

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JULIE ANN REYNOLDS,

Claimant,

vs.

ALGONA MANOR CARE CENTER,

Employer,

and

CANON COCHRAN MANAGEMENT  
SERVICES, INC.,

Insurance Carrier,  
Defendants.

**FILED**

**MAR 16 2017**

WORKERS' COMPENSATION

File No. 5041042

REMAND DECISION

Head Note Nos.: 2501, 3800

STATEMENT OF THE CASE

This matter is before the Iowa Division of Workers' Compensation on remand from the Iowa Court of Appeals following a decision dated July 27, 2016.

This matter was initially heard by Deputy Workers' Compensation Commissioner William Grell on February 14, 2013. In the arbitration decision, filed May 10, 2013, the deputy commissioner found, in part, claimant failed to carry her burden of proof for reimbursement of her husband's lost wages, as a travel expense. The decision also awarded interest on ten weekly payments of benefits that were late.

The decision was affirmed on appeal by then Workers' Compensation Commissioner Christopher Godfrey on December 16, 2013.

The agency decision was appealed in a petition for judicial review to the Polk County District Court. The District Court affirmed the appeal decision, in part. The District Court remanded the case to this agency for a determination of the interest owed on late or missing benefit payments.

The case was appealed, and the case was transferred to the Iowa Court of Appeals.

In the July 27, 2016, decision, the Court of Appeals affirmed the workers' compensation commissioner on all issues, except travel expenses and interest due. The Court of Appeals remanded the case back to this agency for further proceedings consistent with the Court of Appeals decision.

### ISSUES

1. Is claimant entitled to an award for wages for the time her spouse lost from work to transport her for medical care?
2. Is claimant entitled to interest on any late or missing payments?

### FINDINGS OF FACT

The parties stipulated claimant sustained an injury on September 1, 2011, which arose out of and in the course of employment.

Claimant asserted a claim for wages for the time her husband lost from work to transport her to medical appointments. Claimant testified she could not drive to medical appointments out of town due to pain and loss of range of motion in her neck following a cervical fusion. Claimant also testified she was unable to attend out of town medical appointments because of the effects of medication. Claimant testified at hearing she took Tramadol for pain control, which caused her to feel sleepy. She stated she took Flexeril, which carried a warning concerning driving. Claimant used hydrocodone, which also had warnings concerning driving. Claimant testified she used MS Contin, which had a warning concerning driving. Claimant also used Fentanyl patches, which carried a warning concerning driving and use of the medication. (Transcript pages 70-73)

Claimant testified she lived in Algona. There was not a taxi service in Algona. Claimant sought medical treatment in Mason City. She also received medical treatment in Iowa City, Spencer and Ankeny. Claimant testified there was a bus available to her from Algona to Mason City, but the departure and arrival times were inconvenient. She testified there was no bus service from Algona to Iowa City, Spencer, or Ankeny. (Tr. pp. 22-23)

Steven Reynolds testified he is claimant's husband. Mr. Reynolds is a former law enforcement officer. He testified claimant was not capable of driving at higher speeds or out of town due to pain and use of medication. Mr. Reynolds testified he and his wife considered the use of a taxi for transportation, but there was no taxi service available in Algona. (Tr. pp. 78, 82)

In her post-hearing brief, claimant outlined the lost wages claimed for her husband to transport her to medical appointments. (Claimant's post-hearing brief, p. 15) Those dates, providers and wage hours lost were found to be accurate in the arbitration decision. (Arbitration decision, p. 5) After review of the dates, providers, and

wage hours lost, I affirm the findings of fact in the arbitration decision. Those dates, providers, and wage hours lost are as follows:

Dates of Service	Providers	Wage Hours
10/03/11	Spencer Hospital	8
11/21/11	Dr. Beck	6.5
12/01/11 – 12/02/11	Mercy Medical Center	16
12/21/11	Dr. Beck	5
1/11/12	Dr. Beck	8
2/13/12	Dr. Lee	10
10/11/12	Dr. Hoffman	8
12/12/12	Dr. Kuhnlein	8
1/11/13	Dr. Peterson	8

As noted in the arbitration decision, claimant sought wage reimbursements at a rate of \$15.38 an hour. (Claimant's post-hearing brief, p. 15) At hearing, Mr. Reynolds testified his wage rate was actually \$13.38 per hour in the summer of 2012. (Tr. p. 85) Sometime after the summer of 2012, Mr. Reynolds' wages rose to \$15.38 per hour. (Tr. pp. 85-86)

