BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MAUREEN KOSLA,

Petitioner,

vs.

NO: 13 WC 33127
21 IWCC 0062

COOK COUNTY,

Respondent.

ORDER

This matter comes before the Commission on Respondent and Petitioner's timely Motions to Recall the Commission Decision to Correct Clerical Error pursuant to Section 19(f) of the Act. The Commission having been fully advised in the premises finds the following:

The Commission finds that said Decision should be recalled for the correction of a clerical/computational error.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Commission Decision dated February 10, 2021, is hereby recalled pursuant to Section 19(f) of the Act. The parties should return their original decisions to Commissioner Kathryn A. Doerries.

IT IS FURTHER ORDERED BY THE COMMISSION that a Corrected Decision shall be issued simultaneously with this Order.

Kathryn A. Doerries

DATED: MAR 8 - 2021
022321
KAD/bsd
043

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse ☐	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify down	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MAUREEN KOSLA,

Petitioner,

vs.

NO: 13 WC 33127
21 IWCC 0062

COOK COUNTY,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the parties herein and notice given to all parties, the Commission, after considering the issues of causal connection, temporary total disability, medical expenses, and prospective medical, permanent disability, penalties and attorney's fees, and being advised of the facts and law, vacates in part, and modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission affirms and adopts the Decision of the Arbitrator in part, and vacates in part, viewing the evidence differently than the Arbitrator with respect to the awards of the revised life care plan, personal assistant services, §19(k) and §19(l) penalties and §16 attorney's fees. The Commission vacates the award of personal assistant services for four hours per day, seven days per week, from August 1, 2017, through the last hearing of April 18, 2019, vacates the prospective award of full-time personal assistant services should Petitioner participate in an out-patient opioid weaning program, vacates the award of a revised life care plan, vacates the Arbitrator's award of §19(k) and §19(l) penalties and §16 attorney's fees, and further, modifies the Decision for the reasons set forth below.

Medical and Prospective Medical

The Commission agrees with the Arbitrator's Decision with respect to the award of past

and prospective medical expenses except as it relates to the award of a life care plan and personal assistant services.

Life Care Plan

According to the Arbitrator's Decision, Respondent presented a motion to bar (RX18), the report and testimony of Henry Brennan, ("Brennan") a certified life care planner, retained by Petitioner's attorney. (T, 11/18/19, 33-35) Respondent's counsel argued that Brennan is not a physician and is not qualified to address the question of whether companion care for Petitioner is reasonable and necessary under §8(a) of the Act. Respondent's counsel also maintained that Brennan's projections as to the future cost of such care is speculative in nature. (T. 11/18/19, 11-12) Petitioner's counsel argued that Brennan's experience as a guardian and life care planner for disabled individuals uniquely qualified him to assist the Arbitrator in determining the type of care Petitioner requires. The Arbitrator denied Respondent's motion and allowed Brennan to testify. (T. 11/18/19, 16-18)

Brennan testified that he owns and operates a company called "Rehab Assist, Inc." The Commission agrees with the Arbitrator's ruling to allow Brennan to testify, however, also agrees with the Arbitrator's Order to exclude the bill from Rehab Assist, Inc. ($10,633.75) from the award of medical expenses. The Commission finds that the life care plan in this case is not reasonable and necessary, nor are the majority of the recommendations therein. The Commission is not persuaded that Brennan's expertise is germane to the circumstances in this case. Brennan testified that he has given over 300 depositions, and testified at jury trials on 55 or 60 occasions but he could not recall previously testifying at the Illinois Workers' Compensation Commission. (T. 11/18/19, 24-25) His life care plan is most often used for civil litigation. (T. 11/18/19, 57-58) It would certainly appear Brennan's expertise is uniquely suited to guardianship and personal injury cases, where the costs for ongoing and future medical can be converted to present cash value for settlement or other planning purposes.

For instance, Brennan testified that he surveyed vendors for the prescription medications and noted the prices for them as of July of 2017. (T. 11/18/19, 36-37) The Commission finds that charges for this service are not reasonable or necessary since the Petitioner's medications did not need to be priced. In a compensable workers' compensation case, the Respondent will be liable for all past, present and future reasonable, necessary and related medical expenses, subject to the fee schedule or contract negotiated fee, whichever is less, pursuant to §8(a) and §8.2 of the Act, however, the costs are payable as they are incurred. The Commission has no authority to commute the cost of future medical benefits, to which Petitioner is entitled, to an amount payable in a lump sum.

When there is a dispute, such as in the case at bar, the compensable medical costs will be determined at the time of litigation, or if parties choose, via settlement of the case, by the billed medical expenses. The amount that will be paid to the provider is based on the fee schedule or the employer's workers' compensation carrier's negotiated contract rate, or for some pharmaceuticals, based upon the actual charges incurred.

In addition, Brennan admitted there could be changes to medications thus the life plan is

speculative in that regard. (T. 11/18/19, 56-57) In Petitioner's case, since the matter is litigated, Petitioner will retain her rights under §8(a) to reasonable, related and necessary medical expenses subject to §8.2 and other relevant provisions of the Act. In the event the parties choose to engage in settlement negotiations, Petitioner could retain her §8(a) rights, subject to §8.2 and all other relevant provisions. Alternatively, the parties can agree to settle with provisions for future medical satisfied by funding a Medicare Set-Aside, in which case the projected cost of future medical will be governed by guidelines established by the Centers for Medicare and Medicaid Services, thus the Commission does not appreciate the necessity of Brennan's service.

Also, the estimated and projected cost of companion care in the subject case, premised on services the family members are doing now, is contrary to the law. (See *Rousey v. Industrial Comm'n*, 224 Ill. App. 3d 1096, 1101, 587 N.E.2d 26, 29, 1992 Ill. App. LEXIS 100, *8-9, 167 Ill. Dec. 144, 147 spouse's housekeeping services and supervision of employee were not necessary medical expense.)

Brennan agreed the life plan would also change based on variables such as whether or not Petitioner could drive, or take public transportation or use her left hand (T. 11/18/19, 46) Brennan testified PX27 was a summary sheet of time Petitioner's husband spent and activities he did for Petitioner. PX27, the Excel spreadsheet that Brennan relied upon, lacks foundation and further, the time entries in many instances appear to be inflated. Mileage for going to any family friend's funeral, family cemetery plot, family outing or family visits are not the type of transportation charges contemplated by the Act. Petitioner's husband testified that he put some of the charges in the spreadsheet "because I was questioned as to how much more activity I had to be involved in that I wouldn't be involved if my wife were able to live a normal life, if she could drive and do things on her own." (T. 11/18/19, 168)

Further, Petitioner's husband documented that bathing/drying his wife took 90 minutes per day, yet he testified that he merely helps her in and out of the tub, and she bathes herself. (T. 11/18/19, 95-96, PX 27). He testified that his wife "can't really get the mail," however the Commission notes that one of the surveillance videos captured her doing just that. (T, 11/18/19, 97; RX9; RX13)

Regarding a foundation for the expenses, Petitioner's husband testified that he created that spreadsheet within the last 10 days. (T. 11/18/19, 152, 160) However, he created a document that logged countless hours expended, meals and mileage claims without any contemporaneous receipts or records. (T. 11/18/19, 130-131, 152-153, 161, 168-169) Further he included many restaurants that they frequented as a couple and they would have gone to prior to the accident. (T. 11/18/19, 173) Those entries are not relevant to the issues at bar nor should be counted in the hours that he is spending giving his spouse "weekly assistance."(T. 11/18/19, 125)

A second spreadsheet was created, per Petitioner's husband's testimony, more contemporaneously. (T. 1/16/19, 14-15) These later accountings appear to be equally inaccurate i.e. "assist Mo with bath and nighttime attire" estimated at 79 minutes; "one load of laundry" estimated as 65 minutes of time. (PX42) This infers that he may be including the actual time it takes for the machines to wash the laundry. The Petitioner's husband testified he spends six hours of time on laundry per week. (T. 1/18/19, 97) As a basis for establishing time, the figures on the spreadsheet relied upon by Brennan are unreliable. The PX42 spreadsheet also included an entry

documenting "rinse empty bottles and cans, dispose of recyclables" clearly a shared family function.

Brennan testified that he had included home renovation for a walk-in shower that he estimated would cost $7,500.00 to $12,000.00. (T. 11/18/19, 86) Petitioner's house has two walk-in showers. (T. 11/18/19, 174) Brennan did not look into the cost of a safety bar that might accomplish the same goal. (T. 11/18/19, 86)

Other than the recommendation for a personal assistant, the remainder of the life care plan is no more than a reiteration of the medical care currently recommended by the treating and examining physicians.

While Brennan may be qualified to render opinions regarding personal injury cases, or for guardianship, his expertise does not translate to projections for reasonable and necessary medical care in this case. The Commission agrees that the Petitioner should undergo a plan of opioid weaning as recommended by Dr. Konowitz and psychological counseling with psychiatric oversight of medication as recommended by both pain management experts, however, notes that Petitioner has otherwise thrived under the care of her medical providers with no need for the subject, or prospective, revised life care plan. Therefore, the Commission vacates the Arbitrator's award of a revised life care plan.

Past and Prospective Personal Assistant Services

Brennan testified that Petitioner's counsel retained him to prepare a life care plan and as a part of that plan, Petitioner requires a personal assistant to assist her with such activities as grooming, shopping, housekeeping and meal preparation, but not skilled nursing care. He modeled the personal assistant/companion care on services that Petitioner's family members currently provide. (T. 11/18/19, 39) No medical provider up to that point had recommended that a personal assistant be provided and the Commission finds the recommendation to be contrary to the law and not reasonable under the circumstances at bar for the reasons discussed below.

The Commission notes that Dr. Candido testified that he never authored a recommendation that the Petitioner require assistance until Petitioner's attorney wrote him and requested responses to interrogatories. (RX5, 48; DepX2) In the reply letter to Petitioner's attorney, Dr. Candido stated "it is medically necessary that she have assistance for her personal grooming and hygiene to assure she does not become more depressed and despondent." (RX5, DepX2) The Commission notes that at least in that response, Dr. Candido simply opined that Petitioner needed assistance; when asked, he agreed that assistance had heretofore been from family members. (RX5, 46) Petitioner's family testified that they provided assistance to Petitioner, both her children and her husband testified. Dr. Candido agreed that a work buddy could essentially perform the same services in a work environment. (RX5, 72)

As the Arbitrator noted, in *Rousey*, a case in which the Petitioner sustained a traumatic brain injury, the Court upheld the Commission's denial of spousal compensation. The Commission notes the court in *Rousey* held that the very things Brennan suggested for an award of personal assistant services for Petitioner, do not form the basis for an award of compensation to a spouse in Illinois:

> A majority of cases have recognized the general rule that shopping, cooking, and other household services performed by a spouse or other family members are considered gratuitous and cannot form the basis for an award for attendant care services. *(DeLong v. 3015 West Corp.* (Fla. App. 1986), 491 So. 2d 1306.) The rationale for denying compensation for ordinary household duties when performed by a spouse is that a spouse performs such activities for both [***9] parties as part of the marital relationship. *(Currier v. Roman L. Hruska U.S. Meat Animal Research Center* (1988), 228 Neb. 38, 421 N.W.2d 25.) As one court observed, one spouse has agreed to care for the other "in sickness and in health." *(Spiker v. John Day Co.* (1978), 201 Neb. 503, 530, 270 N.W.2d 300, 314.) For this reason, a distinction has been drawn, for compensation purposes, based on the status of the individual performing those services. Although not necessary to the decision in *Burd,* this court embraced that concept when it stated that mere household duties provided by a spouse who is otherwise "obligated" to perform them by virtue of the marital relationship are not compensable, whereas a different result may obtain when an individual not legally or otherwise required to perform the services does so.

