019, beyond his assertion that Ms. Waugh achieved MMI six months after surgery. Dr. Taylor examined Ms. Waugh twice, and performed a records review on another occasion. His opinions are more persuasive and thoroughly laid out than those of Dr. Ridenour. Therefore, I conclude that Ms. Waugh reached MMI, and benefits commence on July 31, 2019.

Gross Earnings/Compensation Rate

The parties have a dispute regarding the claimant's weekly workers' compensation rate. Iowa Code 85.36 states "[t]he basis of compensation shall be the weekly earnings of the injured employee at the time of the injury." Weekly earnings are defined as the gross salary, wages, or earnings of an employee had the employee worked the customary hours for the full pay period in which the employee was injured as the employer regularly required for work of employment. Id.

The subsections of Iowa Code 85.36 set forth methods for computing weekly earnings depending upon the type of earnings and employment. Based upon the evidence in the record, the claimant was paid on an hourly basis. (CE 4:1-2).

If an employee is paid on a daily, or hourly basis, or based upon output, weekly earnings are computed by dividing by thirteen (13) the earnings over the thirteen (13) week period immediately preceding the injury. However, any week that does not fairly reflect the employee's customary earnings shall be replaced by the closest previous week that is a fair representation of the employee's customary earnings. Iowa Code section 85.36(6). The calculation shall include shift differential pay, but not overtime or premium pay in the calendar weeks immediately preceding the injury. Id. If the employee was absent during the time period subject to calculation for personal reasons, the weekly earnings are the amount the employee would have earned had the employee worked when work was available to other employees in a similar occupation for the employer. Id.

Ms. Waugh testified that a full-time LPN at Iowa Masonic is considered working 32 hours per week. Therefore, a fair representation of the claimant's customary earnings is any week in which she exceeds 32 hours of work. The records provided in Claimant's Exhibit 4:1 show Ms. Waugh working anywhere from 33.5 to 40 hours plus overtime on a customary basis. The claimant provided the most complete documentation of the claimant's wages in the 13 weeks preceding her injury on September 24, 2016, in Claimant's Exhibit 4:1. The claimant earned twenty and 57/100 dollars ($20.57) per hour. Based upon the information provided, I find the following weeks to be representative of the claimant's customary earnings:

Period Ending	Regular Hours Worked
9/10/2016	35.5
9/3/2016	40
8/27/2016	36.75
4/16/2016	40
4/9/2016	40
4/2/2016	40
3/26/2016	33.5
2/20/2016	35
2/13/2016	37.5
2/6/2016	39
1/30/2016	40
1/23/2016	40
1/16/2016	40

During the weeks noted above, the claimant worked 31.5 hours of overtime. Between the hours noted in the chart above, and the overtime hours, the claimant worked 528.75 hours. At the rate of twenty and 57/100 dollars ($20.57) per hour, the claimant earned ten thousand eight hundred seventy-six and 39/100 dollars ($10,876.39). When the total amount earned is divided by 13, it results in a weekly average of eight hundred thirty-six and 65/100 dollars ($836.65) per week in gross earnings. In applying the Ratebook from 2016-2017, for a married individual with two exemptions, I find a weekly rate of five hundred forty-one and 48/100 dollars ($541.48).

The claimant argued that they are owed for an underpayment of temporary partial disability and/or healing period benefits based upon their argued rate of five hundred seventy-five and 82/100 dollars ($575.82). Considering I found the appropriate weekly rate to be five hundred forty-one and 48/100 dollars ($541.48), there is no underpayment of benefits based upon a rate dispute.

Medical Expenses

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Iowa Code 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening, October 1975).

Pursuant to Iowa Code 85.27, claimant is entitled to payment of reasonable medical expenses incurred for treatment of a work injury. Claimant is entitled to an order of reimbursement if he/she has paid those expenses. Otherwise, claimant is entitled only to an order directing the responsible defendants to make such payments directly to the provider. See Krohn v. State, 420 N.W.2d 463 (Iowa 1988).

In cases where the employer's medical plan covers the medical expenses, claimant is entitled to an order of reimbursement only if he has paid treatment costs; otherwise, the defendants are ordered to make payments directly to the provider. See Krohn, 420 N.W.2d at 463. Where medical payments are made from a plan to which the employer did not contribute, the claimant is entitled to a direct payment. Midwest Ambulance Service v. Ruud, 754 N.W.2d 860, 867-68 (Iowa 2008) ("We therefore hold that the commissioner did not err in ordering direct payment to the claimant for past medical expenses paid through insurance coverage obtained by the claimant independent of any employer contribution."). See also Carl A. Nelson & Co. v. Sloan, 873 N.W.2d 552 (Iowa App. 2015)(Table) 2015 WL 7574232 15-0323.

The employee has the burden of proof to show medical charges are reasonable and necessary, and must produce evidence to that effect. Poindexter v. Grant's Carpet Service, I Iowa Industrial Commissioner Decisions, No. 1, at 195 (1984); McClellan v. Iowa S. Util., 91-92, IAWC, 266-272 (App. 1992).

