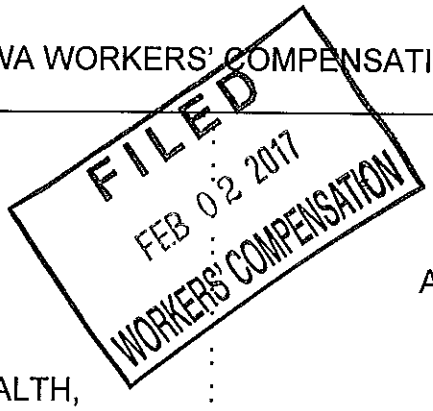
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



JENNY WRIGHT,

Claimant,

vs.

LINN COUNTY HOME HEALTH,

Employer,
Self-Insured,
Defendant.

File No. 5053031

ARBITRATION

DECISION

Head Note Nos.: 1108, 1803, 2500

STATEMENT OF THE CASE

Claimant, Jenny Wright, has filed a petition in arbitration and seeks workers' compensation from Linn County Home Health, self-insured employer defendant.

This matter was heard in Cedar Rapids, Iowa. The case was fully submitted on May 22, 2016. The record in this case consists of joint exhibits 1 - 10; defendant's exhibits A - C; as well as testimony from claimant, Cheryl King and Steve Estenson.

ISSUES

The parties submitted the following issues for determination:

1. Whether the alleged injury is a cause of permanent disability and, if so,;
2. The extent of claimant's industrial disability.
3. Whether there is a causal connection between claimant's injury and the medical expenses claimed by claimant.
4. Assessment of costs.

STIPULATIONS

The parties stipulated to a number of factual and legal issues in the Hearing Report and Order. The stipulations include in part;

1) Claimant sustained an injury on July 3, 2012 that arose out of and in the course of her employment with Linn County Home Health.

2) Claimant sustained a temporary disability, and temporary benefits are not in dispute.

3) Claimant's injury is an industrial disability.

4) Commencement date for any permanent partial disability benefits is November 7, 2014.

5) The parties stipulated claimant was single and entitled to four exemptions with gross wages of $514.72 and a weekly rate of $360.84[1].

6) Defendant is entitled to a credit of 40 weeks of permanent partial disability benefits at the rate of $354.34.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

FINDINGS OF FACT

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

Claimant, Jenny Wright, was 35 years old at the time of the hearing. She graduated from high school. She has taken some courses at a community college while she was in high school. She is a certified medical assistant and an oral med technician. (Transcript, page 8)

Claimant worked in the medical/nursing home area while she was still in high school and continued to do so at the time of the hearing.

Claimant began her employment with Linn County Home Health (Linn County) in 2008. She was a Home Health Aide. (Exhibit B, page 1) She resigned her position on January 14, 2016. (Ex. 1, p. 33) Claimant was making $17.86 per hour when she resigned. (Tr. p. 22) As a Home Health Aide claimant would perform services for her clients such as laundry, dish washing, grocery shopping, vacuuming and cleaning. (Tr. p. 13)

[1] The parties incorrectly stipulated to three exemptions and a weekly rate of $354.34 in the Hearing Report. The parties agreed by email on January 3, 2017 the correct number of exemptions was four and her weekly rate is $360.84. (Copy of the January 3, 2017 email in administrative file.) I accept this stipulation. Because of this new stipulation there is an issue of underpayment of temporary and permanent benefits that will be addressed in the decision.

On July 3, 2012 claimant was in a vehicle for work when she was rear-ended while she was at a stop light. Claimant called Linn County and was told to go to the hospital. (Tr. p. 9) Claimant testified that on the day of the accident only the right side of her neck and behind her ear hurt. (Tr. p. 10) Claimant started to have headaches a day or two after her accident. Claimant was referred to a pain clinic where she received a series of injections and a nerve ablation in September 2012. (Tr. p. 12)

