BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CHARITY HARRIS,

Claimant,

vs.

MEDICAL LABORATORIES OF IOWA, OF EASTERN IOWA,

Employer,

and

ACCIDENT FUND INS. CO.,

Insurance Carrier,
Defendants.

File No. 5048209

ARBITRATION

DECISION

Head Note No.: 1803

STATEMENT OF THE CASE

Charity Harris, claimant, filed a petition in arbitration seeking workers' compensation benefits from Medical Laboratories of Eastern Iowa (a/k/a Med Labs) and its insurer, Accident Fund Insurance Company as a result of an injury she sustained on March 6, 2012 that arose out of and in the course of her employment. This case was heard in Cedar Rapids Iowa. The case was fully submitted, on March 20, 2015. The evidence in this case consists of the testimony of claimant, claimant's exhibits 1 through 15 and defendants' exhibits A through I.

ISSUES

1. Whether the alleged injury is a cause of permanent disability and, if so;
2. The extent of claimant's disability.
3. Whether claimant is entitled to reimbursement for certain medical expenses.
4. Assessment of costs.

The stipulations contained in the hearing report are incorporate by reference and are accepted. Defendant agreed that if the claimant established a claim for permanent benefits that defendants would be responsible for the costs set forth in Exhibit 14. (Transcript, page 5)

REASONING AND FINDINGS OF FACT

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

Charity Harris, claimant, was 34 years old at the time of the hearing. She graduated from high school. She completed paramedicine and EMT basic and intermediate courses at a community college. She received a phlebotomy certificate from a community college in 2001. (Exhibit 7, page 4)

At the time of the hearing claimant was still employed by Med Labs. She was working the same job she had before her injury. While clamant is performing the same job, she testified she needs to shut lights off or wear sunglasses due to her migraines. (Tr. pp. 32, 33) Claimant provided four affidavits from current employees and one former employee supporting her testimony that after her injury she is light sensitive and would work with the lights off or would wear sunglasses. (Ex. 11, pp. 1 – 4) Claimant is no longer allowed to drive a Med Lab vehicle. (Tr. pp. 31, 47) She does have a license and is allowed to drive. She occasionally uses her vehicle for work related driving. Claimant testified that she misses part of a day once every 6 weeks or so due to migraines. (Tr. p. 38) Claimant continues to work 40 hours a week and her earning are the same as before her injury. (Tr. p. 40) Claimant is able to go bowling once a week, watch her children's' ball games and stay in a camper during the summer. (Tr. pp. 56 – 58)

Claimant was notified by the defendants that they would not continue to pay for medical expenses on January 7, 2013. (Tr., p. 50; Ex. H, p. 7) At the time of the hearing, claimant was taking Topamax to prevent migraines and when she has a migraine she takes Imitrex and Reglan for vomiting. (Tr. p. 18)

Claimant was driving a vehicle in the course of her employment for Med Labs on Mach 6, 2012 when she was struck by another vehicle from behind while waiting for a light to change at an intersection. Claimant struck her head against the sun visor of her vehicle. Claimant was having pain in her forehead and blurred vision. She was taken to the hospital by ambulance. (Ex. 2, pp. 1, 2) Claimant was seen by Brian Shedek, D.O., at St Luke's Hospital in Cedar Rapids Iowa.

Dr. Shedek noted in addition to blurry vision claimant was complaining of some nausea. Dr. Shedek's assessment was:

ASSESSMENT:

1. Motor vehicle collision.
2. Closed head injury.
3. Cervical muscle strain.

(Ex. 2, p. 4)

Claimant returned to St. Luke's Hospital on March 13, 2012 because she was still symptomatic and feeling nauseous. Matt McGee, PA-C, assessed claimant with whiplash and thoracic musculoskeletal strain. (Ex. 2, p. 7)

Shirley Pospisil, M.D., examined claimant on March 14, 2012. Dr. Pospisil's assessment was, "Neck pain and headache with nausea and vomiting and photophobia following an [sic] motor vehicle accident." (Ex. 4, p. 1) On March 27, 2012, claimant was complaining of chronic headaches since the motor vehicle accident. Claimant described light sensitivity and nausea cause by her headaches. Dr. Pospisi's assessment was, "Neck pain following motor vehicle accident with migraine, suggestive of postconcussive syndrome." (Ex. 4, p. 3) Claimant went for chiropractic treatment after her injury. A note on June 15, 2012 from Dr. Pospisil stated claimant was to continue with her chiropractic treatment. (Ex. 4, p. 14)