Rousey v. Industrial Comm'n, 224 Ill. App. 3d 1096, 1101, 587 N.E.2d 26, 29, 1992 Ill. App. LEXIS 100, *8-9, 167 Ill. Dec. 144, 147.

While Petitioner's husband is not seeking compensation, Petitioner is asking the Respondent to hire someone to assist in her personal grooming and for the other responsibilities that were itemized on the Excel spreadsheet, in order to relieve her husband, which, the Commission finds, is, in effect, a form of compensation to him. Although prescriptions and groceries can be delivered, putting away groceries, laundry, and undeniably other tasks that Petitioner's husband described must be assisted, however, Petitioner has not sustained her burden of proving that she requires a personal assistant to do those things.

The *Rousey Court* examined another case and established the criteria for compensating caretakers: "Significant to *Burd* were two factors, the type of duties and the status of the party rendering them. In that case, claimant required 24-hour-per-day nursing care because of his paraplegia, which his fiancée was not legally obligated to provide." *Rousey v. Industrial Comm'n,* 224 Ill. App. 3d 1096, 1992 Ill. App. LEXIS 100, *8, 167 Ill. Dec. 144, 146

In this instance, Petitioner has established that the type of duties include, but are not limited to, personal grooming assistance, opening containers, bottles, makeup, lifting and carrying, general household chores and driving. Petitioner's husband is rendering assistance in these areas. Petitioner's husband testified that he works out of his home, and on a busy day, four hours, but he is paid for a 40-hour week. (T. 11/18/19, 153-154) He further testified that he starts his day at 5:00 in the morning to try to get most of his written communications written and e-mailed and then he waits. *Id.* Thus, while the Petitioner's husband also testified he changed jobs, he has also admitted that his job allows him "to help her periodically through the day." (T. 11/18/19, 153)

The Commission acknowledges that Petitioner testified she does not drive anymore, (T, 11/18/19, 244, 246, 287). However, on February 26, 2017, Dr. Candido wrote that he had not recommended Petitioner operate a motor vehicle, "While she insists on doing so for very brief periods of time close to home, and while I comprehend the benefits of her of reducing her sense of isolation by doing so, I cannot medically advocate for her doing so." (PX5, DepX2, 12) After reviewing video surveillance of Petitioner driving, Dr. Candido authored an addendum letter to Petitioner's attorney that stated his opinions solicited in February 2017 remain unchanged. Dr. Candido also testified that he and Petitioner had many conversations that "go on for hours at a time" and that were not documented in his notes. (PX5, 64-66) The Commission infers from that and the following statement, that Dr. Candido understands Petitioner's reasons for driving. Dr. Candido testified on February 28, 2019, "Despite my proclamation that she ought not to operate a motor vehicle, a couple of times a week she feels compelled to do so because of her sense of isolation and her experience of cabin fever." (PX5a, 35)

Dr. Konowitz opined that Petitioner could drive (RX7, 13-14) despite Dr. Candido's opinion and the Marianjoy assessment, an opinion which comports with Dr. Konowitz's opinion that Petitioner's opioid use has lost its efficacy. (RX7, 26) Dr. Candido also concurs that Petitioner's opioid use has no bearing on her cognitive ability. (PX5, 19)

Therefore, given Dr. Candido's testimony and the fact that Petitioner has a driver's license that she retains at minimum for identification, the Commission is not persuaded that Petitioner never drives or never intends to drive. Petitioner could have traded her driver's license for a state identification card had she not wanted to have the option. Petitioner's husband also testified that he has two cars. (T. 11/18/19, 123)

Petitioner's daughters testified that Petitioner showers by herself, needs help dressing but can manage her socks. (T. 11/18/19, 185, 206) Again, Petitioner's house has two walk-in showers. (T. 11/18/19, 174) The Commission appreciates that Petitioner is maintaining her family traditions to the best extent possible, by participating with visits to friends, family outings, and even given the fact that she was driving independently. Dr. Konowitz opined that Petitioner does not require a personal assistant. (RX7, 35) When she arrived at his office on January 17, 2018, she reported that she arrived with no assistance. (RX6; RX7, DepX 5) In this respect, regarding the need for a personal assistant, the Commission finds that Dr. Konowitz's opinion is more credible than Dr. Candido's.

Therefore, based on *Rousey*, and the factors enunciated in *Burd*, the Commission vacates the Arbitrator's award of four hours of personal assistant services per day, seven days per week beginning August 1, 2017, through the last hearing of April 18, 2019, and for the same reasons, the award of prospective personal assistant services are vacated including, but not limited to increased personal assistant services awarded in conjunction with Petitioner's prospective opioid weaning.

Penalties and Fees

The Arbitrator awarded $71,065.71 in penalties under §19(k) of the Act, penalties that represented 50% of $142,131.41 or the unpaid TTD after August 28, 2015, through the date of

hearing, April 18, 2019, less the credit for the TTD paid and the PPD advance paid by Respondent. The Arbitrator also awarded attorney's fees, pursuant to §16, in the amount of $28,426.28 an amount representing 20% of the compensation owed to Petitioner as of the date of the arbitration hearing. Finally the Arbitrator awarded $10,000 in penalties under §19(l). Based on the record in its entirety including testimony, medical records and the surveillance evidence, the Commission finds that the Arbitrator's awarded penalties and attorney's fees under §19(k), §19(l) and §16 are not warranted.

Attorneys' Fees under Section 16

> Whenever the Commission shall find that the employer, his or her agent, service company or insurance carrier has been guilty of delay or unfairness towards an employee in the adjustment, settlement or payment of benefits due such employee within the purview of the provisions of paragraph (c) of Section 4 of this Act; or has been guilty of unreasonable or vexatious delay, intentional underpayment of compensation benefits, or has engaged in frivolous defenses which do not present a real controversy, within the purview of the provisions of paragraph (k) of Section 19 of this Act, the Commission may assess all or any part of the attorney's fees and costs against such employer and his insurance carrier. *820 ILCS 305/16 (2013).*

Penalties under Section 19(k)

> In case where there has been any unreasonable or vexatious delay of payment or intentional underpayment of compensation, or proceedings have been instituted or carried on by the one liable to pay the compensation, which do not present a real controversy, but are merely frivolous or for delay, then the Commission may award compensation additional to that otherwise payable under this Act equal to 50% of the amount payable at the time of such award. Failure to pay compensation in accordance with the provisions of Section 8, paragraph (b) of this Act, shall be considered unreasonable delay. *820 ILCS 305/19(k) (2013).*

In *Jacobo v. Ill. Workers' Comp. Comm'n*, the Court reviewed Illinois precedent for assessing penalties and attorneys' fees, finding penalties under Section 19(k) and attorneys' fees under Section 16 to be reserved for situations where the delay is premised on bad faith. The *Jacobo* Court explained:

> An award of penalties and attorney fees pursuant to Sections 19(k) and 16 are "intended to promote the prompt payment of compensation where due and to deter those occasional employers or insurance carriers who might withhold payment from other than legitimate motives." *McMahan v. Industrial Comm'n*, 289 Ill. App. 3d 1090, 1093, 683 N.E.2d 460, 463 (1997), *aff'd*, 183 Ill. 2d 499, 702 N.E.2d 545 (1998).
>
> The standard for awarding penalties and attorney fees under Sections 19(k) and 16 of the Act is higher than the standard for awarding penalties under Section 19(l) because Sections 19(k) and 16 require more than an "unreasonable delay" in

> payment of an award. *McMahan v. Industrial Comm'n*, 183 Ill. 2d 499, 514-15, 702 N.E.2d 545, 552 (1998). It is not enough for the claimant to show that the employer simply failed, neglected, or refused to make payment or unreasonably delayed payment without good and just cause. *McMahan*, 183 Ill. 2d at 515, 702 N.E.2d at 552. Instead, Section 19(k) penalties and Section 16 fees are "intended to address situations where there is not only a delay, but the delay is deliberate or the result of bad faith or improper purpose." *McMahan*, 183 Ill. 2d at 515, 702 N.E.2d at 553. In addition, while Section 19(l) penalties are mandatory, the imposition of penalties and attorney fees under Sections 19(k) and Section 16 fees is discretionary. *Id.*

Jacobo v. Ill. Workers' Comp. Comm'n, 2011 IL App (3d) 100807WC, 959 N.E.2d 772, 777-778.

Penalties under Section 19(l)

> If the employee has made written demand for payment of benefits under Section 8(a) [*820 ILCS 305/8]* or Section 8(b), the employer shall have 14 days after receipt of the demand to set forth in writing the reason for the delay. In the case of demand for payment of medical benefits under Section 8(a), the time for the employer to respond shall not commence until the expiration of the allotted 30 days specified under Section 8.2(d) [820 ILCS 305/8.2]. In case the employer or his or her insurance carrier shall without good and just cause fail, neglect, refuse, or unreasonably delay the payment of benefits under Section 8(a) or Section 8(b), the Arbitrator or the Commission shall allow to the employee additional compensation in the sum of $30 per day for each day that the benefits under Section 8(a) or Section 8(b) have been so withheld or refused, not to exceed $10,000. A delay in payment of 14 days or more shall create a rebuttable presumption of unreasonable delay. *820 ILCS 305/19* (2013)

The Arbitrator found Respondent's refusal to pay Petitioner weekly compensation benefits after August 28, 2015, lacked an objectively reasonable basis for the refusal. (ArbDec, 49) The Arbitrator characterizes the adjusters as using "tunnel vision" for adopting the opinion of the Respondent's expert and further the Arbitrator notes that the adjusters "went with" the expert's opinion "rather than examining all of the existing circumstances" in handling this claim. *Id.* The Commission disagrees and finds that Respondent's termination of TTD was based on a good faith belief the Petitioner had refused to return to work.

Petitioner's attorney, through commentary in the guise of objections at trial and throughout Dr. Candido's deposition, framed the controversy around the fact that the job was never identified, thus it must follow that the job was not a bona fide offer or legitimate. The Commission does not agree. Respondent's witness, Linda Follenweider, ("Follenweider") testified the "bed control" job would never be posted nor did it have a job description because it is one of many tasks under a general umbrella of the CN1 positions/duties that a nurse would perform in their facility, similar to "house screening" or "med pass." (T. 3/14/19, 57) Follenweider also testified to Respondent's critical need for qualified people to fill the "bed control" position, seven days per week. (T. 3/14/19, 54, 61) The Arbitrator mischaracterizes the Respondent's stipulation regarding

Follenweider's testimony that the availability of the "bed control" position did not constitute a job offer. The Arbitrator assumes that the stipulation meant that there is no viable job; however, the Commission interprets the stipulation to mean that Petitioner would still have to go through a process to have her restrictions reviewed to see if there was position that would be able to accommodate her at the time of the hearing.