Claimant returned to work after the accident. She testified her duties at work affected her health. Lifting could make her headaches more intense. (Tr. p. 13) Claimant said she purchased a cart that she would use at work to carry heavy laundry, groceries and trash. Claimant testified that eventually she had difficulty in completing paper work for Linn County. She attributed this to lack of sleep. (Tr. p. 15) She submitted her resignation effective January 15, 2016, as claimant felt she could no longer perform her work for Linn County. (Tr. p. 21) On cross-examination claimant admitted that her family situation also played a role in her decision to resign. (Tr. p. 46) At the time of the hearing claimant just started working for another agency providing health care and was going through orientation at the time of the hearing. She was working third shift, which claimant described as more limited in activities than her work for Linn County. Claimant said that the lifting in her new job is limited to no more than 25 pounds. (Tr. p. 23)

Claimant testified that due to her health condition she sleeps a lot and does not engage in as many out of home and outdoor activities with her children. She testified she was not having chronic headaches before her motor vehicle accident. (Tr. p. 27)

Claimant had formal lifting restrictions after the accident until claimant asked her physician to lift the restriction in December 2012. (Tr. p. 29) Claimant worked without restrictions for years after the injury for Linn County. Claimant returned to her pain doctor, Douglas Sedlacek, M.D. on September 8, 2014 to determine if she was at maximum medical improvement (MMI). At that time claimant told him she had occasional headaches. (Tr. p.40)

Claimant testified that before the accident she did not have trouble getting her paperwork completed for Linn County. She said that after the accident her paperwork went downhill. (Tr. p. 53) A review of claimant's annual performance evaluation shows that Linn County did have concerns about her paperwork before her accident. In July 2010 her evaluation identified as a goal to "Turn in paperwork in a timely manner." (Ex. B, p. 9) In her July 2011 evaluation she was advised to turn her paperwork in a timely and accurate manner. (Ex. B, p. 14) In claimant's June 2012 evaluation claimant was reminded to turn in paperwork in a timely manner and to check for accuracy. (Ex. B, p. 19) Similarly, in claimant's June 2013 evaluation she was advised to continue to work on improving the accuracy of her timesheets and the completeness of her documentation. (Ex. B, p. 24)

In her June 10, 2015 evaluation the defendant noted deficiencies in her scheduling clients, checking accuracy of her work and turning in paperwork timely. (Ex.

B, p. 29) On July 24, 2015 defendant provided very specific goals and set up a weekly timeline for her to meet her goals. (Ex. B, p. 30) On November 19, 2015 defendant established additional requirements for claimant so she could meet her goals including coming into the office at the end of the day to complete accurately her paperwork. (Ex. B, p. 32)

Claimant had a low back injury that pre-dated her employment that was not related to her employment with Linn County. Claimant was receiving narcotic pain medication for this condition before and after her Linn County-related injury. (Tr. p. 32) Claimant was receiving chiropractic care as well for her lower back. (Ex. 4, pp. 1 – 10) Claimant has been receiving pain medication for her lower back since she was 21 years old. (Ex. 1, p. 1)

Cheryl King, service coordinator for Linn County testified. Ms. King said that the services provided by Linn County are homemaker and not medical services. (Tr. pp. 61, 62) Claimant reported to Ms. King who was claimant's immediate supervisor. Ms. King said that claimant always had a difficult time with scheduling her time and requesting substitute clients. (Tr. p. 64) Ms. King testified that claimant always had problems, before and after the accident, in doing her paperwork. Ms. King noticed no change in claimant's (in)ability to do paperwork after the accident. (Tr. p. 66) Ms. King said that in the six months before claimant resigned Linn County set up a service plan to assist claimant in turning in correct paperwork. (Tr. p. 67) Ms. King said claimant never told her that claimant was having any issues with the physical aspects of her job or that the job was causing her headaches. (Tr. pp. 70, 75) Ms. King said that claimant would do light housework as a homemaker and that lifting was not a significant portion of her job.

Steve Estenson, risk manager for the defendant testified. He said that he was informed claimant was at MMI and received a permanent impairment rating of 8 percent and paid claimant the rating. (Tr. p. 87) Mr. Estenson said that claimant could have performed her work for Linn County as a home health aide with a lifting restriction of 20 – 25 pounds. (Tr. p. 91)

