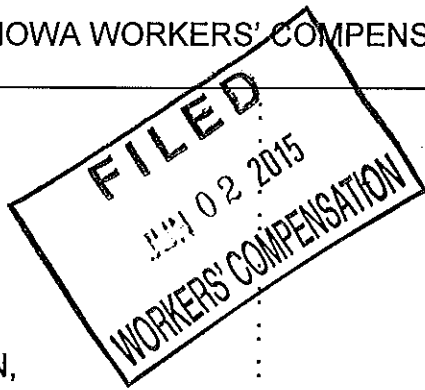


BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TRACY DRAAYER,  
Claimant,

vs.

PELLA CORPORATION,  
Employer,  
Self-Insured,  
Defendant.



File No. 5018137

REVIEW-REOPENING  
DECISION

Head Note No.: 2905

TRACY DRAAYER,  
Claimant,

vs.

PELLA CORPORATION,  
Employer,  
Self-Insured,  
Defendant.

File No. 5018137

PARTIAL COMMUTATION  
DECISION

Head Note No.: 3303.20

STATEMENT OF THE CASE

Tracy Draayer, claimant, filed a petition for a partial commutation seeking payment of a lump sum of all but one week of the permanent total disability benefits that were awarded to her in an arbitration decision and final decision from the commissioner from Pella Corporation, self-insured employer.

Pella Corporation filed an application for review-reopening requesting a finding that the claimant's condition has improved and that she is no longer permanently and totally disabled.

These two petitions were consolidated for hearing purposes. For clarity purposes these two cases will be referred to as the review-reopening hearing. These cases were heard in Des Moines, Iowa and fully submitted on November 24, 2014. The evidence in this case consists of the testimony of claimant and Dennis Markway, claimant's exhibits 1 – 6 and 8 – 17 and defendant's exhibits A – H.

The issue of whether the defendant may be liable for certain medical bills was bifurcated and is the subject of another hearing scheduled for hearing in July 2015.

## ISSUES

### Review-Reopening

1. Whether there has been a change of condition since the arbitration decision on November 26, 2007 that would entitle defendant to reduction of the permanent total disability award under a review-reopening and, if so,
2. The extent of claimant's industrial disability.

### Partial Commutation

Whether a partial commutation of all but the last week of permanent total disability benefits is in the best interest of claimant.

### For both claims

Assessment of costs.

## FINDINGS OF FACT

The deputy workers' compensation commissioner having heard the testimony and considered the evidence in the record finds that:

The original arbitration decision was heard and deemed fully submitted on June 27, 2007. An amended and substituted decision (hereinafter arbitration decision) was issued on November 26, 2007. This decision found that claimant was permanently and totally disabled as a result of her work injury with Pella Corporation. An appeal decision was issued on October 14, 2008. That decision was the final agency decision. The final agency decision affirmed the amended and substituted decision, which held that claimant had proven she was permanently and totally disabled and also was an "odd-lot worker." The decision was appealed to the Iowa District Court, which affirmed the agency decision. No further appeal was made.

Tracy Draayer was 52 years old at the time of the review-reopening hearing. Ms. Draayer resides in a single family home in Hawarden, Iowa. Ms. Draayer purchased this house after the arbitration decision. Ms. Draayer purchased the house for \$89,000.00 and has done some improvements and repairs. At the time of the review-reopening decision she had her home for sale and listed the house at \$115,000.00. Ms. Draayer said her mortgage on her home is about \$85,000.00. The house is assessed for a little more than \$71,000.00. (Transcript page 54)

