

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

HAZEMA KAPIC,

Claimant,

vs.

HY-VEE,

Employer,

and

UNION INS. CO. OF PROVIDENCE,

Insurance Carrier,
Defendants.

File No. 21700554.01

RULING ON CLAIMANT'S LIMITED

APPLICATION FOR REHEARING

On November 15, 2022, the undersigned filed an arbitration decision in this case. On December 5, 2022, claimant filed a timely limited application for hearing pursuant to 876 IAC 4.24. Defendants filed a response on December 9, 2022. The filings are considered.

Claimant's application for rehearing correctly points out that the arbitration decision failed to address the issue of whether claimant was entitled to reimbursement of her IME pursuant to Iowa Code section 85.39. Claimant's application for limited rehearing has merit. The arbitration decision did fail to address the issue of whether claimant should be reimbursed for an IME under Iowa Code section 85.39.

Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991).


Claimant is seeking reimbursement pursuant to Iowa Code section 85.39, in the amount of three thousand three hundred seventy-six and no/100 dollars (\$3,376.00) for the IME performed by Dr. Bansal on April 19, 2022. Defendants contend claimant is not entitled to reimbursement pursuant to Iowa Code section 85.39 because a determination of no causation does not equate to a zero impairment rating; therefore, the prerequisites of section 85.39 were not met. In support of their position defendants cite to a 2018 appeal decision from this agency. See Reh v. Tyson Foods, Inc., 2018 WL 1701271 (App. 2018). Defendants argument is not persuasive. More recently the Iowa Court of Appeals has ruled that a doctor's opinion on lack of causation was tantamount to a zero percent impairment rating and triggers reimbursement of an IME under section 85.39. See Kern v. Fenchel, Doster & Buck, P.L.C., No. 20-1206, 2021 WL 3890603 (Iowa Ct. App. Sept. 1, 2021). Thus, I find that because prior to Dr. Bansal's IME, Dr. Myrttil opined that claimant's conditions were not work related, the prerequisites of section 85.39 were met. Therefore, claimant has demonstrated entitlement to reimbursement for the IME pursuant to Iowa Code section 85.39. Defendants shall reimburse claimant for the IME of Dr. Bansal in the amount of three thousand three hundred seventy-six and no/100 dollars (\$3,376.00)

THEREFORE, IT IS ORDERED:

The defendants' application for rehearing is granted. Defendants shall reimburse claimant pursuant to Iowa Code section 85.39 for the IME of Dr. Bansal in the amount of three thousand three hundred seventy-six and no/100 dollars (\$3,376.00).

The arbitration decision is supplemented and amended via this ruling.

Signed and filed this 13th day of December, 2022.


ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Erin Tucker (via WCES)

Lindsey Mills (via WCES)