Claimant's attorney notified defendants that claimant was owed additional temporary benefits. On February 13, 2013, defendants paid claimant \$2,165.10 to remedy this discrepancy. Defendants contend in their brief on appeal the check covered temporary total disability benefits from September 6, 2011, through September 9, 2011, and from October 8, 2011, through October 14, 2011. Defendants contend in their brief on appeal this amount also covered underpayment of temporary total disability benefits from September 26, 2011, through October 3, 2011, from January 14, 2011, through January 15, 2011, and from February 13, 2011, through February 24, 2011. It also covered an underpayment of temporary partial disability benefits for September 24, 2011, through September 25, 2011, from October 4, 2011, through October 14, 2011, from October 22, 2011, through October 23, 2011, and from January 16, 2012, through February 12, 2012. Claimant was paid at a rate of \$642.61, with interest. (Ex. A, pp. 10-11) (Defendants' brief on appeal, pp. 22-23)

Claimant did not contest these amounts and these periods in their brief on appeal.

The arbitration decision found claimant's rate to be \$635.05 per week. (Arb. Dec., p. 9) In a ruling on rehearing, the deputy workers' compensation commissioner held that an order was not required regarding how much defendants paid in temporary benefits or interest, as those matters were stipulated in the hearing report. (Ruling on application for rehearing, May 31, 2013)

The District Court found claimant's rate to be \$633.30 per week. (Ruling in order on petition for judicial review, p. 16) The rate determined by the District Court was not discussed as an issue on appeal by the Court of Appeals.

### CONCLUSIONS OF LAW

The first issue to be determined is if claimant is entitled to an award of wages for her spouse's lost time from work to transport her to medical appointments.

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

Iowa Code section 85.27(1) requires an employer to pay for reasonably necessary transportation expenses to get an injured worker to medical appointments. The Iowa Supreme Court held that this obligation may include paying the lost wages of a spouse if the lost wages were necessitated by time off work to transport the injured worker to medical appointments. Mycogen Seeds v. Sands, 686 N.W.2d 457, 468,469 (Iowa 2004).

To establish a claim for reimbursement of a spouse's wages under the travel expenses portion of Iowa Code section 85.27(1), claimant must prove the following:

1. The claimant has to prove the 'mode of transportation taken was reasonable and economical under the circumstances, taking into consideration the medical condition of the claimant.'
2. The claimant must produce evidence regarding the cost of the chosen manner of travel compared to the cost of 'other reasonably available means of transportation.'

Sands, 686 N.W. 2d at 468.

Once claimant produces the above evidence, the burden shifts to the employer to supply evidence that a more reasonable and economical transportation method exists. Id.

Claimant and her husband testified there was no reasonable means of transportation between her home in Algona, Iowa, and her medical appointments in Spencer, Iowa City, and Ankeny. As a result, there could be no reasonable

transportation more economical than her husband driving her to those appointments. The burden then shifts to defendants to show a more reasonable and economical transportation method was available to claimant, which claimant chose not to use. Defendants failed to make such a showing. Reynolds v. Algona Manor Care Center, No. 15-1095, slip op. at 9 (Iowa Ct. of Appeals, July 27, 2016). As a result, claimant has carried her burden of proof she is due reimbursement for wages her husband lost from work in order to transport her for medical care.

As noted in the finding of facts, claimant is due reimbursement at \$13.38 per hour for trips from October 3, 2011, through February 13, 2012. Those trips totaled 53.5 hours at \$13.38 per hour, or \$715.83. From October 11, 2012, through January 11, 2013, claimant is due reimbursement at \$15.38 per hour. These trips total 24 hours at \$15.38 per hour, or \$369.12. Claimant is due an award of reimbursement for her husband's lost wages to transport her to medical care of \$1,084.95 (\$715.83 + \$369.12).

Iowa Code section 85.30 provides:

Compensation payment shall be made each week beginning on the eleventh day after the injury, and each week thereafter during the period for which compensation is payable, and if not paid when due, there shall be added to the weekly compensation payments, interest at the rate provided in section 535.3 for court judgments and decrees.

The rate in this case was found, by the District Court, to be \$633.30 per week. Defendants ultimately paid all temporary benefits at a rate of \$642.61 per week, plus interest. (Ex. A, pp 10-11; Ex. H) Based on this, defendants are not liable for interest on any late or missing temporary benefit payments.

#### ORDER

THEREFORE IT IS ORDERED:

On remand, after review of the exhibits, record, the arbitration decision, findings of fact and conclusion of law, and the directions provided by the Iowa Court of Appeals, it is ordered defendants shall pay claimant one thousand eighty-four and 95/100 dollars (\$1,084.95) for wages for claimant's spouse that were lost to transport claimant to medical care.

Defendants shall pay the costs of this action of the appeal under rule 876 IAC 4.33, including the hearing transcript and other costs.

Defendants shall file reports to this agency on the payment of this award under rule 876 IAC 3.1.

Signed and filed this 16<sup>th</sup> day of March, 2017.

*Joseph S. Cortese II*

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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

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