Dr. Pospisil continued to treat claimant for neck pain and head pain until August 20, 2012. On July10, 2013, Dr. Pospisil responded to written question posed by claimant's counsel. (Ex. 4, pp. 18, 19) Dr. Pospisil agreed that the motor vehicle accident of March 6, 2012 was a substantial contributing factor in bringing about claimant's neck/upper back pain and headaches. (Ex. 4, p. 18) Dr. Pospisil also agreed that without accommodation concerning light in her work area, it would be difficult for claimant to perform her work. (Ex. 4, p. 18) Dr. Pospisil ordered a TENS unit for claimant. (Tr. p. 16)

Claimant was referred to the Physicians Clinic of Iowa Neurology Clinic and saw Jill Miller, ARNP, on April 9, 2012. ARNP Miller's assessment was, "Post-traumatic headache, Occipital neuralgia." (Ex. 5, p. 5) ARNP Miller prescribed medicine for claimant's headaches, referred her to a pain clinic for occipital blocks. (Ex. 5, p. 6) Claimant was also seen by Shereen Chang, M.D., at the Physicians Clinic of Iowa, Neurology Clinic. On March 8, 2013 ARNP Miller wrote:

> Migraines were starting to get under control with Topamax and then Workmans Comp refused to pay for her medications and her insurance would not cover them either. When this happened her migraines increased back to 3-4 per week. She will continue on Topamax 50 mg twice a day and use the Treximet or Imitrex as needed to abort the migraines when they do occur. She continues to have occipital neuraliga and has been injected twice with mild relief. We will set her up with PT and see if this can help with the occipital neuraliga. She will follow up in 3 months.

(Ex. 5, p. 26)

On December 5, 2012, Dr. Chang noted claimant was having two to three migraines per week. (Ex. 5, p. 19) On June 4, 2013, ARNP Miller noted claimant was having 17 migraines a month. (Ex. 5, p. 32) In September 2013 claimant was having 10 headaches a month. (Ex. 5, p. 33) On September 18, 2013, Dr. Chang and ARNP Miller responded to a letter of claimant's counsel. They stated the claimant's diagnosis

was Post-Traumatic Headache and Occipital Neuralgia. They opined that the motor vehicle accident on March 6, 2012 was a substantial contributing factor for claimant's neck, upper back pain headaches and occipital neuralgia. They agreed that light aggravated claimant's migraines. They also agree that the treatment provide was reasonable and necessary and the charges reasonable and customary. (Ex. 5, pp. 38 – 40)

Chad Abernathey, M.D., examined the claimant on December 12, 2012. Dr. Abernathey was asked to provide a neurosurgical opinion regarding the claimant's presentation. (Ex. A, p. 1) Dr. Abernathey's neurodiagnostic investigation lists a review of MRI and CT scan of the C-spine. (Ex. A, p.1) Dr. Abernathey's records do not show a thorough neurological examination of the claimant, other than his neurodiagnostic investigation. Dr. Abernathey's impression was:

> IMPRESSIONS/RECOMMENDATIONS:
>
> Ms. Charity Harris clinically presents with chronic cervical strain following a work related motor vehicle accident. I do not recommend an aggressive neurosurgical stance due to a paucity of clinical and radiographic findings. I favor further conservative treatment in this setting. Her neural elements are well decompressed in her studies and her neurologic function is intact. I discussed my opinion with the patient in detail. She states she fully understands the breadth of our conversation and concurs. I will be available for further consultation if so desired in the future.

(Ex. A, pp. 1, 2)

In a letter dated December 12, 2012 to the insurance carrier Dr. Abernathey stated that claimant's diagnosis was chronic cervical strain. He stated claimant had no objective findings and considered the claimant to be at MMI. Dr. Abernathey did not believe any surgical intervention was warranted. (Ex. A, p. 3; Ex. 6, p.1) Dr. Abernathey did not specifically address the claimant's migraines and light sensitivity, even though she was receiving active treatment before and after his evaluation. I do not find his opinion convincing. Dr. Chang and ARNP Miller continued to provide treatment for claimant's migraines and pain that was effective after Dr. Abernathey's opinion. While Dr. Abernathey's opinion that claimant is not a surgical candidate is undisputed, that conclusion does not mean that claimant's neck, light sensitivity, and migraines do not limit her ability to work.

