

defendants for all past requested medical expenses itemized in the attachment to the hearing report, except for those requested past medical expenses from James Gallagher, M.D. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is not entitled to receive reimbursement from defendants in the amount of \$3,412.50 for the cost of Dr. Gallagher's independent medical evaluation (IME) performed on September 9, 2015. The deputy commissioner found claimant is not entitled to receive reimbursement from defendants pursuant to rule 876 IAC 4.33 for the cost of Dr. Gallagher's November 2, 2015, IME report. The deputy commissioner found claimant is entitled to receive reimbursement from defendants pursuant to rule 876 IAC 4.33 for the \$525.00 fee charged by Dr. Gallagher for his December 9, 2015, report. The deputy commissioner ordered defendants to pay claimant's other costs of the arbitration proceeding in the amount of \$105.40.

Defendants assert on appeal that the deputy commissioner erred in finding claimant is entitled to receive TTD benefits from January 15, 2015, through November 2, 2015. Defendants assert the deputy commissioner erred in finding claimant is entitled to receive penalty benefits.

Claimant asserts on cross-appeal that the deputy commissioner erred in finding claimant failed to carry his burden of proof that he is entitled to receive either TTD benefits or TPD benefits during the period beginning on May 24, 2014, and ending on January 14, 2015. Claimant asserts the deputy commissioner erred in finding claimant had not reached MMI as of the date of the arbitration hearing and in failing to award either substantial industrial disability or permanent total disability for the work injury. Claimant asserts the deputy commissioner erred in failing to award substantially more than \$1,061.67 in penalty benefits.

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

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

Pursuant to Iowa Code sections 17A.5 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on November 21, 2016, and those portions of the proposed rehearing decision filed on January 6, 2017, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of the issues raised in the arbitration proceeding and in the application for rehearing. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to those issues. I affirm the deputy commissioner's finding that claimant had not reached MMI as of the date of the arbitration hearing. I affirm the deputy commissioner's finding that the issue of whether claimant sustained permanent disability as a result of the work injury was not ripe for adjudication. I affirm the deputy commissioner's finding that

claimant failed to carry his burden of proof that he is entitled to receive either TTD benefits or TPD benefits during the period beginning on May 24, 2014, and ending on January 14, 2015. I affirm the deputy commissioner's finding that claimant is entitled to receive a running award of TTD benefits beginning on January 15, 2015. I affirm the deputy commissioner's finding that claimant's correct average gross weekly wage for the work injury is \$998.81, and I affirm the deputy commissioner's finding that claimant's weekly benefit rate for the work injury is \$631.86. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 86.13, claimant is entitled to receive penalty benefits in the amount of \$1,061.67 for an unreasonable delay in paying weekly benefits for the period beginning November 2, 2015, and ending March 1, 2016. I affirm the deputy commissioner's finding that claimant is entitled to payment by defendants for all past requested medical expenses itemized in the attachment to the hearing report, except for those requested past medical expenses from Dr. Gallagher. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is not entitled to receive reimbursement from defendants in the amount of \$3,412.50 for the cost of Dr. Gallagher's IME. I affirm the deputy commissioner's finding that claimant is not entitled to receive reimbursement from defendants pursuant to rule 876 IAC 4.33 for the cost of Dr. Gallagher's November 2, 2015, IME report. I affirm the deputy commissioner's finding that claimant is entitled to receive reimbursement from defendants pursuant to rule 876 IAC 4.33 for the \$525.00 fee charged by Dr. Gallagher for his December 9, 2015, report. I affirm the deputy commissioner's order that defendants pay claimant's other costs of the arbitration proceeding in the amount of \$105.40. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on November 21, 2016, and the rehearing decision filed on January 6, 2017, are affirmed in their entirety.

Defendants shall pay claimant a running award of temporary total disability benefits at the weekly rate of six hundred thirty-one and 86/100 dollars (\$631.86) commencing on January 15, 2015, and running until such time that claimant reaches maximum medical improvement.

Defendants shall receive a credit for all benefits previously paid.

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).

Defendants shall pay claimant a penalty of one thousand sixty-one and 67/100 dollars (\$1,061.67).

Defendants shall pay all past requested medical expenses itemized in the attachment to the hearing report, except for those requested past medical expenses from Dr. Gallagher.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of \$630.40, and the parties shall split the costs of the appeal, including the cost of the hearing transcript.

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

Signed and filed on this 12th day of July, 2018.



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WORKERS' COMPENSATION
COMMISSIONER

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