Follenweider testified that Respondent has a process to determine if physician assigned restrictions translate practically based upon what the job requires, what the restrictions are, and what accommodations can be made. (T. 3/14/19, 33-34) In fact, the majority of Follenweider's testimony was about the process. Respondent can bring people back specifically based on the type of work available, i.e. for each job type or each type of service, there may be the ability to accommodate light duty. She typically does not base the decision on the specific name of the person that might qualify for the job, she is more typically asked to determine within that job classification and job title, whether she has the ability to accommodate the described restrictions. She never gets health information or files pertaining to an employee who returns. (T. 3/14/19, 33-34) The ability to accommodate is not based on the identity of the person but whether they have work based on the limitations they are provided. (T. 3/14/19, 35-36)

Follenweider testified that that Petitioner's job classification is a position called CN1, for a Professional Registered Nurse. She indicated the area worked in depends on the duties/tasks of work for CN1 positions. For instance, some CN1s pass med's, some may do some patient care, some case management. She stated the CN1 positions at Cermak pass med's or do vital signs or health service request forms, or bed control, which is surveillance to make sure that people are situated where they need to be cared for. Med pass would be giving medications, dose-by-dose; the registered nurse actually hands the patient the medications, verifies they got the right medicine at the right time to the right person, and documents it in the record. (T. 3/14/19, 38)

Bed control, specifically at Cermak in the jail, which is different than bed control duties in the hospital, looks at where a patient is housed and verifies it makes sense for the person's medical needs. In a hospital, if a person is discharged from the ICU, the bed control nurse would be behind the scenes looking for the appropriate bed assignment based on the patient's clinical needs. (T. 3/14/19, 39) Follenweider went on to describe the duties of bed control in detail and testified the census of detainees looked after by the bed control person was 5700 the day before the hearing. (T. 3/14/19, 43) A report is generated and the bed control staff creates a list, through cutting and pasting from the report, which is sent to Classification, a contact in the Department of Corrections, and lists the priority for movement. (T. 3/14/19, 45-46) Follenweider testified that there is no patient contact at all. Further, there's no typing required beyond opening a computer with your password and the use of a mouse. (T. 3/14/19, 51)

Follenweider testified that the position is permanent, seven days per week needs to be filled, available and that the position can accommodate restrictions. (T. 3/14/19, 53-55)

The Commission finds that Follenweider's description of the process and volume of work that Respondent has, and the fact that Respondent always has open CN1 positions is persuasive regarding the availability of a position matching Petitioner's restrictions including, but not limited to, that of the bed control job. Follenweider specifically answered on cross-examination that with

respect to the bed control position she could accommodate restrictions of working four hours per day with a personal assistant, no use of her left hand and no use of her right arm. (T. 3/14/19, 104)

The Commission does not agree with the Arbitrator's statement that "the fact that non-physician human resource employees and adjuster conceived the "bed control" task as doable does not mean it was appropriate from a medical perspective." Although those decisions may ultimately be reconsidered, adjusters, sometimes in conjunction with human resources, interpret physician appointed restrictions and limitations for injured workers everyday as part of their claims decision making process. The fact that the adjusters made a decision that the Commission does not agree with does not negate the legitimacy of their reliance on physician appointed restrictions nor is that the criteria upon which penalties are premised.

After the Petitioner was re-evaluated by Dr. Konowitz pursuant to §12 on April 23, 2015, Dr. Konowitz opined that Petitioner could work eight hours sedentary duty, with no use of her right arm and limited use of her left arm, maximum weight 20 pounds. (RX3, 13)

Jason Henschel, ("Henschel") testified that he was a claims adjuster for Respondent and had handled Petitioner's claim from its inception to about May 2018. (T. 1/16/19, 140-143) Henschel viewed RX17 and identified it as a letter he sent to Petitioner's attorney on July 23, 2015, advising that based on Dr. Konowitz's report dated April 23, 2015, Petitioner can work with restrictions which the Petitioner's department was able to accommodate. The Petitioner's attorney was instructed to have Petitioner contact Paris Partee at a specific telephone number for return to work instructions. The letter is noted to be copied to the Petitioner's department, the state's attorney, the pension department, and human resources, to the attention of Paris Partee, whom Petitioner was instructed to contact. (T. 1/16/19, 150) Petitioner's attorney stipulated that the letter was received. (T. 1/16/19, 156,) Henschel testified that the former attorney had contacted him regarding the letter on July 29, 2015, via email, informing Henschel that Petitioner had not returned to work based on driving restrictions. Thus, Petitioner did not return to work at that time. (T. 1/16/19, 160) Henschel testified that Petitioner spoke with Paris Partee, the director of Human Resources at Cermak Health Services on July 30, 2015. The Petitioner made no attempt to return to work at that time. (T. 1/16/19, 162) The Petitioner's attorney agreed that Petitioner did not go to an address at the Cermak Health Services in this time period and try to do a job. (T. 1/16/19, 166)

Henschel testified that the job opening was with Pamela Brown, the Director of Patient Care Services at Cermak Health Services. (T. 1/16/19, 170-172) Ms. Brown left her employment with Cook County in March 2018. (T. 1/16/19, 172)

Petitioner testified that she spoke with Paris Partee after the letter of July 2015. Petitioner told Partee, "something to the effect that, Paris, I'm in so much pain, I struggle with my normal daily activities. What job do you have that I could possible do? She told me: Report to Employee Health. I said: I have four fingers. I can't even get myself there to do a job. What is the job? Report to Employee Health again. And I asked her what the job was. She wouldn't tell me." (T. 11/18/19, 250-251)

PX62 is an email from a Senior Human Resources coordinator dated August 3, 2015 that

verified that she spoke with Petitioner and told her she must report to EHS "for the RTW assessment." The Petitioner was asked to verify if she made transportation arrangements for the next day. There is no corresponding EHS visit in August in evidence, which comports with Henschel's testimony. Petitioner testified that she saw a doctor at Employee Health in September and December. (T. 11/18/19, 251, 322)

Based on the reports contained in Petitioner's exhibit 60, the Commission finds that these September and December visits were not done to coordinate the return to work instructions per the claims division at the times potential jobs were identified; these visits were to provide documentation to the County Employees' Annuity and Benefit Fund of Cook County. (PX60, 178, 191) The Commission notes that a previous visit for the same purpose of providing documentation to the County Employees' Annuity and Benefit Fund of Cook County was documented on March 23, 2015. (PX60, 166) There is no evidence to suggest that those letters were copied to anyone except Petitioner.

Henschel testified that after the July 23, 2015 letter was sent, he attempted to bring Petitioner back to work again. He had obtained surveillance in September and October 2015 that showed Petitioner driving. (T. 1/16/19, 172) He sent the surveillance video to Dr. Konowitz for a §12 addendum report. (T. 1/16/19, 173) Dr. Konowitz indicated in his report Petitioner should continue with no use of her right arm and with no driving restrictions. (T. 1/16/19, 173-174)

Henschel testified that he contacted the department again after he received the September 15, 2015, §12 report from Dr. Konowitz to see if Respondent still had a job available and that required no use of the right arm. Respondent still had the position available. (T. 1/16/19, 174) Henschel said he sent the additional §12 report authored by Dr. Konowitz to Petitioner's prior attorney and advised that benefits were being terminated. (T. 1/16/19, 177) Petitioner did not return to work at that time. (T. 1/16/19, 182)

Petitioner was seen by Dr. Sefer on March 24, 2016, at Stroger Hospital Clinic. (PX60, 204) Henschel testified that another attempt was made to bring Petitioner back to work at the same job with Pamela Brown. (T. 1/16/19, 182) The job was at the Cermak facility and would start on May 2, 2016. (T. 1/16/19, 182-183) According to Henschel, Paris Partee contacted Petitioner on April 19, 2016, about this job. (T. 1/16/19, 185) Petitioner did not return to work after that. (T. 1/16/19, 186)

Petitioner testified that she did not recall if Paris Partee contacted her or left a voice message on April 19, 2016. Petitioner testified, "I believe Paris Partee had called a couple of times over the years saying you have to come back to work or they're going to basically lay me off or fire me." (T. 11/18/19, 320) Petitioner agreed it was possible that Paris Partee called her and left her a message on April 19, 2016. (T. 11/18/19, 320)

On June 16, 2016, a Stroger office note documents that Petitioner reported "somebody called her (and told her) that she has job at Cermak Health Unit." Dr. Sefer wrote that he was not aware of any nursing job at Cermak that any nurse can perform with one hand. (PX60, 213) The Commission finds that Dr. Sefer's note two months after-the-fact does not obviate Petitioner's obligation to follow instructions per Human Resources to coordinate return to work in April.

Based on Follenweider's testimony regarding the number of jobs not posted that are under the umbrella of CN1 positions, the Commission finds that Dr. Sefer could not be not aware of every job available within the Respondent's system, nor is it his function to make that determination.

The evidence in Petitioner's exhibit 60 (PX60) include multiple letter from the doctors at Employee Health Services (EHS) addressed to the County Employees' Annuity and Benefit Fund of Cook County, most of which are authored by Dr. Sefer. Three of the visits and letters, already referenced, occurred on March 23, 2015, September 11, 2015, and December 22, 2015. (PX60, 166, 178, 191) On June 15, 2016, Dr. Sefer again wrote the County Employees' Annuity and Benefit Fund of Cook County after seeing the Petitioner. The Enclosure included a Physician Statement for Disability Benefits date June 10, 2016 and the letter was copied solely the Petitioner. A subsequent letter dated June 15, 2016, was sent to Paris Partee, Director of Human Resources notifying her that the Medical Staff of CCHHS Employee Health Services performed a medical evaluation of this employee in response to a request for medial disability benefit coverage.

It appears to the Commission that the County's primary function in Petitioner's case, in 2016, was to interview the Petitioner for disability status, and to collect a note from her treating physician, as infrequently as every six months, to be submitted to the County Employees' Annuity and Benefit Fund of Cook County. (PX60, 228-note signed by Dr. Candido) The Attending Physician notes are not the County's physicians that are making a medical evaluation; the County's physicians are collecting "Attending Physician's" notes. (PX60, 219, 221, 226-228) Copies of the notes are sent to human resources for documentation noting that the determination as to whether to grant or continue this employee on disability is that of the County Employees Annuity And Benefit Fund of Cook County. EHS would then request that the Annuity and Benefit Fund verify the status of disability benefit coverage with this organization. The Commission acknowledges some earlier County Physician statements are signed by Dr. Sefer. For instance on December 22, 2015, Dr. Sefer recommended that Petitioner's period of disability based on evaluation was from 01/01/16 to 6/18/16, however, he recommended that she be reevaluated on 3/23/16 and 06/16. (PX60, 193) However, these visits are documented on the County Employees and Officers' Annuity and Benefit Fund of Cook County forms.