Robert Schultes, M.D. is claimant's primary care physician and was treating claimant's lower back. Claimant saw Dr. Schultes for an annual examination on August 9, 2012. (Ex. 1, p. 6) On March 25, 2013 Dr. Schultes performed an annual medical examination. Claimant complained of pain in the right side of her head. (Ex. 1, p. 7) On October 8, 2015 claimant reported to Dr. Schultes she continued to have chronic headaches. (Ex. 1, p. 12) On November 17, 2015 claimant reported that her chronic neck pain and headaches were gone. (Ex. 1, p. 16) On January 26, 2016 claimant reported to Dr. Schultes she still had neck pain, and part of his assessment was chronic right neck pain. (Ex. 1, p. 20)

On July 3, 2012 claimant went to the emergency room at St. Luke's Hospital in Cedar Rapids after being in a motor vehicle crash. She was complaining of pain in the

upper back and neck. (Ex. 2, p. 1) X-rays of the cervical and thoracic spine were normal. She was assessed with cervical strain and discharged. (Ex. 1, p. 5)

On July 5, 2012 Ann McKinstry, M.D. examined claimant. Her assessment was "Cervical and thoracic strain status post motor vehicle accident." (Ex. 3, p. 3) Work restrictions of 5 pounds and no forceful pushing and pulling were made by Dr. McKinstry. Claimant was referred to physical therapy. (Ex.3, p. 4) On July 27, 2012 the lifting restriction was increased to 20 pounds. Dr. McKinstry noted claimant went to a chiropractor that provided some relief and Dr. McKinstry did not object if claimant continued seeing a chiropractor on her own. She also assessed claimant with headaches. (Ex. 3, p. 7) On August 3, 2012 claimant reported improvement in her headaches and requested a change in her restriction. The lifting restriction was raised to 35 pounds. (Ex. 3, p. 8) On August 24, 2012 Dr. McKinstry assessed claimant with, "Cervical and thoracic strain and occipital headaches." (Ex. 3, p. 9) Dr. McKinstry referred claimant to a pain clinic. On September 14, 2014 Dr. McKinstry referred claimant for an MRI of the cervical spine. (Ex. 3, p. 10) On March 9, 2015 Dr. McKinstry wrote claimant's counsel. She stated that claimant would benefit from future chiropractic care and continue to take her ibuprofen and Flexeril. (Ex. 3, p. 36) On November 7, 2015 Dr. McKinstry provided a rating to the claimant. She noted that claimant's condition had markedly improved for where it had been and that claimant had limited range of cervical motion, but had compensated by turning her whole body. Dr. McKinstry wrote claimant could work without restrictions. (Ex. 3, p. 18) Dr. McKinstry provided an 8 percent whole body impairment rating for the claimant. (Ex. 3, p. 19)

Dr. Sedlacek provided greater occipital nerve and trigger point injections on August 31. 2012. (Ex. 2, p. 15) Dr. Sedlacek noted on September 9, 2012 the nerve block helped for a day but claimant's condition returned so that it was no better than before the injections. (Ex. 2, p. 6) On October 5, 2012 Dr. Sedlacek provided facet injection at the C2-C3 and C3-C4 levels, right. (Ex. 2, p. 18) Dr. Sedlacek noted that claimant had some improvement from the second set of injections and provided additional injections procedure on December 18, 2012 and February 6, 2013, April 23, 2013 and June 19, 2013. (Ex. 2, pp. 21, 24, 27) On September 19, 2013 Dr. Sedlacek performed radiofrequency lesioning. (Ex. 2, p. 34)

On September 8, 2014 Dr. Sedlacek noted claimant had marked improvement and that claimant now has occasional headaches. He advised claimant that she needs to be protective of her neck and found that she was at MMI. He noted her symptoms could return. (Ex. 2, pp. 8, 9)

Bradley Kruger, D.C. provided chiropractic treatment for claimant's headaches beginning July 19, 2012 through September 20, 2012. (Ex. 4, pp. 11 -38) Colette Murphy, D.C. provided chiropractic care for claimant's right cervical and upper cervical area from November 1, 2013 through May 14, 2015. (Ex. 5, pp. 1 – 14)

On April 14, 2015 claimant underwent a functional capacity examination by Brian Steffen, MPT. The results were considered valid. (Ex. 6, p. 4) The FCE recommended the following: Two-handed floor to waist 25 pounds, waist to shoulder 25 pounds, overhead lift 20 pounds with two hands and 20 pounds with left hand and 10 pounds overhead with right one hand. All of the lifting was on an occasional basis. (Ex. 6, p. 5) Claimant was limited to modified light work by her FCE. The FCE was not specifically or implicitly adopted by any physician, so while relevant, it does not carry substantial weight.