At the time of the review-reopening hearing Ms. Draayer had her grandson living with her. He was financially dependent on her. (Exhibit F, p. 86) It was her intention to adopt him. She had applied for a number of programs such as the Family Investment Program (FIP), Food Stamps (a/k/a SNAP) and Title XIX. Food Stamps had been denied, but FIP was awarded. Ms. Draayer was not aware if she might be eligible for any adoption subsidy. Ms. Draayer was receiving Medicare and MEDP as far as insurance coverage. (Tr. p. 20) It is not clear in the record what type of insurance MEDP is, although Ms. Draayer pays for this program through the Iowa Department of Human Services. (Ex. 13, p. 30) Ms. Draayer said she has roughly \$2,000.00 a month that she lives on for her expenses. (Tr. p. 29) She testified that she has about \$100.00 left at the end of the month. (Tr. pp. 55, 56) Ms. Draayer said with the partial commutation she would pay off her mortgage and was considering selling her home to have a smaller home. (Tr. 44)

Since the arbitration decision, Ms. Draayer continued to see Rodney Dean, M.D. every three to six months since the arbitration decision. Dr. Dean is a psychiatrist and prescribes medication for depression, anxiety and for sleep. (Tr. pp. 32, 33) Ms. Draayer saw her chiropractor until May 2011. (Tr. p. 34) Ms. Draayer said that for the review-reopening case she has had independent medical examinations with John Kuhnlein, D.O., Sunil Bansal, M.D. and Terry Davis, M.D. Dr. Davis is a psychiatrist. All three of these examinations were one-time examinations.

In January 2011 Ms. Draayer contacted Terry Ostercamp, ARNP concerning left shoulder pain. (Ex. 5, p. 1) She had an MRI (Ex. 6, p. 5) that was reviewed by Quentin Durward, M.D. on May 9, 2011. Dr. Durward was the surgeon who performed her neck surgery in 2006. Dr. Durward recommended that Ms. Draayer's primary care physician prescribe physical therapy and medication. (Ex. 3, p. 5)

On June 10, 2014 Dr. Kuhnlein performed an IME. His diagnoses were: "1. Right rotator cuff tear with February 16, 2005, arthroscopic rotator cuff repair, anterior labral repair and arthroscopic acromioplasty (Estes). 2. Degenerative disc disease and spinal stenosis with January 31, 2006, C4-C7 anterior cervical discectomy and fusion (Durward). Complaints of headache." (Ex. B, p. 54) Dr. Kuhnlein recommended an MRI and that it be read by a neuroradiologist. (Ex. B, p. 54) He recommended physical therapy and work hardening. (Ex. B, p. 55)

Dr. Kuhnlein stated,

There also has been no objective change in her neck condition beyond her complaints, barring any radiographic changes in the cervical spine. She relates that she has trouble holding her head up, but that was not noted in the almost two hours I spent with her, and there was no suggestion of any problems like that in the record. . . Again, it is only her complaints that suggest worsening with no objective change in the record at this time.

(Ex. B, p. 55)

Dr. Kuhnlein stated that there was no change in her impairment rating or in restrictions. He noted that Ms. Draayer would have problems with range of motion with her three-level fusion, but there was still work that she could do. (Ex. B, p. 56)

On September 2, 2014 Sunil Bansal, M.D. provided an independent medical examination (IME) of Ms. Draayer. (Ex. 8, pp. 28 – 50) Dr. Bansal found no improvement in Ms. Draayer's shoulder condition. (Ex. 8, p. 46) He recommended no over-the-shoulder lifting with the right arm and no pushing, pulling or lifting greater than ten pounds with the right arm. (Ex. 8, p. 47) Dr. Bansal stated that Ms. Draayer's cervical spine had not improved, and as she has a degenerative condition it would not be expected to improve. He agreed with the lifting restriction that Dr. Durward provided in 2006 of 20-pound lifting and occasional flexion and extension of the neck as well as no overhead lifting. (Ex. 8, p. 48)

On September 22, 2014 Rick Ostrander, LPC, CRC, CDMS provided a vocational evaluation of Ms. Draayer. (Ex. 15, pp. 1 – 8) Mr. Ostrander previously evaluated her in 2008. (Ex. 15, p. 7) He concluded that Ms. Draayer's loss of earning capacity was greater now than at the time of the arbitration decision due to the increase of her age. (Ex. 15, p 7)