On March 24, 2016, Dr. Sefer's Stroger Hospital Clinic evaluation noted Petitioner's report of her treating doctor's evaluation and that her "MD opined that" she reached MMI. Dr. Sefer also noted that Petitioner "Explains to me meaning of "MMI". (PX60, 204)

These visits, in this case, are not medical evaluations for workers' compensation purposes because it is clear that her medical care is managed by her own doctor. Petitioner cannot rely upon these notes to justify refusal to cooperate with risk management for return to work. The Commission finds that Respondent has established that the Petitioner's communication regarding return to work for purposes of workers' compensation needs to be coordinated through workers' compensation and human resources and Petitioner's refusal to go, which might be premised on valid reasons, does not merit penalties for termination of TTD.

On December 22, 2016, Henschel spoke with Devon McBride, the Senior Human Resources coordinator at Cermak about the bed control position for Petitioner and it was still available. (T. 1/16/19, 189-190)

On December 21, 2016, an email was sent from Dr. Patricia Kelleher and copied to Dr. Sefer et.al. at the Employee Health Services sent via Securelock and in reference to Petitioner. The December 21, 2016, email states:

> Ms. Kosla's physician had indicated that she cannot return to modified duty and recommend that she is fully disabled until 6.9.17. We will forward the Disability Forms to the Pension Fund, *unless further information is available.* (Emphasis added) (PX60, 2337)

The actual EHS encounter that took place on December 9, 2016, is described and the period of disability requested is noted to Period of disability requested: 12/18/16 until 06/19/17. The letter states Petitioner's physician stated she is not able to return to modified duty and the date she is able is unknown, however, the Attending Physician Statement on the County Employees' and Officers' Annuity and Benefit Fund of Cook County form is signed by Dr. Candido, the Petitioner's treating pain management doctor. (PX60, 228) Dr. Candido's signature is also on June 10, 2016 form.

A second letter was authored by Dr. Vesna from the Cook County Health & Hospital Systems (CCHS) on December 22, 2016 and was address to the Senior Human Resources Coordinator, Ms. Devon McBride regarding the Petitioner. This letter again was notification that the CCHHS Employee Health Services performed a medical evaluation in response to a request for medical disability benefit coverage and noted the determination as to whether to grant or continue this employee on disability is that of the County Employees Annuity and Benefit Fund of Cook County. Dr. Vesna asked that they verify the status of disability benefit coverage with this organization.

On February 21, 2014, the EHS notes document that Petitioner was there to apply for disability. (PX60, 121) The Commission infers from that the Petitioner's visits to Employee Health Services thereafter were related to ongoing medical disability benefit coverage from the County Employees Annuity And Benefit Fund of Cook County. Follenweider's testimony made it clear that records between departments were not shared. The Commission therefore infers that the visits to Employee Health Services on March 23, 2015, September 11, 2015, December 22, 2015, June 15, 2016, and December 9, 2016, documented in PX60, were prepared for the sole purpose of sending those reports to the County Employees Annuity and Benefit Fund of Cook County and were the type of forms that were meant to be kept in the Employee's personnel file but are not summarily the type of medical opinions the adjusters were required to rely upon when making workers compensation determinations, especially in this case where the Petitioner's medical is managed by her own treating physician.

On December 28, 2016, Devon McBride wrote Jason Henschel and included Dr. Kelleher's report and notified Henschel that he received the report and it appears that Petitioner is to remain off work. Henschel replied "Per IME of Dr. Konowitz, Maureen can work with no right arm use and she can use public transportation or drive a car without restrictions or modification. He noted the difference of opinion between the treating doctor and the "IME doctor." He wrote that he was relying on Dr. Konowitz's opinion and that he did not understand the other restrictions assigned

by the treating doctor that were for body parts not injured in the work accident such as stand, walk, and that she cannot work sedentary duty at all.

Tekuila McGee testified that she is the claims adjuster that assumed handling Petitioner's claim after Henschel. McGee testified that she relies upon medical records provided by treating physicians as a factor she uses in decision making. (T. 1/16/19, 25) McGee also testified that she also relies upon a specialist to examine the patient and review medical records provided by the treating physician. Those doctors then give opinions to Respondent. (T. 1/16/19, 26) If litigated, she confers with defense counsel. (T. 1/16/19, 27) McGee went on further to reiterate, when determining medical necessity and reasonableness of treatment, an adjuster would use "IMEs and §12 exams, which is a review of the medical records from the treating physician."

The Arbitrator found that Henschel failed to thoroughly analyze Dr. Konowitz's opinions because when asked whether Petitioner could return to work, Dr. Konowitz answered, "no right arm work graded," with no further explanation. The Commission fails to appreciate how the determination of penalties hinges on whether or not Dr. Konowitz explained the word "graded." Further, there is nothing in the record that established that Henschel relied on the word "graded" to assume that Petitioner would eventually have the use of her right arm.

The Commission finds that Henschel clearly understood Petitioner to be restricted from using her right arm at work, and he considered that along with other factors in making his determination that Petitioner might be suited to do accommodated work. He advised Petitioner's attorney when he terminated her benefits. Henschel also made subsequent efforts to get Petitioner to make the appropriate appointments to discuss return to work.

The Commission notes that the claims adjusters had viewed and/or were aware of surveillance of Petitioner driving, shopping, going to lunch and therefore, in good faith, relied upon Dr. Konowitz's opinion as Petitioner appeared to be doing activities of daily living.

The Commission notes that Dr. Konowitz and Dr. Candido agree on Petitioner's diagnosis and treatment; however, their opinions differ with respect to Petitioner's continued opioid use, work restrictions, the Petitioner's ability to drive or use public transportation and the number of hours she could work They both essentially agree that Petitioner should have treatment for depression. (PX3, 18; PX5, DepX2, 18; RX 7, 26, 29) The Commission finds Dr. Konowitz credible when describing the reasons that the Petitioner should be weaned off opioids, thus the adjusters' reliance on his opinion regarding Petitioner's ability to work with no use of her right arm was not unreasonable.

Dr. Candido, the Petitioner's treating pain management doctor, also testified to several critical issues relevant to the issue of termination of TTD benefits. When asked by Petitioner's attorney hypothetically, if such a job existed, whether or not Petitioner could work in a sedentary position with no use of the right arm, Dr. Candido opined that Petitioner could potentially work up to four hours a day in a sedentary duty with no use of the right upper extremity and with minimal use of the left upper extremity, no lifting or carrying greater than five pounds and no repetitive use for ten minutes consecutively. (RX5, 41)

The Arbitrator also noted none of Respondent's witnesses refuted Petitioner's testimony that Employee Health "is where you have to go" to be released to work. The Commission disagrees. The doctors at Employee Health relied on Petitioner's self-reported history and, in some instances, were merely obtaining from the Petitioner her treating doctor's work status reports to Employee Health so they could forward those forms to the County Employees' Annuity and Benefit Fund of Cook County as per the afore-referenced letters in PX60.

The Commission finds that Follenweider made it clear that appearances in Employee Health Services (EHS) and the functions of her department are separate and distinct and they do not share confidential health records. (T. 3/14/19, 85-91-92) Follenweider testified that she has interaction with EHS around "certain types of things, but typically around disability or returning to work, EHS does not work directly with me at all around those types of things. I work with HR." (T. 3/14/19, 95-96)

The Commission finds the Respondent's objection to the conversation between Petitioner and the physician at EHS regarding his opinion about available jobs was properly sustained. (T, 3/14/19, 255) Further, neither claims adjuster, Henschel or McGee testified that they relied on physician opinions from EHS. In fact, Henschel made it clear in his email on January 3, 2017 (PX60) that he was at that time trying to advise Dr. Kelleher from EHS that he also had a §12 opinion regarding Petitioner's work ability and that he, in his capacity at Risk Management, was relying upon that opinion.

Dr. Candido testified the Petitioner described a light-duty job to him. (RX5, 42, 50) This is instructive because the Petitioner's attorney maintained throughout the deposition that the accommodated job was never identified in the past. (RX5, 40) Thus, it appears the Petitioner made an assumption that an accommodated position would be "light duty" as Petitioner described to Dr. Candido and not sedentary, no use of the right arm, left-hand modified work. Dr. Candido testified that he was aware of the fact "that she refused to return to work, and she has never attempted to return to work since the date of accident."(RX5, 50-51) Dr. Candido stated that Petitioner is "cognitively unimpaired, so yes, she can dictate." (RX5, 52) Follenweider testified that the bed control position could accommodate Petitioner's restrictions, however, based upon Dr. Candido's testimony, it is apparent that Petitioner refused or was unwilling to consider any position. Taking that position thwarted the parties' communication. (RX5, 50-51)

Without minimizing Petitioner's concerns, the Commission notes that Petitioner did get out to shop, dine, sports events, family outings, and church services and do things Dr. Candido opined were justified for her mental health, but he also agreed, in general, it could be beneficial for Petitioner to return to work from a psychological standpoint. (RX5, 52)

The Commission finds the Arbitrator's finding of no objective reasonable basis for terminating benefits ignores the evidence and magnitude of controversy regarding Petitioner's unwillingness to even explore the Respondent's accommodated position. It is clear to the Commission that Respondent made legitimate overtures to get Petitioner to discuss potential return to work issue and accommodations. Petitioner had been spotted multiple times in surveillance driving in 2015, going to stores alone and doing activities of daily living albeit without the use of her right arm. (RX8, RX13) There is no evidence that the termination of Petitioner's TTD benefits

was done in bad faith or for an improper purpose, certainly not vexatiously and thus does not merit the imposition of penalties under Section 19(k) or the award of attorney's fees under §16.

In *Otto Baum Co. v. Ill. Workers' Comp. Comm'n*, (citations omitted), the court examined under what circumstances TTD may be suspended:

> "Therefore, when determining whether an employee is entitled to TTD benefits, the test is whether the employee remains temporarily totally disabled as a result of a work-related injury and whether the employee is capable of returning to the work force." *Interstate Scaffolding, Inc.*, 236 Ill. 2d at 146, 923 N.E.2d at 274. *HN5* "The Act provides incentive for the injured employee to strive toward recovery and the [*8] goal of returning to gainful employment by providing that TTD benefits may be suspended or terminated if the employee refuses" medical services or fails to cooperate in good faith with rehabilitation efforts. *Interstate Scaffolding, Inc.*, 236 Ill. 2d at 146, 923 N.E.2d at 274 (citing 820 ILCS 305/19(d) (West 2004)). "Benefits may also be suspended or terminated [**587] [***705] if the employee refuses work falling within the physical restrictions prescribed by his doctor." (Emphasis added.) *Interstate Scaffolding, Inc.*, 236 Ill. 2d at 146, 923 N.E.2d at 274 (citing *Hartlein v. Illinois Power Co.*, 151 Ill. 2d 142, 166, 601 N.E.2d 720, 731, 176 Ill. Dec. 22 (1992), and *Hayden v. Industrial Comm'n*, 214 Ill. App. 3d 749, 574 N.E.2d 99, 158 Ill. Dec. 305 (1991)).