The employee has the burden of proof in showing that treatment is related to the injury. Auxier v. Woodard State Hospital-School, 266 N.W.2d 139 (Iowa 1978), Watson v. Hanes Border Company , No. 1 Industrial Comm'r report 356, 358 (1980) (claimant failed to prove medical charges were related to the injury where medical records contained nothing related to that injury) See also Bass v Vieth Construction Corp., File No 5044438 (App. May 27, 2016)(Claimant failed to prove causal connection between injury and claimed medical expenses); Becirevic v Trinity Health, File No. 5063498 (Arb. December 28, 2018) (Claimant failed to recover on unsupported medical bills)

Iowa Code section 85.27(4) provides that the employee may choose their own care at the employer's expense in an emergency, if the employer's agent cannot be immediately reached. However, the duty of an employer to furnish reasonable medical care supports all claims for care by an employee that are reasonable under the totality of the circumstances, "even when the employee obtains unauthorized care." Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 206 (Iowa 2010). The employee must still prove by a preponderance of the evidence that unauthorized care was reasonable and beneficial. Id. The Court in Bell Bros. concluded that unauthorized medical care is beneficial if it provides a "more favorable medical outcome than would likely have been achieved by the care authorized by the employer." Id.

The claimant provided receipts for prescriptions from Walmart totaling thirty-three and 95/100 dollars ($33.95). Only one receipt indicates the medication prescribed. The additional receipts only correlate to the date of incident, and there is no proof presented as to what medications were paid for by the claimant. Therefore, I award nineteen and 93/100 dollars ($19.93) for the receipt provided in Claimant's Exhibit 5:1.

The main dispute regarding outstanding medical expenses surrounds one thousand four hundred ninety-seven and 50/100 dollars ($1,497.50) in billing for treatment with Hudson Chiropractic listed in Claimant's Exhibit 6. The billing indicates a total balance of two thousand five hundred fifty-three and 00/100 dollars ($2,553.00); however, in reviewing the total charges for each bill, the proper amount is one thousand four hundred ninety-seven and 50/100 dollars ($1,497.50). The defendants argue that they accepted the claim, and therefore continued to control medical care during the time that Ms. Waugh treated with Hudson Chiropractic. The defendants further argue that they never authorized treatment with Hudson Chiropractic, nor did Drs. Garrels or Ridenour recommend treatment at Hudson Chiropractic. Ms. Waugh argues that she had to seek out chiropractic care because the defendants failed to approve a referral to Dr. Ridenour in a timely manner. Ms. Waugh further argues that the chiropractic care was beneficial in reducing her pain.

Ms. Waugh testified at the arbitration hearing that the chiropractic care was beneficial in reducing her pain. However, it did not eliminate her pain entirely. The records from Hudson Chiropractic buttress this testimony. In the records, Ms. Waugh noted an improvement in her pain.

From November of 2016, to February of 2017, Ms. Waugh received no care authorized by the employer. The care provided by Hudson Chiropractic provided a more favorable outcome than a lack of care provided by the employer. Care with Hudson Chiropractic was reasonable and beneficial. However, some of the care provided was for extremities, and was not for Ms. Waugh's back injury. Unfortunately, some of the handwritten records are difficult to read. Therefore, I am turning to the billing for an analysis of billing owed by the defendants. In removing any billing for an "Extremity Adjustment," I found one hundred sixty-five and 00/100 dollars ($165.00) in billing for an extremity adjustment. After removing this amount, I find the defendants owe one thousand three hundred thirty-two and 50/100 dollars ($1,332.50) for the outstanding billing of Hudson Chiropractic.

Penalty for Delayed Payments

Iowa Code 86.13(4) provides the basis for awarding penalties against an employer. Iowa Code 86.13(4) states:

> (a) If a denial, a delay in payment, or a termination of benefits occurs without reasonable or probable cause or excuse known to the employer or insurance carrier at the time of the denial, delay in payment, or termination of benefits, the workers' compensation commissioner shall award benefits in addition to those benefits payable under this chapter, or chapter 85, 85A, or 85B, up to fifty present of the amount of benefits that were denied, delayed, or terminated without reasonable or probable cause or excuse.
>
> (b) The workers' compensation commissioner shall award benefits under this subsection if the commissioner finds both of the following facts:
>
> (1) The employee has demonstrated a denial, delay in payment, or termination of benefits.
>
> (2) The employer has failed to provide a reasonable or probable cause or excuse for the denial, delay in payment, or termination of benefits.
>
> (c) In order to be considered a reasonable or probable cause or excuse under paragraph "b", an excuse shall satisfy all of the following criteria:
>
> (1) The excuse was preceded by a reasonable investigation and evaluation by the employer or insurance carrier into whether benefits were owed to the employee.
>
> (2) The results of the reasonable investigation and evaluation were the actual basis upon which the employer or insurance carrier contemporaneously relied to deny, delay payment of, or terminate benefits.
>
> (3) The employer or insurance carrier contemporaneously conveyed the basis for the denial, delay in payment, or termination of benefits to the employee at the time of the denial, delay, or termination of benefits.