Ms. Draayer testified that in her opinion her neck, shoulder, anxiety and depression were worse than at the time of the arbitration decision. (Tr. pp. 40, 41)

Terry Davis, M.D. performed a psychiatric independent medical examination of the claimant on February 21, 2014 and issued a report on May 2, 2014. (Ex. A, pp. 1 – 24) Dr. Davis performed a thorough review of claimant's mental health treatment as well as reviewed other medical treatment. Dr. Davis concluded that claimant was at MMI for any mental condition caused, aggravated or exacerbated by her 2005 work injury by March 4, 2008. (Ex. A, p. 14) He stated,

In summary, it is my opinion that Ms. Draayer's medical and psychiatric records indicate that she reached maximum medical improvement for any mental or emotional condition caused, aggravated, or exacerbated by her 2005 work injuries as of 3-4-08. Furthermore, it is my opinion that Ms. Draayer's records do not indicate that she suffers from any psychiatric restriction, impairment, or disability that is attributable to her 2005 work injuries.

(Ex. A, p. 15)

Dr. Davis's diagnostic impression was,

**Impression:**

It is my opinion to a reasonable degree of medical and psychiatric certainty that Ms. Draayer has the following diagnoses:

**Axis I:** 1. Pain Disorder Associated With Both Psychological Factors and a General Medical Condition, Chronic (DSM-IV-TR 307.89)

2. Dysthymic Disorder (DSM-IV-Tr 300.4)

3. History of Polysubstance Abuse, rule out Polysubstance Dependence

**Axis II:** Borderline Personality Disorder (DSM-IV-TR 301.83)

**Axis III:** 1. Status post right rotator cuff tear and repair

2. Status post cervical fusion operation

3. History of multiple injuries and medical problems as per her medical records

**Axis IV:** Problems related to relationship stressors, litigation stress, and general life stressors

**Axis V:** Current Global Assessment of Functioning (GAF) = 65

(Ex. A, p. 18) Dr. Davis noted that under the DSM-IV-TR the pain disorder is categorized as a somatoform disorder, and somatoform disorders such as pain disorders are not caused or aggravated by work accidents or injuries. (Ex. A, p. 19) He also opined that Ms. Draayer's dysthymic disorder was not caused by her work injury, and she reached MMI in March of 2008. (Ex. A, p. 22) He also opined that his diagnosis of borderline personality disorder was not work related. (Ex. A, p. 22) Dr. Davis's opinion was Ms. Draayer does not have any restrictions or impairment in her ability to work from a psychiatric standpoint that are attributable to her 2005 work injuries. (Ex. A, p. 22)

On August 21, 2007 Rodney Dean, M.D. diagnosed Ms. Draayer with: "AXIS I: Dysthymia. Major depressive disorder, single episode, without psychosis, in partial remission. Pain disorder with both psychological and physiological features. Alcohol abuse." (Ex. 1, p. 12) In January 2012 Dr. Dean ranked Ms. Draayer's pain disorder as her primary problem and her major depressive disorder, recurrent in partial remission and dysthymic disorder as secondary. (Ex. 1, p. 23)

Dr. Dean responded to questions from Ms. Draayer's counsel on August 4, 2014, using a check-box form. (Ex. 1, pp. 72 - 74) Dr. Dean agreed that his three diagnoses of claimant, pain disorder, major depressive disorder, recurrent without psychosis in partial remission and dysthymic disorder developed or were sequelae of her work injury with Pella Corporation. He placed Ms. Draayer at MMI as of January 14, 2014 and

agreed that it was unlikely to see improvement of her condition in the future. (Ex. 1, p. 72) Dr. Dean agreed that his work restrictions as set forth in 2006 have essentially not improved and that her ability to be employed was poor. (Ex. 1, p. 73) Dr. Dean reviewed the May 2014 report of Dr. Davis and stated that his opinions remained unchanged. (Ex. 1, p. 74)