Otto Baum Co. v. Ill. Workers' Comp. Comm'n, 2011 Ill. App. LEXIS 1086, *7-8, 960 N.E.2d 583, 586-587, 355 Ill. Dec. 701, 704-705, 2011 IL App (4th) 100959WC

Termination of TTD benefits does not warrant penalties when in this instance, the Commission finds that the Respondent's job accommodation potential is credible, and Petitioner's unwillingness to even explore potential jobs with accommodation, thwarted any possible resolution of the issue. Although the Commission finds that Petitioner is entitled to TTD, for the disputed period, the Commission vacates the Arbitrator's award of penalties under §19(k) and attorney's fees under §16.

The Commission further finds that even more significantly, the Arbitrator's decision ignores the fact that the Respondent relied upon a credible §12 expert's opinion that Petitioner could return to full-duty sedentary work with no use of her right arm, and the Respondent had repeatedly made overtures to Petitioner to explore sedentary jobs that might have been suitable, however, Petitioner was not willing to explore job opportunities or even attempt to return to a sedentary, accommodated position, and therefore, termination of her benefits, under a reasonable standard, is justified. The issue of divergent medical opinions is a recurrent theme before the Commission and analyzed by the *Holland* court:

> When the employer acts in reliance upon reasonable medical opinion or when there are conflicting medical opinions, penalties ordinarily are not imposed." *Matlock*, 321 Ill. App. 3d at 173; see, e.g., *Ford Motor Co. v. Industrial Comm'n*, 126 Ill. App. 3d 115 (1984) (Commission's assessment of section 19(l) penalties reversed, where the employer disputed causation relying on a physician's report that indicated

> the claimant suffered from conditions that were unrelated to his work accident). An employer's belief is honest only if the facts in the possession of a reasonable person in the employer's position would justify it. *Board of Education of City of Chicago v. Industrial Comm'n,* 93 Ill. 2d 1, 10 (1982). The burden of proof is on the employer. *Mobil Oil Corp. v. Industrial Comm'n,* 309 Ill. App. 3d 616, 625 (2000).

USF Holland, Inc. v. Indus. Comm'n (Baker), 357 Ill. App. 3d 798, 805, 829 N.E.2d 810, 817, 2005 Ill. App. LEXIS 426, *14-15, 293 Ill. Dec. 885, 892.

The Commission notes also that Respondent paid a large PPD advance after TTD was terminated as further evidence of good faith.

The Commission does not agree that imposition of penalties under §19(l) was warranted. Therefore, the Commission vacates the Arbitrator's award of §19(k), §19(l) and §16 penalties.

Conclusions of Law

On page 47, the Commission strikes everything after the word "facilities" in the second full paragraph, and through the words, "afforded by Section 12 of the Act." The paragraph should read, "As for the claimed transportation-related expenses, the Arbitrator awards only those expenses relating to Petitioner's trips to various Respondent Employee Health facilities."

The Commission modifies the fifth paragraph on page 48, of the Arbitrator's Conclusions of Law, so the third and fourth sentences read, "If this physician recommends that the weaning be conducted in an inpatient setting, the Arbitrator awards all related medical expenses pursuant to §8(a), including reasonable transportation expenses. If the weaning is performed on an outpatient basis, the Arbitrator awards all related medical expenses pursuant to §8(a)." Following the last sentence in the fifth paragraph on page 48, the Commission adds the following sentence, "The life care plan is not awarded."

In the fourth paragraph on the first page of the Order of the Arbitrator's Decision, the Commission strikes everything in the second and third lines after the word, "facilities" and through the words, "afforded by Section 12 of the Act." The paragraph should read, "The Arbitrator awards only those claimed transportation expenses relating to the trips Petitioner and her husband made to various Respondent Employee Health facilities."

On the second page of the Order of the Arbitrator's Decision, the Commission strikes the first paragraph, beginning with the words, "In conjunction" and through the word "details."

On the second page of the Order of the Arbitrator's Decision, the Commission strikes the fourth sentence in the third paragraph (second bullet point), beginning with the words "The Arbitrator further awards" and through the words, "Dr. Konowitz."

For the foregoing reasons, the Commission vacates the Arbitrator's award of personal assistant services, both for four hours daily and the award of full-time personal assistant services should Petitioner participate in an out-patient opioid weaning program, and the Commission

further vacates the Arbitrator's award of penalties under §19(k) and §19(l) and attorney's fees under §16 and modifies the Arbitrator's Decision. Finally, the Commission vacates the Arbitrator's award of a revised life care plan.

The Commission further remands the case to the Arbitrator for further proceedings consistent with this Decision.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision filed on June 4, 2019, is hereby modified for the reasons stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the award of personal assistant services for four hours per day, seven days per week, from August 1, 2017, through the last hearing of April 18, 2019, and prospectively, is vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that the prospective personal assistant services awarded in conjunction with Petitioner's prospective opioid weaning, is vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that the award of a revised life care plan is vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that the award of §19(k), §19(l) penalties and §16 attorney's fees is hereby vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of $1,110.78 per week for a period of 295 weeks, commencing August 23, 2013, through April 18, 2019, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any. Respondent shall be given a credit of $114,825.95 for TTD (paid through August 27, 2015) and $70,722.74 for PPD advance.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the medical, prescription and out-of-pocket expenses enumerated in PX37, pursuant to §8(a) and §8.2 of the Act, subject to the fee schedule, other than the Alexian Brothers Medical Center bill of $21,745.00, the Alliance laboratory bill of $283.15, the Elk Grove bill of $1,007.00, the Elk Grove Radiology bill of $340.00, the Rehab Assist bill of $10,633.75 and the claimed clothing related expenses of $272.12. Because the Commission declined to address PPD, the ruling is deferred on the claimed bill of $1,159.72 associated with the vocational services provided by Blumenthal and Associates. Respondent entitled to credit for any payments it made toward the awarded expenses. (Respondent is entitled to credit for $109,186.07 paid in medical bills, and is entitled to $28,769.07 credit under Section 8(j) of the Act provided that Respondent shall hold Petitioner harmless from any claims and demands by any providers of the benefits for which Respondent is receiving credit under this order.)

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent provide and pay

medical expenses pursuant to §8(a) for the claimed adjustable king mattress, air flosser, Movantik and ongoing blocks necessary for nail cutting. The Commission awards those claimed transportation expenses relating to the trips Petitioner and her husband made to various Respondent Employee Health facilities. The Commission declines to award Petitioner a walk-in shower or compounding creams.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall provide and pay prospective medical in the form of medically supervised opioid weaning to be overseen by a pain management specialist or "addictionologist" other than Dr. Candido or Dr. Konowitz to be selected by agreement of the parties.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent provide and pay prospective medical in the form of psychological counseling and psychiatric oversight of psychiatric medication management, if necessary.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Based upon the named Respondent herein, no bond is set by the Commission. *820 ILCS 305/19(f)(2)*. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAR 8 - 2021
KAD/bsd
O121520
42

Kathryn A. Doerries

Maria E. Portela

PARTIAL DISSENT

I concur, in part, with my colleague's affirmance and adoption of the Arbitrator's decision. However, I disagree with the majority's decision to vacate the Arbitrator's award of 1) four hours of companion care per day seven days a week, 2) full-time companion care should Petitioner participate in an outpatient opioid weaning program, 3) a revised life care assessment or plan, and 4) penalties and attorneys' fees pursuant to §19(l), §19(k) and §16 of the Act. As a result, I issue

this partial dissent.

The evidence shows that Petitioner suffered an undisputed accident on 8/22/13 when she fell while exiting work. (Arb.Ex.1). There is no dispute that she suffers from complex regional pain syndrome (CRPS) in her right arm and that she essentially has no functional use of her dominant right hand and arm due to that syndrome, a fact that Respondent's IME, Dr. Konowitz, does not refute. (Arb.Dec.[Addendum], p.46). The Arbitrator found that as a result Petitioner also suffers from causally related left thumb and index finger conditions due to overuse. (Id., p.46). With respect to her left thumb, Petitioner indicated that she currently wears an orthotic device on her left hand in addition to the sling she wears on her right arm. In describing her current ability to function, Petitioner noted that "[p]eople should actually tie one hand behind their back and tie their thumb up and see what it's like to function in life." (T.11/19/18, p.272).

Based on the evidence taken as a whole, including the testimony of Drs. Candido and Konowitz, as well as that of certified life planner Henry Brennan, Petitioner and Petitioner's family members, the Arbitrator awarded Petitioner companion care of four hours per day, including weekends, at $21.00/hour from 8/1/17 (when Petitioner's husband began his current job) through the hearing date of 4/18/19. (Arb.Dec.[Addendum], p.46). In my opinion, this was an entirely reasonable award, under §8(a) of the Act, given Petitioner's obvious need for personal assistance throughout the day, given her limitations as to manual dexterity, in the face of her husband's responsibilities outside the home with respect to his full-time job. And for that reason, I totally disagree with the majority's decision and rationale to vacate this aspect of the award.

Likewise, I take issue with the majority's decision to vacate the Arbitrator's award for full-time (i.e. 40 hours/week) companion care in the event that an equally-qualified, third pain physician or "addictionologist", agreed to by the parties, recommends that Petitioner's opioid weaning be performed on an outpatient basis. Once again, I believe that this was an entirely reasonable award under the circumstances based on Petitioner's ongoing need for personal assistance when she is at home.

In addition, I believe that given the complexity of this case, and the care and treatment involved, that the Arbitrator's award of a revised or new life care plan after the pressing issue of medication management is addressed makes perfect sense and would undoubtedly provide clarity and a path forward once Petitioner is finally weaned off these highly addictive opioids, or at least an attempt is made to do so.

Finally, the Arbitrator found that Petitioner was entitled to additional compensation in the amounts of $10,000.00 (statutory maximum) and $71,065.71 (50% of net unpaid benefits as of 4/18/19, or .5[$142,131.41]), pursuant §§19(l) and 19(k), respectively, and attorneys' fees pursuant to §16 of the Act in the amount of $28,426.28 (.2[$142,131.41]) based on Respondent's refusal to pay temporary total disability benefits from 8/28/15 through the hearing date of 4/18/19. The Arbitrator noted that "Respondent lacked an objectively reasonable basis for this refusal", and I wholeheartedly agree.

The evidence shows that Respondent paid TTD benefits through 8/27/15 but unilaterally cut off benefits thereafter based ostensibly on the opinion of its examining physician, Dr.

Konowitz, and its claim that work within the restrictions outlined by Dr. Konowitz was available.