If weekly compensation benefits are not fully paid when due, Iowa Code 86.13 requires that additional benefits be awarded unless the employer shows reasonable cause or excuse for the delay or denial. Robbennolt v. Snap-On Tools Corp., 555 N.W.2d 229 (Iowa 1996). Delay attributable to the time required to perform a reasonable investigation is not unreasonable. Kiesecker v. Webster City Meats, Inc., 528 N.W.2d 109 (Iowa 1995).

It is also not unreasonable to deny a claim when a good faith issue of law or fact makes the employer's liability fairly debatable. An issue of law is fairly debatable if viable arguments exist in favor of each party. Covia v. Robinson, 507 N.W.2d 411 (Iowa 1993). An issue of fact is fairly debatable if substantial evidence exists which would support a finding favorable to the employer. Gilbert v. USF Holland, Inc., 637 N.W.2d 194 (Iowa 2001). An employer's bare assertion that a claim is fairly debatable is insufficient to avoid imposition of a penalty. The employer must assert facts upon which the commissioner could reasonably find that the claim was "fairly debatable." Meyers v. Holiday Express Corp., 557 N.W.2d 502 (Iowa 1996).

If an employer fails to show reasonable cause or excuse for the delay or denial, the commissioner shall impose a penalty in an amount up to 50-percent of the amount unreasonably delayed or denied. Christensen v. Snap-On Tools Corp., 554 N.W.2d 254 (Iowa 1996). The factors to be considered in determining the amount of the penalty include: the length of the delay, the number of delays, the information available to the employer, and the employer's past record of penalties. Robbennolt, 555 N.W.2d at 238.

For purposes of determining whether an employer has delayed in making payments, payments are considered "made" either (a) when the check addressed to a claimant is mailed, or (b) when the check is delivered personally to the claimant by the employer or its workers' compensation insurer. Robbennolt, 555 N.W.2d at 235-236; Kiesecker, 528 N.W.2d at 112).

Penalty is not imposed for delayed interest payments. Schadendorf v. Snap-On Tools Corp., 757 N.W.2d 330, 338 (Iowa 2008); Davidson v. Bruce, 594 N.W.2d 833, 840 (Iowa 1999).

Penalty may be imposed when an employer is informed that an employee has reached MMI and then the employer delays in seeking an impairment rating, or commencing payment. Davidson, 594 N.W.2d at 539.

On January 2, 2020, treating physician Dr. Ridenour provided an impairment rating to the insurer. The defendants did not issue a check for the amount of Dr. Ridenour's impairment rating until December 30, 2020. The defendants issued a check for seven thousand thirty-nine and 24/100 dollars ($7,039.24), which represents part of Dr. Ridenour's impairment rating. The defendants provide no explanation as to any reasonable cause or excuse for the delay in issuing payment for the rating of Dr. Ridenour. Imposition of a penalty is appropriate. A penalty of 50 percent is appropriate considering the length of delay, and lack of explanation for any delay. Therefore, the claimant is awarded three thousand five hundred nineteen and 62/100 dollars ($3,519.62) for the delayed permanent partial disability benefits payments.

Costs

Claimant seeks the award of costs for the filing fee. Costs are to be assessed at the discretion of the deputy commissioner hearing the case. See 876 Iowa

Administrative Code 4.33; Iowa Code 86.40. 876 Iowa Administrative Code 4.33(6) provides:

> [c]osts taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, including convenience fees incurred by using the WCES payment gateway, and (8) costs of persons reviewing health service disputes.

The claimant requests an assessment of costs for the filing fee. In my discretion, I award the claimant costs for their filing fee of one hundred and 00/100 dollars ($100.00).

ORDER

THEREFORE, IT IS ORDERED:

The defendants are to pay unto claimant two hundred seventy-five (275) weeks of permanent partial disability benefits at the rate of five hundred forty-one and 48/100 dollars ($541.48) per week from the commencement date of July 31, 2019.

The defendants shall reimburse the claimant one thousand three hundred fifty-two and 43/100 dollars ($1,352.43) for one prescription payment, and certain billing from Hudson Chiropractic.

The defendants shall pay the claimant a penalty of three thousand five hundred nineteen and 62/100 dollars ($3,519.62).

The defendants shall reimburse the claimant one hundred and 00/100 ($100.00) for costs.

The defendants shall be given credit for benefits previously paid, as stipulated.

The defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable 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. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

The defendants shall file subsequent reports of injury (SROI) as required by this agency pursuant to 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this __26th__ day of May, 2021.

ANDREW M. PHILLIPS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Jenna Green (via WCES)

Edward Rose (via WCES)

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 filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation 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 legal holiday.