Dr. Dean completed a Mental Residual Capacity functional Assessment (RFC) form on August 4, 2014. (Ex. 1, pp. 75 - 77) Using the check boxes, Dr. Dean reported claimant had moderate limitations in ten categories of function and no limitations of functioning in ten categories of functioning<sup>1</sup>. The RFC form showed the claimant as moderately limited in ten categories. In addition to the ten categories of functioning that are moderately limited Dr. Dean states: "The extend [sic] of difficulty with task completion still depends on the job assigned, the degree of physical exertion. And she will need lots of task breaks. She will probably require frequent time off to physically/emotionally recover, even if she does the most benign task." (Ex. 1, pp. 75, 76)

Dr. Dean has been treating claimant, has had significant contact with the claimant and has been prescribing medication to Ms. Draayer. Ms. Draayer was also receiving therapy from a therapist in Dr. Dean's office.

It is difficult to imagine competitive work claimant could complete with the above limitations and need to recover emotionally even from the most benign tasks. Based upon Dr. Dean's reports claimant's mental health condition has not improved. Her mental health condition alone supports a holding that claimant is permanently and totally disabled.

Claimant was found eligible for Social Security Disability (SSD) and Supplemental Security Income<sup>2</sup> (SSI) by a Social Security administrative law judge on

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<sup>1</sup> The Social Security Program Operation Manual (POMs) provided the following definitions when using the RFC form:

"Not Significantly Limited," when the effects of the mental disorder do not prevent the individual from consistently and usefully performing the activity. "Moderately Limited," when the evidence supports the conclusion that the individual's capacity to perform the activity is impaired. POMS DI 24510.063 <https://secure.ssa.gov/apps10/poms.NSF/lnx/0424510063> (Last visited May 18, 2015)

<sup>2</sup> SSI is a needs-based program and income, and resources of a recipient effect eligibility for this program. <http://www.ssa.gov/pubs/EN-05-11000.pdf>

July 17, 2008 with an eligibility date of August 16, 2005. (Ex. 10, pp. 1 – 13) The decision found,

After careful consideration of the entire record, the undersigned finds that the claimant has the residual functional capacity to lift and carry 20 pounds occasionally and 10 pounds frequently; sit 2 hours in an 8-hour workday; and stand/walk 6 hours in an 8-hour workday. She must be permitted to alternate sitting and standing. The claimant is precluded from climbing ladders and she is precluded from crawling, stooping, squatting, and kneeling. She is precluded from prolonged, repetitive rotation, flexion, and hyperextension of the neck. She can occasionally reach in any direction, but she is precluded from reaching above the shoulders/head bilaterally. The claimant can occasionally handle, finger, and feel. She must be permitted to recline, rest, or nap frequently as needed. Due to the inability to be relieved of chronic pain and fatigue, and in consideration of the side effects of her medication, the claimant cannot sustain concentration, persistence, or pace on a routine and continuing basis to complete the required tasks of a job in an 8-hour day, 5 days and 40 hours per week. Due to her emotional disorder, the claimant has marked limitation in her ability to have frequent contact with the public and coworkers.

(Ex. 10, pp. 7, 8) While findings by the Social Security Administration are not binding on this agency, they do provide persuasive evidence that claimant was, as of the date of that decision, still permanently and totally disabled.

In July of 2011, Gerald Isakson, D.C. wrote defendant's attorney stating that he had provided treatment to Ms. Draayer for non-work related complaints. He stated,

But nearly every time Tracy was treated for these symptoms, she also required treatment of the cervical or upper thoracic spine, which I believe have been compromised [sic] by tissue damage from the injury and subsequent surgery. I believe that Tracy will always have to deal with a "less than normal neck" as a result of the injury.

(Ex. 2, p. 5)

I find that the claimant's physical condition is substantially the same as to when she was awarded benefits. She has a three-level fusion and a degenerative condition of her spine. The IME of Dr. Kuhnlein held that Ms. Draayer's physical condition, rating and restriction remained essentially unchanged. Dr. Bansal found Ms. Draayer's condition worse.