However, as the Arbitrator rightly pointed out, the adjustors in this claim "... can readily be accused of 'tunnel vision' since they simply 'went with' Dr. Konowitz rather than examining 'all of the existing circumstances,' in handing this claim." (Arb.Dec., p.49). I would take it a step further and say that this behavior was the result of bad faith and amounted to a deliberate withholding of benefits without good and just cause. In fact, I would argue that this is precisely why we have the penalty/attorneys' fees provisions of §§19(k) and 16 of the Act, which, as the majority notes, was "intended to promote the prompt payment of compensation where due and to deter those occasional employers or insurance carriers who might withhold payment for other than legitimate motives." *McMahan v. Industrial Commission*, 289 Ill. App. 3d 1090, 1093, 683 N.E.2d 460, 463, aff'd, 183 Ill. 2d 499, 702 N.E.2d 545 (1998). It would have taken little additional effort to compare Dr. Konowitz's opinions with the available record. Instead, the adjustors chose to close their eyes to the fact that Petitioner was never released to return to work by the employer's physician at CCHHS, even though this was a prerequisite for any return to work and even though she presented to Employee Health Services for this very purpose on multiple occasions. It is also questionable whether suitable work even existed with Respondent, much less that it was rejected by Petitioner. Further, there is no evidence that Dr. Konowitz ever endorsed the so-called "bed-control" task Respondent claims was available, especially given Dr. Konowitz and others' belief that Petitioner was still in need of on-going care. Instead, the adjustors decided to conveniently interpret Dr. Konowitz's report in a way they saw fit, and in opposition to the overwhelming medical evidence in this case, in order to unceremoniously cut off TTD benefits that were rightfully due and owing to this Petitioner – a fact made even more egregious by Respondent's subsequent stipulation that Mrs. Kosla has no functional use of her dominant right hand and arm due to her chronic regional pain syndrome.

As a result, I would affirm and adopt Arbitrator Mason's thoughtful and well-reasoned opinion in its entirety, including the award for companion care, a revised life care plan and penalties/attorneys' fees. To hold otherwise eliminates a necessary support service for an injured worker in the home setting and disregards the very need for an equally essential roadmap for future care and treatment, and more or less condones the type of conduct the penalty provisions of the statute were designed to discourage.

For the above reasons, I issue this partial dissent.

Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

KOSLA, MAUREEN
Employee/Petitioner

Case# **13WC033127**

COOK COUNTY
Employer/Respondent

21IWCC0062

On 6/4/2019, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 2.25% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0274 HORWITZ HORWITZ & ASSOC
MITCHELL W HORWITZ
25 E WASHINGTON ST SUITE 900
CHICAGO, IL 60602

2337 INMAN & FITZGIBBONS LTD
KRISTIN THOMAS
33 N DEARBORN ST SUITE 1825
CHICAGO, IL 60602

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

MAUREEN KOSLA
Employee/Petitioner

v.

COOK COUNTY
Employer/Respondent

Case # 13 WC 33127

Consolidated cases: D/N/A

21IWCC0062

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Molly C. Mason, Arbitrator of the Commission, in the city of Chicago, on 11/19/18, 1/16/19, 3/14/19 and 4/18/19. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☒ Should penalties or fees be imposed upon Respondent?
N. ☒ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On 8/22/13, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Respondent stipulated to causation insofar as Petitioner's right upper extremity chronic regional pain syndrome is concerned. For the reasons set forth in the attached decision, the Arbitrator finds that Petitioner also established causation as to a left wrist overuse-related condition that resolved and as to her current overuse-related left thumb and index finger conditions.

In the year preceding the injury, Petitioner earned $86,640.32; the average weekly wage was $1,666.16.

On the date of accident, Petitioner was 53 years of age, ***married*** with 0 dependent children.

Petitioner ***has in part*** received reasonable and necessary medical services.

Respondent ***has in part*** paid appropriate charges for reasonable and necessary medical services.

Respondent shall be given a credit of $114,825.95 for TTD (paid through August 27, 2015), $0 for TPD, $0 for maintenance, and $70,722.74 for PPD advance, $109,186.07 in medical bills for other benefits, for a total credit of $294,734.76.

Respondent is entitled to a credit of $23,769.07 under Section 8(j) of the Act.

ORDER

Pursuant to the attached Findings of Fact and Conclusions of Law, the Arbitrator finds as follows:

- The Arbitrator awards Petitioner the medical, prescription and out of pocket expenses enumerated in PX 37, subject to the fee schedule, **other than** the Alexian Brothers Medical Center bill of $21,745.00, the Alliance Laboratory bill of $283.15, the Elk Grove bill of $1,007.00, the Elk Grove Radiology bill of $340.00, the Rehab Assist bill of $10,633.75 and the claimed clothing-related expense of $272.12. Because the Arbitrator declines to address permanency (see further below), she defers any ruling on the claimed bill of $1,159.72 associated with the vocational services provided by Blumenthal and Associates. Respondent is entitled to credit for any payments it made toward the awarded expenses.

  The Arbitrator also awards Petitioner the claimed adjustable king mattress, air flosser, Movantik and ongoing blocks necessary for nail cutting, for the reasons set forth in the attached decision. The Arbitrator declines to award Petitioner a walk-in shower or compounding creams, for the reasons set forth in the attached decision.

  The Arbitrator finds that Petitioner was entitled to four hours of personal assistant services per day, seven days per week, at the rate of $21 per hour, from August 1, 2017 through the last hearing of April 18, 2019. As explained in the attached decision, the Arbitrator uses August 1, 2017 as a start date because this is when Petitioner's husband changed jobs in deference to Petitioner's needs.

  The Arbitrator awards only those claimed transportation expenses relating to the trips Petitioner and her husband made to various Respondent Employee Health facilities to undergo return-to-work evaluations. The Arbitrator views these evaluations as akin to the examinations afforded by Section 12 of the Act.

In conjunction with the awarded prospective opioid weaning (see below), the Arbitrator awards certain prospective personal assistant services, again at the rate of $21 per hour. See the attached decision for details.

- Respondent stipulated Petitioner was temporarily totally disabled from August 23, 2013 through July 23, 2015. Arb Exh 1. Respondent continued paying temporary total disability benefits through August 27, 2015. The Arbitrator finds that, in addition to the stipulated period, Petitioner was temporarily totally disabled from July 24, 2015 through the last hearing of April 18, 2019, with Respondent receiving credit for the benefits it paid through August 27, 2015. The Arbitrator finds the TTD rate to be $1,110.78/week based on the stipulated average weekly wage of $1,666.16.

- The Arbitrator awards prospective care in the form of supervised opioid weaning, to be overseen by a pain management specialist/"addictionologist" other than Dr. Candido or Dr. Konowitz. The Arbitrator directs the parties to confer and select such a specialist. The Arbitrator also awards prospective care in the form of psychological counseling, preferably in conjunction with psychiatric medication management. The Arbitrator further awards a revised life care assessment, to be performed after opioid weaning, per Dr. Konowitz. See the attached decision for further details.

- The parties placed nature and extent in dispute. Arb Exh 1. However, the Arbitrator finds Petitioner is not at maximum medical improvement and thus it would be premature to address permanency.

- The Arbitrator finds Respondent liable for Section 19(k) penalties in the amount of $71,065.71 in Section 19(l) penalties in the maximum statutory amount of $10,000.00 and Section 16 attorney fees in the amount of $28,426.28, based on its unreasonable discontinuation of temporary total disability benefits. See the attached decision for additional reasoning and method of calculation.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Molly C Mason

Signature of Arbitrator

6/4/19
Date

JUN 4 - 2019

Maureen Kosla v. Cook County Department
of Public Health
13 WC 33127

Summary of Disputed Issues

The parties agree that Petitioner, a registered nurse, sustained an accidental fall on August 22, 2013. Petitioner testified she injured her dominant right arm in this fall. She subsequently developed chronic regional pain syndrome in her right upper extremity. She also claims left thumb, index finger and wrist conditions secondary to overuse. Respondent does not dispute the CRPS diagnosis or need for restrictions of no right arm use but does dispute causation as to the claimed left-sided conditions. Respondent also disputes other restrictions imposed by Dr. Candido, the treating pain specialist selected by the nurse case manager.

The parties agree that, following the accident, Petitioner was temporarily totally disabled from August 23, 2013 through July 23, 2015. They also agree that Respondent is entitled to credit for the $114,825.95 in temporary total disability benefits it paid through August 27, 2015. Arb Exh 1. Respondent disputes Petitioner's claim for additional benefits after July 23, 2015, citing its second examiner, Dr. Konowitz, and claiming that work within the restrictions contemplated by Dr. Konowitz was available to Petitioner.

Other disputed issues include claimed companion care and transportation expenses, various claimed medical and out of pocket expenses, whether Petitioner should be weaned off of her current opioid regimen, prospective care, nature and extent and penalties/fees. Arb Exh 1.

Arbitrator's Ruling on Respondent's Motion to Bar

At the initial hearing, Respondent presented a motion to bar (RX 18) the report and testimony of Henry Brennan, a certified life care planner retained by Petitioner. Respondent's counsel argued that Brennan is not a physician and thus not qualified to address the question of whether companion care for Petitioner is reasonable and necessary under Section 8(a) of the Act. Respondent's counsel also maintained that Brennan's projections as to the future cost of such care are speculative in nature. T. 11/19/18, pp. 11-12. Petitioner's counsel pointed out that the physicians who have testified in this case agree Petitioner has no use of her right arm, that Petitioner also claims difficulty using her left thumb and that Brennan's experience as a guardian and life care planner for disabled individuals uniquely qualifies him to assist the Arbitrator in determining the type of care Petitioner requires.

The Arbitrator denied Respondent's motion and allowed Brennan to testify. T. 11/19/18, pp. 16-18.

Arbitrator's Summary of Trial Testimony

Henry Brennan testified he holds a master's degree in communication disorders. He obtained certification in life planning after taking a 128-hour postgraduate course, submitting a sample plan and passing an examination. T. 11/19/18, p. 21. For the past 25 years, he has owned and operated a company called "Rehab Assist, Inc." He currently employs 14 individuals. Rehab Assist, Inc. offers case management, guardianship and life care planning services. With respect to case management and guardianship, Rehab Assist, Inc. is typically appointed by a probate court. Rehab Assist, Inc. currently

acts as a guardian of the person in over 100 cases in Cook and various collar counties. T. 11/19/18, p. 22-23. Of those 100+ cases, about 10 to 15% involve individuals who became disabled due to an injury. T. 11/19/18, pp. 23-24.

Brennan indicated he has given over 300 depositions and has testified at jury trials on 55 or 60 occasions. He has not previously testified at the Illinois Workers' Compensation Commission. He obtains referrals from both plaintiffs and defendants. T. 11/19/18, pp. 24-25. He has written over 400 life care plans. PX 25B. He is not a physician and is not appearing to render medical opinions. T. 11/19/18, p. 27.

Brennan testified that Petitioner's counsel retained him to prepare a life care plan for Petitioner. He reviewed various treatment records, a driving rehabilitation clinical evaluation, independent medical examination reports and an Excel spreadsheet prepared by Petitioner's husband in the process of formulating his plan. T. 11/19/18, pp. 29-31. Based on his records review, he concluded that Petitioner sustained a right upper extremity injury that was initially treated orthopedically but that she eventually developed chronic regional pain syndrome, along with symptoms in her contralateral left hand, primarily the thumb. T. 11/19/18, pp. 33-35.

Brennan identified the life care plan he devised for Petitioner. On the first page, he recommends ongoing psychological counseling, based partially on Dr. Candido's recommendation. T. 11/19/18, p. 35. He visited Petitioner at her home, to discuss her medication regimen, so that he could survey pharmacy vendors to determine the cost of the various medications. The prices referenced in his plan are from July 2017. They relate to five medications: Movantik, Diazepam, Fentanyl, Zolpidem and Oxycodone. He also contacted a specialty pharmacy to determine the cost of a topical compound pain cream that Petitioner uses. T. 11/19/18, p. 37.