Michael Cullen, M.D. evaluated the medical and other case records and provided opinions concerning causation of claimant's current symptoms and whether she has a permanent injury— the report is undated. (Ex. C, pp. 1 – 8) He did not believe that a medical examination was necessary. Dr. Cullen stated,

> It is my opinion to a reasonable degree of medical certainty, Ms. Wright's reports of increases in headache intensify and pain later in August of 2012 were not due to the effects of the July 3, 2012 accident, but were, more likely than not, precipitated by stresses or factors unrelated to the automobile accident, including her activities of daily living, stresses she experienced taking care of and raising three children including a then ten-month old infant without significant assistance, and her involvement in a litigation process.

(Ex. C. p. 7) Dr. Cullen believed the medical care claimant received after August 3, 2012 did not improve her headaches and that any improvement in her headaches was likely due to other factors. (Ex. C, p. 8)

Claimant was able to work for Linn County for a number of years after her accident. Claimant testified that it was difficult and she was exhausted and would have her oldest child assist her around the house. Dr. McKinstry noted that claimant adapted to her injury by turning her whole body, at times, rather than her neck. Dr. Sedlacek recommended claimant be cautious about her neck. Claimant was advised to continue the over–the–counter medication and Flexeril. Based upon claimant's physical limitations I find that claimant has a 20 percent loss of earning capacity.

Claimant has requested medical expenses. (Ex. 7, pp. 1 – 18) Many of the fax copies of billings are unreadable. The summary of the expenses are readable and were not disputed by the defendant. Defendant paid all of the St. Luke's Hospital and St. Luke's Work Well Clinic bills so there is no controversy concerning these bills. (Ex. 7, p. 1) Defendant's summary of medical expenses paid show that they paid $61,169.82 in medical expenses. (Ex. A, p. 22)

Linn County Anesthesiologist was paid $10,519.94 by the defendant. Claimant's health insurance (assuming HI stands for health insurance) paid $420.00. Claimant's health insurance paid $734.98 for Cedar Rapids Chiropractic. Claimant paid out of pocket $78.39 to Cedar Rapids Chiropractic. Claimant paid $166.99 out of pocket for

prescriptions at Hy-Vee. (Ex. 7, p. 1) Claimant has requested reimbursement to her health insurer and her out-of-pocket expenses for an August 9, 2012 examination by Dr. Schultes. This was for her annual examination and was not for her work injury. That expense is not recoverable in this case.

REASONING AND CONCLUSIONS OF LAW

PERMANENT DISABILITY

The first issue is whether claimant has proven she has a permanent disability.

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

Dr. Cullen issued an opinion that claimant suffered a brief temporary aggravation of her existing proclivity to suffer chronic headaches which resolve as it related to her motor vehicle accident as of August 3, 2012.

I do not find his report convincing. Claimant was having chronic headaches throughout August of 2012 and until September 19, 2013 when Dr. Sedlacek performed radiofrequency lesioning. The treatment, reports of Dr. McKinstry and Dr. Sedlacek, claimant's chiropractic treatments after August 3, 2012 run counter to Dr. Cullen's opinion. While the medical evidence shows that in the past claimant had some headaches, the severity and number of her headaches increased after her accident and continued, albeit somewhat improved at the time of the hearing. I find the reports of Dr. Sedlacek and Dr. McKinstry to be more convincing. They had extensive contact

with claimant and provided extensive treatment to claimant. They related her continuing cervical pain and headaches to her July 3, 2012 work injury.

Claimant testified to continuing to have chronic headaches since her July 2012 accident. Defendant correctly points out there are many medical records that do not support claimant's testimony as to her suffering constant headaches after December 2012. The claimant's testimony, in comparison with the medical records, overestimated the severity of her health problems caused by her July 2012 accident. Defendant appears to minimize the effects the July 2012 accident has caused.

I find that claimant has proven by a preponderance of the evidence she has a permanent injury and impairment as a result of her work injury of July 3, 2012.

Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 593; 258 N.W. 899 (1935) as follows: "It 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 the 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. However, consideration must also be given to the injured worker's medical condition before the injury, immediately after the injury and presently; the situs of the injury, its severity, and the length of healing period; the work experience of the injured worker prior to the injury, after the injury, and potential for rehabilitation; the injured worker's qualifications intellectually, emotionally and physically; the worker's earnings before and after the injury; the willingness of the employer to re-employ the injured worker after the injury; the worker's age, education, and motivation; and, finally the inability because of the injury to engage in employment for which the worker is best fitted. Thilges v. Snap-On Tools Corp., 528 N.W.2d 614, 616 (Iowa 1995); McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

I found in this case that the work injury is a cause of permanent impairment to the body as a whole, a nonscheduled loss of use. Consequently, this agency must measure claimant's loss of earning capacity as a result of this impairment.

Pursuant to Iowa Code section 85.34(2)(u) , Iowa has adopted the so-called "fresh start rule." Industrial loss now is no longer a measure of claimant's disability from all causes after which we then apportion out non-work causes and leave in work related causes under the full responsibility rule. The percentage of industrial loss now is the loss of earning capacity from what existed immediately prior to the work injury. This means that an already severely disabled person before a work injury can have a high industrial loss because the loss is calculated in all cases from whatever his earning capacity was just before the injury and what it was after the injury, not the loss as compared to a healthy non-disabled person. In other words, all persons start with a 100 percent earning capacity regardless of any prior health or disability conditions. The

rationale for this approach is that an employer's liability for workers' compensation benefits is dependent upon that person's wages or salary. Consequently, the impact, if any, of any prior mental or physical disability upon earning capacity is automatically factored into a person's wages or salary by operation of the competitive labor market and there is no need to further apportion out that impact from any workers' compensation award. Roberts Dairy v. Billick, 861 N.W.2d 814 (Iowa 2015); Steffan v. Hawkeye Truck & Trailer, File No. 5022821 (App. September 9, 2009).

A release to return to full duty work by a physician is not always evidence that an injured worker has no permanent industrial disability, especially if that physician has also opined that the worker has permanent impairment under the AMA Guides. Such a rating means that the worker is limited in the activities of daily living. See AMA Guides to Permanent Impairment, Fifth Edition, Chapter 1.2, p. 2. Work activity is commonly an activity of daily living. This agency has seen countless examples where physicians have returned a worker to full duty, even when the evidence is clear that the worker continues to have physical or mental symptoms that limit work activity, e.g. the worker in a particular job will not be engaging in a type of activity that would cause additional problems, or risk further injury; the physician may be reluctant to endanger the worker's future livelihood, especially if the worker strongly desires a return to work and where the risk of re-injury is low; or, a physician, who has been retained by the employer, has succumbed to pressure by the employer to return an injured worker to work. Consequently, the impact of a release to full duty must be determined by the facts of each case.

Assessments of industrial disability involve viewing a loss of earning capacity in terms of the injured worker's present ability to earn in the competitive labor market without regard to any accommodation furnished by one's present employer. Quaker Oats Co. v. Ciha, 552 N.W.2d 143, 158 (Iowa 1996); Thilges v. Snap-On Tools Corp., 528 N.W.2d 614, 617 (Iowa 1995). However, an employer's special accommodation for an injured worker can be factored into an award determination to the limited extent the work in the newly created job discloses that the worker has a discerned earning capacity. To qualify as discernible, employers must show that the new job is not just "make work" but is also available to the injured worker in the competitive market. Murillo v. Blackhawk Foundry, 571 N.W.2d 16 (Iowa 1997).

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. Section 85.34.

Contrary to her testimony claimant did have difficulty in completing her paperwork before her accident. Paperwork is mentioned as an item to work on in claimant's annual performance evaluations with Linn County before her injury. However, the performance evaluation of June 2015 and follow up evaluations in July 7, 2015 and November 18, 2015 shows that Linn County was having more concerns about her paperwork and developed a weekly and daily plan to address her deficiencies at

work. Linn County developed service/remediation plans to address her deficiencies only in 2015.

Claimant is limited in the amount of physical activity she can perform. The FCE indicated that she could perform modified light activity. As no physician has specifically adopted these restrictions I do not find that these are her restrictions per se, but do find that claimant's ability to engage in medium and heavy work is compromised. She was cautioned by Dr. Sedlacek about using her neck. Claimant has worked in health care all her life. She has limited education. Her bilingual ability is a valuable skill.