I find that Ms. Draayer's mental condition is essentially unchanged since she was awarded benefits. I find Dr. Dean's assessment more convincing than Dr. Davis. Dr. Davis was a one-time evaluation. The issue of whether the injury at work caused

Ms. Draayer's depression was decided in the arbitration decision. Dr. Dean has seen Ms. Draayer numerous times since 2006. A therapist in his office also provides care to Ms. Draayer. Dr. Dean has had the opportunity to see Ms. Draayer before the arbitration decision through the review-reopening decision. I find that the three diagnoses Dr. Dean has made, pain disorder, major depressive disorder, recurrent without psychosis in partial remission and dysthymic disorder are related to her work injury. Ms. Draayer's residual function as set forth in the RFC forms filled out by Dr. Dean in August 2014 are accepted as her mental limitation and do not show improvement.

Finally, the only vocational evidence presented showed that Ms. Draayer's employment prospects are worse than the arbitration decision.

Ms. Draayer wants a partial commutation to pay off her debts and invest the remainder. Ms. Draayer manages her own funds at this time. At the time of the hearing Ms. Draayer had reduced somewhat her personal debt in the last year. (Tr. pp. 51, 52) She contacted a financial planner, Chris Saras from New York Life. Ms. Draayer chose Mr. Saras upon the recommendation of a friend.

One of the reasons that she was considering the financial plans offer by Mr. Saras was that there was a possibility of providing for her children with a residual benefit in case of her death. (Tr. p. 98) Ms. Draayer had not finally decided which financial plan proposed by Mr. Saras she was going to utilize if the partial commutation was allowed. (Tr. p. 97)

Mr. Saras' testimony was presented by deposition. (Ex. 16) (The deposition includes a number of exhibits attached to it that will be referred to as (Depo. Ex. \_\_, p. \_\_)) Mr. Saras has been employed by New York Life since 2007. Mr. Saras met with Ms. Draayer and obtained income and expense information from her to use in determining a financial plan. (Depo. Ex. 6, pp. 1, 2; Depo Ex. 1, pp. 158, 159) Mr. Saras determined that after paying off her debts he would recommend an investment in a single premium immediate annuity. (Ex. 16, p. 17) Mr. Saras' proposal for financial investment is found in a letter dated November 6, 2013. (Depo. Ex. 1, pp. 3 – 6) In this letter he outlines three plans. Two of the plans would provide about \$643.00 per month, and one plan provided \$396.00 per month. (Depo. Ex. 1, p. 5) Mr. Saras also considered under his proposals the ability to leave money to Ms. Draayer's children if she would die. He noted that her workers' compensation benefits will stop upon her death. (Ex. 16, p. 25) Mr. Saras testified that under his plan Ms. Draayer would reduce her debt and have about the same amount of monthly income. (Ex. 16, p. 33)

Dennis Markway, President of Iron Horse Wealth Management testified at the hearing. Mr. Markway is a certified financial planner among other certifications. (Ex. C, p. 70) Mr. Markway reviewed Ms. Draayer's goals for her partial commutation as set forth in her petition and the plans proposed by Mr. Saras. Mr. Markway's testimony and report he prepared (Ex. C, pp. 66 – 69), was critical of the plans proposed by Mr. Saras.



Some of his criticism was Mr. Markway was critical of the limited focus of annuities proposed by Mr. Saras. He was critical for the lack of documentation of how Ms. Draayer's financial situation was analyzed. He also opined that the plan to pay off her mortgage and receive an annuity would make all of her resources illiquid and make it difficult to deal with inflation or unexpected expenses. Mr. Markway acknowledged that the workers' compensation benefits Ms. Draayer receives is not liquid as a resource and not adjusted for inflation. Mr. Markway believed unequivocally Ms. Draayer's plans for her partial commutation were not in her best interest. (Tr. p. 127) Mr. Markway found too many deficiencies in the process and the product to find the partial commutation to be in Ms. Draayer's best interest. (Ex. C, p. 69)

### CONCLUSIONS OF LAW

In a proceeding to reopen an award for payments or agreement for settlement as provided by section 86.13, inquiry shall be into whether or not the condition of the employee warrants an end to, diminishment of, or increase of compensation so awarded or agreed upon. Iowa Code section 86.14(2).