On March 2, 2014, Stanley Mathew, M.D., performed an independent medical examination at the request of the claimant. (Ex. 1, pp. 5 – 7) Dr. Mathew's impression was:

> IMPRESSION:
>
> 1. Chronic neck pain.
>
> 2. Traumatic brain injury

3. Myofascial pain.

4. Chronic low back pain.

5. Migraines

(Ex. 1, p. 7) Dr. Mathew stated he believed the motor vehicle accident constituted a substantial contributing cause for claimant's conditions. He recommended chronic pain management, physical therapy and chiropractic treatment. (Ex. 1, p. 7) Dr. Mathew provided impairment ratings for claimant's conditions. He provided a 10 percent whole body rating for brain injury. He provided 5 percent whole body for her neck condition and neck pain. He also provided a 5 percent impairment rating for her low back. In total, he provided a 20 percent whole body impairment rating. (Ex. 1. p. 7) Dr. Mathew provided the restrictions that stated claimant would have difficulty working in a competitive environment and she should avoid prolonged standing, walking, bending, lifting, squatting and twisting. She was also to avoid bright lights and loud noises. (Ex. 1, p. 7) He also stated that claimant may have issues with focus with her chronic migraines as well as her traumatic brain injury. On February 4, 2014, Dr. Mathew responded to questions from claimant's counsel. Dr. Mathew was provided additional chiropractic records and Robert Broghammer, M.D., report and records referenced by Dr. Broghammer. (Ex. 1, pp. 8, 9) Dr. Mathew did not change any of his previous opinions based upon a review of these new documents. (Ex. 1, pp. 8, 9)

I find that claimant is limited by her injury and has limitations of performing prolonged work that involves significant standing, walking and twisting of her neck. She is also to avoid bright lights and loud noises.

On February 3, 2015, Dr. Broghammer performed a chart review at the request of the defendants. Dr. Broghammer was critical of the impairment ratings that Dr. Mathew provided. Dr. Broghammer also criticized how Dr. Mathew utilized the AMA Guides for the Evaluation of Permanent Impairment, Fifth Edition. While the defendant does not have any burden of proof as to this issue, Dr. Broghammer does not offer a suggestion as to what table(s) in the AMA Guides should be utilized in examining claimant's migraines, occipital neuralgia, neck and cervical pain.

Specifically, Dr. Broghammer was critical of Dr. Mathew's evaluation of the cervical and lumbar spine and her lower back. Claimant did not testify to low back injury and the claimant did not argue in her brief that she was requesting any award for a low back injury.

While it is true that on the day of the injury claimant did not complain of neck or cervical pain, the claimant was complaining of neck pain and started receiving treatment by Dr. Pospisil on March 14, 2012. (Ex. 4, p. 1) Dr. Broghammer's failure to consider claimant's neck and cervical complaints is not supported by the evidence.

Dr. Broghammer wrote:

> Rather, what Ms. Harris has is evidence of an ongoing chronic headache disorder that was allegedly temporarily exacerbated by the work injury. Realize that a headache is a very subjective thing. There is no way to prove one way or the other whether a headache exist. In my medical opinion it is not appropriate to rate a headache disorder without any objective findings and certainly not appropriate to rate Ms. Harris for a mental status, cognition, or highest integrative function deficit.

(Ex. E, pp. 11, 12) Dr. Broghammer stated that claimant's injury is consistent with only a slight concussion to the forehead. And that claimant had a pre-existing migraine and there was no evidence that the injury caused a headache disorder.

I do not find Dr. Broghammer's report at all convincing. The medical evidence, including Dr. Pospisil, Dr. Chang and ARNP Miller and Dr. Mathew records shows that claimant had a much more serious injury that a "very slight contusion to her forehead." She has concussion symptoms and has had significant cervical pain, increase in migraines and light sensitivity.

On July 31, 2008, claimant had a physical examination by Shannon Throndson, M.D. It was noted claimant had occasional migraine headaches which Imitrex worked well. (Ex. B, p. 1) Claimant testified she had not taken Imitrex for years before her March 3, 2012 injury. (Tr. p. 19)

Claimant was receiving chiropractic care before her injury of March 3, 2012. Claimant had chiropractic treatment on November 29, 2011, February 24, 2012 and February 29, 2012. (Ex. D, pp. 1 – 6) Claimant testified that the treatments before her accident were general adjustments, but after the accident she went due to acute pain. (Tr. p. 21) After the injury, she went to the chiropractor frequently, sometimes twice a day. She testified that at times it was the only treatment that would provide relief from her migraines. (Tr. p. 22) Claimant received authorization from her employer to receive chiropractic care on March 8, 2012. (Ex. 13, p. 34) The bill for those services are found in Exhibit 13, pages 6 – 20. The last entry in the chiropractic bills is not medical treatment, but a bill defendants incurred in ordering records. Claimant is not requesting payment of that bill.