I previously found claimant had a 20 percent loss of earning capacity. Based upon all of the factors for industrial disability, I find that claimant has a 20 percent industrial disability.

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. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

Evidence in administrative proceedings is governed by section 17A.14. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of evidence. The rules of evidence followed in the courts are not controlling. Findings are to be based upon the kind of evidence on which reasonably prudent persons customarily rely in the conduct of serious affairs. Health care is a serious affair.

Prudent persons customarily rely upon their physician's recommendation for medical care without expressly asking the physician if that care is reasonable. Proof of reasonableness and necessity of the treatment can be based on the injured person's testimony. Sister M. Benedict v. St. Mary's Corp., 255 Iowa 847, 124 N.W.2d 548 (1963).

It is said that "actions speak louder than words." When a licensed physician prescribes and actually provides a course of treatment, doing so manifests the physician's opinion that the treatment being provided is reasonable. A physician practices medicine under standards of professional competence and ethics. Knowingly providing unreasonable care would likely violate those standards. Actually providing care is a nonverbal manifestation that the physician considers the care actually provided to be reasonable. A verbal expression of that professional opinion is not legally mandated in a workers' compensation proceeding to support a finding that the care

provided was reasonable. The success, or lack thereof, of the care provided is evidence that can be considered when deciding the issue of reasonableness of the care. A treating physician's conduct in actually providing care is a manifestation of the physician's opinion that the care provided is reasonable and creates an inference that can support a finding of reasonableness. Jones v. United Gypsum, File 1254118 (App. May 2002); Kleinman v. BMS Contract Services, Ltd., File No. 1019099 (App. September 1995); McClellon v. Iowa Southern Utilities, File No. 894090 (App. January 1992). This inference also applies to the reasonableness of the fees actually charged for that treatment.

The documentation of the prescriptions at Hy-Vee is mostly unreadable. I am able to discern that most of the prescriptions were issued by Dr. Schulte. I am not able to determine what the prescriptions are for and whether they are related to claimant's work injury. Claimant has not carried her burden of proof for the prescription expenses at Hy-Vee.

Claimant has met her burden of proof for the medial expenses at St. Luke's Hospital, St. Luke's Work Well Clinic, Linn County Anesthesiologist and Cedar Rapids Chiropractic. Defendant shall reimburse the health insurance provider for their costs and reimburse claimant her out–of–pocket expenses. These expenses are:

For Linn County Anesthesiologist claimant's health insurance paid for $420.00. Claimant's health insurance paid $734.98 for Cedar Rapids Chiropractic. Claimant paid out of pocket $78.39 to Cedar Rapids Chiropractic.

UNDERPAYMENT OF RATE

The parties agreed that claimant's weekly rate for benefits is $360.84. Previously defendant paid benefits at the rate of $354.34. The difference is $6.50. Defendant shall pay claimant the additional $6.50 per week for any week it underpaid claimant's weekly rate.

COSTS

Claimant has requested costs of $100.00 for the filing fee in this claim. In my discretion and pursuant to 876 IAC 4.33, I award this cost to the claimant.

ORDER

THEREFORE, it is ordered:

That defendant shall pay claimant one hundred (100) weeks of permanent partial disability commencing November 7, 2014 at the weekly rate of three hundred sixty and 84/100 dollars ($360.84).

Defendant shall pay claimant the underpayment of weekly rate as set forth in the decision.

Accrued benefits shall be paid in lump sum together with interest pursuant to Iowa Code section 85.30 with subsequent reports of injury pursuant to rule 876 IAC 3.1.

Defendant is entitled to a credit of forty (40) weeks of permanent partial disability it has paid at the rate of three hundred fifty-four and 34/100 dollars ($354.34).

That defendant shall pay claimant's medical expenses as set forth above and shall reimburse the claimant for those expenses the claimant has personally paid pursuant to Iowa Code section 85.27.

That defendant shall pay the costs of this action pursuant to rule 876 IAC 4.33 in the amount of one hundred dollars ($100.00).

Defendant shall file subsequent reports of injury (SROI) as required by our administrative rule 876 IAC 3.1(2).

Signed and filed this 2nd day of February, 2017.

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.