The Iowa Supreme Court has held that a claimant does not need to prove that the change in the condition was not contemplated at the time of the original decision(s). Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387 (Iowa 2009). However, the party bringing the review-reopening proceeding has the burden of showing that the employee's condition has changed since the original award or settlement was made and that that change in condition relates back to the original injury. The change may be either economic or physical. Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Henderson v. Iles, 250 Iowa 787, 96 N.W.2d 321 (1959). A mere difference of opinion of experts as to the percentage of disability is not sufficient to justify a different determination on a petition for review-reopening. The principles of res judicata apply, and the agency should not reevaluate facts and circumstances that were known or knowable at the time of the original action. Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387, 392 (Iowa 2009).

A treating physician's opinions are not to be given more weight than a physician who examines the claimant in anticipation of litigation as a matter of law. Gilleland v. Armstrong Rubber Co., 524 N.W.2d 404.408 (Iowa 1994); Rockwell Graphic Systems, Inc. v. Prince, 366 N.W.2d 187, 192.

As found above in this decision I find Pella Corporation has failed to show that Ms. Draayer's physical and mental condition has improved. Pella Corporation's request for review-reopening is denied.

The next issue to be resolved is whether a partial commutation of all but the last week of permanent total disability benefits is in the best interest of claimant.

In determining whether the commutation is in the best interest of claimant, this agency cannot act as a conservator and disregard claimant's desires and reasonable

plans just because success of the plans is not assured. Diamond v. Parsons Co., 256 Iowa 915, 129 N.W.2d 608 (1964). The Iowa Supreme Court in Dameron v. Neumann Bros., Inc., 339 N.W.2d 160, 165 (Iowa 1983) has held that this agency should examine the following in determining whether to allow a commutation:

1. The worker's age, education, mental and physical condition, and actual life expectancy (as contrasted with information provided by actuarial tables).
2. The worker's family circumstances, living arrangements, and responsibilities to dependents.
3. The worker's financial condition, including all sources of income, debts, and living expenses.
4. The reasonableness of the worker's plan for investing the lump sum proceeds and the worker's ability to manage invested funds or arrange for management by others (for example, by a trustee or conservator).

The Dameron court went on to state that a request for commutation should be approved unless the potential detriments to the worker outweigh the worker's expressed preference and the demonstrated benefits of commutation. Dameron, 339 N.W.2d at 165.

Iowa Code section 85.48 provides:

When partial commutation is ordered, the workers' compensation commissioner shall fix the lump sum to be paid at an amount which will equal the future payments for the period commuted, capitalized at their present value upon the basis of interest at the rate provided in section 535.3 for court judgments and decrees. Provisions shall be made for the payment of weekly compensation not included in the commutation with all remaining payments to be paid over the same period of time as though the commutation had not been made by either eliminating weekly payments from the first or last part of the payment period or by a pro rata reduction in the weekly benefit amount over the entire payment period.

When the period of future compensation to which a claimant is entitled is definitely determinable and a claimant's work-related medical condition is stable, claimant may receive a lump sum discounted payment of future benefits, provided claimant establishes that the commutation of benefits is in claimant's best interest. A claimant's preference for receiving a lump sum payment is balanced against the potential detriments that could result if the employee invests unwisely, spends foolishly or otherwise wastes the funds to the point where they no longer provide the wage substitute intended by the workers' compensation law. Dameron, 339 N.W.2d at 160.