Brennan opined that Petitioner requires companion services to assist her with such activities as grooming, shopping, housekeeping and meal preparation, but not skilled nursing care. He priced out both a 12-hour per day option, modeling the services that Petitioner's family members currently provide, and a live-in option. He does not favor one option over another. T. 11/19/18, p. 47. With respect to the 12-hour option, he priced out hourly rates ranging from $21 to $26, based on a survey of the vendors listed in his plan. Such rates would be usual and customary for in-home companion care. They do not factor in driving-related expenses. T. 11/19/18, pp. 39-40. They would represent the value of the services provided to Petitioner to date by her husband and daughters. T. 11/19/18, p. 41. He projected a transportation cost of four round trips per week, at $25 to $35 per trip, to help Petitioner get to doctors' appointments and into the community. T. 11/19/18, p. 43. He based the need for driving services on Dr. Candido's recommendations. T. 11/19/18, p. 43.

In an offer of proof, Brennan testified that the activities outlined in PX 27 (the Excel spreadsheet) represent services provided by family members in the past. T. 11/19/18, p. 45.

Brennan acknowledged that, if he were to adopt Dr. Konowitz's opinions that Petitioner can freely use her left hand and drive or take public transportation without any limitation, the portion of his plan relating to projected transportation costs would be eliminated. T. 11/19/18, p. 46. If Petitioner has some function in her left hand, her need for companion services might decrease from 12 to 10 hours per day. T. 11/19/18, p. 47. She would still have significant limitations due to her ongoing pain, which is very real, and her fear that people not acquainted with her situation might accidentally brush up against her arm, causing that pain to increase. T. 11/19/18, p. 48.

Under cross-examination, Brennan testified that the documents in his file (PX 25A) include a letter he received from Petitioner's counsel, asking him to prepare a life care plan, and his fee agreement with Petitioner's counsel. T. 11/19/18, pp. 49-50. He obtained his life care planner certification through Intelicus and the University of Florida, after attending a 4-day course and completing evaluations. T. 11/19/18, p. 51. He submitted a draft of his life care plan to Dr. Candido and asked him to review it. Dr. Candido later sent the draft back to him. He did not submit a draft to Dr. Konowitz or otherwise ask for his input. T. 11/19/18, p. 54. He personally interviewed Petitioner on July 1, 2017. Petitioner's husband was present during the interview. No one else was present. T. 11/19/18, pp. 54-55. He is not a physician and cannot offer an opinion as to whether future modalities are reasonable or necessary. T. 11/19/18, pp. 55-56. He did, however, seek medical guidance from Dr. Candido in formulating the plan. T. 11/19/18, p. 56. He conceded that aspects of his projections could change if Petitioner improved or got worse in the future. T. 11/19/18, p. 57. He is typically asked to prepare a life care plan in the context of litigation. He has formulated life care plans in other workers' compensation claims but it is more typical for him to prepare them in personal injury cases. T. 11/19/18, pp. 57-58. He understands that a claimant who takes his case to trial before an arbitrator has the right to seek future medical care under Section 8(a). He does not know whether Petitioner has applied for Social Security disability benefits. He is familiar with Medicare set-asides. T. 11/19/18, pp. 59-60. He has prepared life care plans for Petitioner's counsel's firm on six or eight prior occasions. Throughout the course of his career, he has prepared such plans on hundreds of occasions. About 70% of the plans he prepares are for plaintiffs' lawyers. T. 11/19/18, pp. 60-61. He also reviews plans for defendants. About 90% of the depositions he has given were for plaintiffs. The same percentage applies to his trial testimony. T. 11/19/18, p. 62. He charged $7,481.25 to prepare Petitioner's life care plan. It took him about 26 hours to prepare the plan. He charges $285 per hour for research and plan preparation and $325 per hour for testifying. T. 11/19/18, pp. 63-64. He relied on a counselor, Ms. LeClaire, in projecting the need for psychological counseling. T. 11/19/18, p. 65. He relied on Dr. Candido's prescription with respect to the thumb spica splint projection. T. 11/19/18, pp. 66-69. In making the medication-related projections, he did not assume Petitioner would be weaned off of her opioid medication. T. 11/19/18, pp. 70-71. He did not make any calculations based on that assumption. He is aware of Dr. Konowitz's opinions as to whether Petitioner should be weaned from the opioids. He has no opinion as to whether Petitioner's opioid intake is high. That would be a medical opinion. Pain creams can be prescribed individually rather than as compounds. The cost would be less. T. 11/19/18, p. 73. He did not take into account Dr. Konowitz's opinion that compounding is not necessary in administering such creams. He does not know whether compounds are approved by the FDA. T. 11/19/18, p. 74. He included the compound version in his plan because Dr. Candido recommended it. It would be up to an individual to decide whether to obtain 12-hour or live-in companion care. A companion can be unskilled. He or she need not be a CNA. Given Petitioner's chronic regional pain syndrome, he does not know whether a companion could be obtained from the Illinois Department of Rehabilitation or Human Services. T. 11/19/18, pp. 75-76. He did not use Dr. Konowitz's opinions concerning Petitioner's home health care needs in devising his plan. He understands Petitioner does not have complex regional pain syndrome in her left hand. T. 11/19/18, p. 77. He also understands that Petitioner has some limited ability to use her left hand. T. 11/19/18, p. 77. With respect to that hand, Dr. Candido imposed a 5-pound restriction and an approximate 10-minute repetition restriction while Dr. Konowitz did not feel Petitioner required any left hand restrictions. T. 11/19/18, pp. 77-78. To his knowledge, the only leg problem Petitioner has is varicose veins. He does not believe this is accident-related. His plan contemplates costs for brachial plexus blocks for nail trimming purposes, per Dr. Candido's recommendation. He did not address any less expensive methods for stabilizing the right hand so that nail trimming could take place. T. 11/19/18, p. 79. His plan projects potential costs for

interventions such as a spinal cord stimulator, even though he is aware that Petitioner has repeatedly declined to pursue this. T. 11/19/18, pp. 79-80. He included this in the event Petitioner changed her mind whereas he assumed the status quo with respect to his other calculations. T. 11/19/18, p. 80. He included it per Dr. Candido's recommendation. He is not aware that Dr. Konowitz did not feel a stimulator would help Petitioner this late in the game. T. 11/19/18, p. 81. On his own, he recommended a home alert system. Dr. Candido agreed with this but it was his idea. T. 11/19/18, p. 81. He is aware that Petitioner was driving in 2015. When he met with Petitioner, she indicated her husband was doing the driving. He also read the Marianjoy evaluation recommending that Petitioner not drive. T. 11/18/19, p. 82. Underlying his transportation expense projections is the assumption that Petitioner will never be able to use public transportation. T. 11/19/18, p. 82. He is aware that, prior to the accident, Petitioner drove on her own or obtained a ride from a family member. Petitioner is in a different situation now, in his opinion, in that she may need to get somewhere quickly, due to her medical condition. She would be asking a family member to become available immediately. If Petitioner was going to be driven to a family event, unrelated to the accident, that is a different story. In making his projections, he is assuming Petitioner's left hand will not improve and she will continue to require the same amount of opioid pain medication. T. 11/19/18, pp.84-85. He has projected a cost of $7,500 to $12,000 for an accessible, walk-in shower. He is aware that Petitioner has no leg or back problems that would interfere with her ability to take a shower. He has not looked into any cheaper alternatives. T. 11/19/18, p. 86. He is assuming that Dr. Candido's reports are accurate. He is deferring to Dr. Candido because he has treated Petitioner for several years. T. 11/19/18, p. 87. To his knowledge, Petitioner is not confined to a wheelchair. No one has recommended wheelchair usage. T. 11/19/18, p. 88.

On redirect, Brennan testified that the initials "KDC" appear on a note dated June 16, 2017. He received this note from Dr. Candido. The initials represent the doctor's approval of his plan. He prepared life care plans for six to eight other clients of Petitioner's counsel's firm over a ten-year period. T. 11/19/18, p. 89.

James Kosla, Petitioner's husband, testified that he and Petitioner have been married for 33 years. He currently works as a vice president of marketing for a German automotive steel company based in South Carolina. Before his wife's accident, in 2013, he worked for another automotive steel company. This job involved extensive travel. He was away from home 40 to 50% of the time. T. 11/19/18, p. 92. He began working for his current employer in August 2017. T. 11/19/18, p. 93.

Kosla identified PX 27 as a multi-page Excel spreadsheet that he prepared at the request of Petitioner's counsel. The first page describes the physical assistance he provides to Petitioner. The next few pages list Petitioner's medical appointments during the five-year period since the accident. Another page lists the trips Petitioner has made to Respondent's public health department. The last page describes Petitioner's personal travel. T. 11/19/18, pp. 93-94.

Kosla testified he has to prepare food, periodically clean and "do a lot of laundry" because Petitioner is unable to perform these activities. When he is home, he also helps Petitioner take baths. She prefers baths over showers in terms of easing her right arm pain. If he is away, Petitioner will use a walk-in shower to the best of her ability. He does not have to wash Petitioner but he has to be present to help her get in and out of the bathtub and hand her a towel. They have a conventional bathtub. T. 11/19/18, pp. 94-96. Petitioner can dress herself to the extent of putting on stretchy items but is not able to use zippers, fasten bras, button items or put on boots. He has to help her with all of those activities. T. 11/19/18, p. 95. If he and Petitioner are going out to dinner or to a function, he also has to

open her make-up cases for her, put her jewelry on for her, rub body lotion where she cannot reach and trim her toenails and the nails on her left hand. When he is not around, Petitioner has to use her mouth to open make-up cases. He also has to retrieve and open the mail and write any necessary checks. He routinely cuts up Petitioner's food and opens containers and bottles for her. T. 11/19/18, p. 100. During the holidays, he takes care of all the gift wrapping.

Kosla testified that, before Petitioner's accident, he performed very little cleaning and no cooking. T. 11/19/18, pp. 96-97. For about six or eight months after the accident, Petitioner "still tried to do a lot of things on her own." During that time, her hand deteriorated to its present "atrophied and locked" position. It was in 2014 that he began providing the assistance he has described. T. 11/19/18, p. 102.

Kosla testified that, when he and Petitioner walk somewhere, he walks to her left, at her request, to prevent anyone contacting her right arm. He opens all the doors for Petitioner. If he accidentally makes contact with her right arm, she screams and may cry, if the contact is significant. Petitioner has "high anxiety about that arm" because contact leads to intense pain. T. 11/19/18, p. 104. He has not witnessed any significant contact and Petitioner has not fallen but even mild contact will result in about an hour of pain. Sometimes Petitioner will walk away because she does not want people to see her cry. Even if there is no physical contact, Petitioner cries every day "just thinking about" how her life has been destroyed. She deals with depression and anxiety. T. 11/19/18, pp. 106-107.

Kosla testified that Petitioner was very independent and active before the accident. She worked full-time as a nurse for Respondent and drove on her own with no issues. T. 11/19/18, p. 107.