Claimant was seen at Chiropractic Health Care Associates by David Swope, D.C., on March 8, 2012 as a result of the motor vehicle accident of March 6, 2012. (Ex. 3, p. 2) Claimant was treated for pain in the muscles of the lumbar spine, the muscles of the thoracic spine and the muscles of the posterior neck. (Ex. 3, p. 2) Claimant received frequent chiropractic treatment through May 2014. And claimant continued to receive chiropractic treatment on a regular basis up until the time of the hearing.

Claimant has received bills for treatment by Dr. Channg and ARNP Miller in the amount of $606.00. (Ex. 13, pp. 2 – 5) These charges were incurred after defendants no longer authorized treatment. Claimant also incurred pharmacy charges after the defendants stopped authorizing medical care. (Ex. 13. pp. 21, 22) Claimant testified these prescriptions were ordered by Dr. Chang and ARNP Miller. (Tr. p. 25)

Claimant is performing her work at Med Labs, with the accommodation of reducing her exposure to light by turning off lights and wearing sunglasses.

The clamant is still subject to migraines, however her medication has reduced the amount of time claimant has had to miss work due to migraines. Claimant is intelligent and motivated to work. She has shown the ability to be trained in medical areas and has some aptitude in the lab. She was 34 years old at the time of the hearing. With claimant's cervical pain, migraine and light sensitivity there are many physical jobs and jobs that expose her to regular light that she cannot perform. I find that claimant has a 20 percent loss of earning capacity.

CONCLUSIONS OF LAW

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).

The first issue to determine is whether claimant has a permanent impairment as a result of her March 6, 2012 motor vehicle accident. I find that the claimant has proven by a preponderance of the evidence that she has a permanent injury as a result of her March 6, 2012 injury. I find the opinions of Dr. Chang, ARNP Miller, Dr. Mathew and Dr. Pospisil to be more convincing that the opinions of Dr. Abernathey and Dr. Broghammer.

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 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, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. 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).

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.

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). If the claimant had a preexisting condition or disability that is materially aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (1961).

I previously found that claimant had a 20 percent loss of earning capacity. I find that claimant has a 20 percent industrial disability. This entitles claimant 100 weeks of permanent partial disability benefits.

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 defendants sent a notice to claimant on January 7, 2013 that they were denying her claim as she was at maximum medical improvement (MMI). The answer to interrogatory by defendants state that this is the notice they provided to claimant that they were no longer going to pay any medical benefits as claimant had reached MMI. (Ex. H, p. 6) The practice in this case of denying additional medical treatment after a claimant has reached MMI is, at best, an incorrect interpretation of Iowa law concerning medical treatment an injured worker is entitled to receive. Injured workers are entitled to lifetime medical benefits for a work injury even if no significant medical improvement is anticipated and the care is palliative.

Defendants stopped paying for claimant's medication. The March 8, 2013 records of ARNP Miller show that when claimant was not receiving medication her migraine condition got worse and improved after medication was resumed. (Ex. 5, p. 26)

Dr. Chang, ARNP Miller and Dr. Pospisil were all authorized by the defendants to provide medical care to the claimant. (Ex. 8, p. 2) Dr. Pospisil recommended claimant continue to see a chiropractor. (Ex. 4, p. 14) Dr. Pospisil referred claimant to Dr. Chang and ARNP Miller. Since Dr. Pospisil is an authorized physician, her recommendation that claimant continues chiropractic care and neurological care makes the chiropractic care authorized.

Defendants shall pay the medical expenses that are found in Exhibit 13. The claimant has shown that the treatment she received after medical care was no longer authorized was beneficial. Claimant has proven that the care she was receiving was more beneficial than the care (none) which was offered by defendants after they denied her claim on January 7, 2013. Defendants shall pay for this medical care as well. Defendants shall pay any interest, late fees or other charges that have been imposed on the claimant due to non-payment of these medical expenses.

Claimant has requested costs for the filing fee, service cost and a report of Dr. Mathew for a total of $462.52. (Ex. 14, p. 1) I find that claimant is entitled to these costs under to 876 IAC 4.33 and pursuant to my discretion I award claimant these costs.

ORDER

Defendants shall pay one hundred (100) weeks of permanent partial disability benefits at the rate of four hundred fifteen and 54/100 dollars ($415.54) per week commencing on March 7, 2012.

Defendants shall pay any past due amounts in a lump sum with interest as provided by law.

Defendants shall pay medical expenses as set forth in this decision.

Defendant shall pay costs as set forth in the decision.

Defendants shall pay the future medical expenses of the claimant necessitated by the work injury.

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

Signed and filed this 26th day of August, 2015.

JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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JFE/kjw

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.