It has already been established that "commutation turns on what is in the best interest of the worker, not on what is in the best interest of the employer or insurance carrier." Dameron, 339 N.W.2d 160, 165 (Iowa 1983). The best interest analysis involves balancing the worker's preference and the benefits to the worker of receiving a lump sum payment weighed against the potential detriment that would result if the worker invested unwisely, spent foolishly, or otherwise wasted the funds. *Id.* At 164-165. This analysis does not include the hardship to the employer from commutation. The statute says nothing about denying commutation because of expense, hardship or inconvenience to the employer. Diamond v. Parsons Co., 256 Iowa 915, 928, 129 N.W.2d 608, 616 (1964).

French & Hecht v. Arlingdale, 432 N.W.2d 705, 707 (Iowa App. 1988).

Claimant has the burden to show that the partial commutation would be in her best interest. Considering Ms. Draayer's, age, education, physical and mental condition the partial commutation could be in her best interest. Her proposal to have a very conservative investment that she would not have to manage is appropriate given her depression and anxiety. Ms. Draayer is currently able to handle her daily expenses, even with her grandson living with her.

Ms. Draayer was living with her grandson who she wanted to adopt. The plan for partial commutation would not impair her ability to take care of herself and grandson.

While there are other investments that would likely provide a higher yield, she has chosen an investment that will provide a measure of certainty. She is not sophisticated concerning investments, and under her proposal she would not need to take an active part in managing her investments. Like her workers' compensation benefits there is no cost of living adjustment if she would purchase an annuity.

In considering Ms. Draayer's financial circumstances from all sources the record shows there are some troubling gaps in information as to how a partial commutation may affect Ms. Draayer's eligibility for some assistance she receives. Ms. Draayer was found eligible for SSD and SSI. No information was provided as to whether the commutation could adversely affect her eligibility for SSI. While it does not appear that she receives SSI, there was no explanation concerning this fact. Ms. Draayer receives some insurance through the Iowa Department of Human Services, the MEPD program. Ms. Draayer did not provide any information as to whether this program will or will not be effected by a partial commutation. Ms. Draayer was found eligible for FIP while she had her grandson. No information was provided as to whether the partial commutation will affect her eligibility for FIP. Finally, Ms. Draayer was considering adopting her grandson at the time of the hearing and did not know whether she would be eligible for a subsidized adoption. No evidence was presented as to whether the partial commutation could affect her eligibility for an adoption subsidy. It is possible that none of these public programs would be reduced if she receives a partial commutation. It is

possible that she could receive a reduction in benefits. There is simply no evidence for me to evaluate as to whether a partial commutation would be in Ms. Draayer's best interest regarding this issue. It is for this reason claimant has not proven that the partial commutation is in her best interest.

Ms. Draayer's request for a partial commutation is denied.

The last issue to be resolved is whether defendant is liable for the costs as set forth in Exhibit 17.

Iowa Code section 86.40 provides:

All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner.

Rule 876 IAC 4.33 provides in part:

Costs taxed by the workers' compensation commissioner or a deputy commissioner shall be ... (3) costs of service of the original notice and subpoenas, ... (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports.

I find that the cost of Mr. Ostrander's report and the service fee are allowable costs, and in my discretion I award these costs.

I also find that the IME performed by Dr. Bansal is an allowable cost under Iowa Code section 85.39 and award this cost to Ms. Draayer.

Defendant shall pay Ms. Draayer \$4,074.74 in costs.

#### ORDER

THEREFORE, it is ordered:

**For the Partial Commutation:**

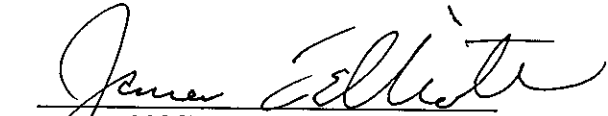
The request for partial commutation is denied.

**For the Review-Reopening:**

The request for review-reopening is denied.

Defendant shall pay costs to the claimant in the amount of four thousand seventy-four and 75/100 dollars (\$4,074.75).

Signed and filed this 2<sup>nd</sup> day of June, 2015.

  
JAMES F. ELLIOTT  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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JFE/sam

**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 in writing and received by the commissioner's office 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 a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.