Kosla testified that he, Petitioner and other family members attend a hockey game about once a year. They arrive very early and try to leave early or late to avoid crowds. When they walk, they surround Petitioner so that no one will contact her right arm. He and Petitioner go to restaurants frequently but seating is complicated. He has to cut her food and she wants to avoid air conditioning and servers. She tells him where to sit. He usually sits to her left. T. 11/19/18, pp. 110-111.

Kosla testified he changed jobs in 2017 because he was "traveling a lot and could see it was creating some problems with [Petitioner]." Sometimes he would have to be gone for a week and she was unable to function. When he was gone, she would not get dressed and would not eat well. He could only pre-prepare so much food. The food had to be wrapped in such a way that she could easily unwrap it. He rarely has to travel now. When he does travel, he tries to leave in the afternoon so she will see him in the morning and get assistance from him. If he has to be gone overnight, a friend or one of their daughters will sleep over. One of their daughters lives fairly close. T. 11/19/18, pp. 113-115.

Kosla testified he is aware there is surveillance of Petitioner driving in 2015. He has seen a couple of still photos from the surveillance videos. After the accident, Petitioner's driving was very "herky-jerky." She would have to reach over to shift gears. He cannot say he felt unsafe when riding with her but "her driving skills deteriorated." She drove in 2014 but only locally. She told him she drove to get out of the house. She made short runs to stores, pharmacies and doctors' offices. T. 11/19/18, p. 116. She last drove in early 2016. T. 11/19/18, p. 121. They sold her car to their daughter about a year and a half ago. Prior to that, the car "sat in the garage" for a year. T. 11/19/18, p. 122.

Kosla testified that Petitioner tries to remain in one position at night, due to her right arm pain. She "cannot roll onto her right side" and "does not sleep well at all." She complains if he moves or the

sheets move. T. 11/19/18, pp. 117-118. She has asked Respondent to provide an adjustable bed. He can give her a "half hug" but otherwise they have no physical contact. T. 11/19/18, pp. 120-121.

Kosla testified that Petitioner gets "very tired and cranky" after about four to five hours of activity. T. 11/19/18, pp. 118-119.

Kosla testified that Petitioner is "not very comfortable in any vehicle." Bumps are a major problem for her. He now drives very slowly. He owns two cars, one of which is sports car with a stick shift. Petitioner will not ride in that car. T. 11/19/18, pp. 123-124.

Kosla testified that Petitioner does not use her left hand much. She owns a brace, which allows her to perform light activities, but does not wear it much. The more she uses her left hand, the more her left thumb hurts. T. 11/19/18, pp. 124-125, 147. She uses her mouth to apply the brace to her hand. T. 11/19/18, p. 125.

Kosla estimated that, since about 2014, he has spent about 42 hours per week performing household chores and otherwise assisting Petitioner. PX 27. This is a conservative estimate, in his opinion. Until 2017, one of his daughters still lived at home so he "had more help." T. 11/19/18, pp. 126-127. At one point in 2014 and for several months in 2015, Respondent provided transportation services to Petitioner. On November 10, 2015, Respondent notified Petitioner it was discontinuing all transportation services. T. 11/19/18, p. 129. On his spreadsheet, he is claiming meal- and transportation-related expenses. He estimated he drove about 2020.5 miles while taking Petitioner to various medical appointments. T. 11/19/18, p. 132. On the last two sheets of the document, he totaled the miles he drove for personal trips. On one of those trips, he drove Petitioner to Omaha so she could see a friend. Before the accident, Petitioner "had her own social life" and drove on her own to visit friends. T. 11/19/18, pp. 133-134. On a number of other occasions, he drove Petitioner to Champaign, where one daughter attends school, and Cedar Rapids, where another daughter has lived for three years. Some of the other listed trips were to cemeteries, where relatives and friends are buried, churches and relatives. He also drove Petitioner downtown on 21 occasions so they could see their daughter Taylor, who lives downtown. On other occasions, he drove Petitioner to the United Center and Wrigley Field. On other occasions, he has driven Petitioner to a hair salon and to resale clothing shops. Petitioner "lost a lot of weight" after the accident and needed to buy special items such as shawls and capes that she can wear over her arm. T. 11/19/18, pp. 142-144.

Kosla testified that Petitioner has traveled via airplane since the accident but never alone. T. 11/19/18, pp. 144-145.

Kosla testified that, overall, he has driven Petitioner about 39,028 miles since the accident. He has spent about 999 hours driving her and sitting in his vehicle, waiting for her at various locations. T. 11/19/18, p. 146.

Kosla testified he is aware of Dr. Konowitz's opinion that Petitioner is capable of driving anywhere. Regardless, he would not ride with Petitioner because she "can't drive" and "panicked just trying to pull [the car] out of the driveway." T. 11/19/18, p. 148. He is also aware of the doctor's opinion that Petitioner could use public transportation and work eight hours per day. He disagrees. Petitioner "is in pain 24/7," is chronically fatigued and is "on heavy narcotics." Since the accident, he has never seen her remain active for 12 to 14 hours at a stretch. She has never remained awake for that long. T. 11/19/18, pp. 149-150. Before the accident, Petitioner did not need his assistance. She cooked,

cleaned, worked, had a social life and was very active with her children. The change has been devastating for her. T. 11/19/18, p. 151.

Under cross-examination, Kosla testified he and Petitioner prepared PX 27 within the last ten days. He previously did not keep track of his mileage or the hours he spent assisting Petitioner. He starts his own workday at 5 AM so that he can take care of his written communications before Petitioner gets up. His job is full-time but he works only four hours a day, at most. Petitioner has no set schedule. That is why he had to average some of the time he spends helping her. Before the accident, Petitioner did all of the shopping, retrieved the mail and made and changed the beds. T. 11/19/18, pp. 157-158. He has records of all the dates they went to medical appointment but otherwise he had to estimate the hours he spent. They did previously request transportation, which Respondent provided for a while, but otherwise did not submit requests for reimbursement to Respondent. He has very few receipts concerning the meal expenses he is claiming. T. 11/19/18, p. 161. He claimed $27 for each meal. He used MapQuest in determining the mileage. Early on, Petitioner drove herself to medical appointments. T. 11/19/18, pp. 162-163. Each time he had to drive Petitioner to CCHS [Cook County Health Services], and wait for her, it took a total of seven hours. He could pull up the toll receipts off a computer. T. 11/19/18, p. 166. The mileage between their house and CCHS is "a real number based on GPS." T. 11/19/18, p. 167. Some of the personal trips he listed on PX 27 are trips he would have perhaps gone on regardless of Petitioner's situation. It would have depended on his schedule. T. 11/19/18, p. 169. Some of the restaurants listed on PX 27 are restaurants he and Petitioner went to before the accident. T. 11/19/18, p. 173. Petitioner was able to tolerate the lengthy road trip to Omaha. T. 11/19/18, p. 173.

Under additional cross-examination, Kosla testified they have two walk-in showers but Petitioner prefers to take baths. T. 11/19/18, p. 174.

On redirect, Kosla testified that, while Petitioner is able to go out with family members to attend sporting events, she does so very rarely. Before the accident, they were "very active" and went out frequently. When they travel via car, they regularly make rest stops. There was never an occasion where he did not have to wait three hours for Petitioner at CCHS. T. 11/19/18, p. 178. He was not allowed into the building so he would wait in a lot and work off his cell phone or laptop. T. 11/19/18, p. 179. The claimed meal expense of $27 is an average. Petitioner prefers baths because the warm water relieves her arm pain and it is easier for her to get cleaner. T. 11/19/18, p. 180.

Taylor Kosla, one of Petitioner's daughters, testified. She has been a licensed attorney since November 2017. At the time of the accident, she was attending college in Champaign. Before the accident, Petitioner was "very happy." She was a "super mom" who "could handle everything while working and being a nurse."

Taylor testified she no longer lives at home but goes home once or twice a month to help Petitioner or take Petitioner shopping. If her father is out of town, she will spend the night with Petitioner. Petitioner can shower on her own but needs help getting dressed. Petitioner always wears loose-fitting clothing because her right arm is "extremely sensitive." Petitioner is not able to put on jewelry or gloves. Petitioner does not wear her splint all the time. If they leave the house, she (Taylor) has to help Petitioner with any doors. If they go to a store, Petitioner picks out the items she wants and she (Taylor) puts them in the cart. In preparation for the holidays, Petitioner told her where to put various decorations. She (Taylor) did "all the legwork" and decorated the tree.

Taylor testified that Petitioner does not use her left hand "much at all." Petitioner is alone at times. They leave food containers that she is able to open. To her knowledge, Petitioner is not left alone for more than 24 hours.

Taylor testified that attending a sporting event with Petitioner is "incredibly stressful for everyone." They have to "surround" Petitioner so that no one will hit her. Sometimes Petitioner will "react out of fear of someone hitting her and that triggers her pain." This "kind of ruins the time for everyone because [Petitioner] is in so much pain she is crying." If Petitioner's pain is triggered, she will walk away a little bit and cry on her own. Even after Petitioner returns to the group, "you can see the pain in her eyes." T. 11/19/18, pp. 189-190. Petitioner "sleeps a lot throughout the day and needs naps." Petitioner recently attended a baby shower for another daughter but hit a point where she was "done" and needed sleep. T. 11/19/18, pp. 191-192.

Taylor identified PX 28 as a spreadsheet she prepared at the request of Petitioner's counsel. The spreadsheet lists the hours she spent assisting Petitioner in 2017 and 2018. On two occasions, she has accompanied Petitioner on 3- to 4-day trips to Dallas so that Petitioner can get out of the cold weather and visit a friend. They are planning a third trip. She goes with Petitioner because Petitioner can no longer fly alone. She estimated spending a total of 39 hours in a year driving Petitioner to stores and helping her shop, 86 hours accompanying Petitioner on trips, 14 hours helping Petitioner around the house, 19 hours preparing for the holidays and 2.7 hours helping Petitioner with make-up and hair. T. 11/19/18, pp. 195-197.

Taylor testified that Petitioner "absolutely" cannot live alone. Petitioner "can't do anything by herself." Petitioner cannot put on clothes, cook for herself or feed herself. T. 11/19/18, pp. 197-198.

Under cross-examination, Taylor testified she loves Petitioner and has a good relationship with her. She would always speak the truth about her. She graduated from college in May 2014 and moved out of her parents' home in March 2015. She currently works full-time. She sees Petitioner once or twice a month, more during the holidays. Petitioner will attend a sporting event "once in a blue moon." T. 11/19/18, p. 202. She (Taylor) has no receipts for the mileage she claims. She never asked Respondent to reimburse her. T. 11/19/18, p. 202.

Jaclyn Kosmicki, another of Petitioner's daughters, testified she lives about three miles from Petitioner. She steps in and helps Petitioner when her father is out of town. In terms of getting dressed, Petitioner can put on socks and underpants but needs help putting on and fastening her bra. She also helps Petitioner put on make-up and dry her hair. She will prepare food that Petitioner can heat up later on. Petitioner did the cooking, cleaning and grocery shopping before the accident. T. 11/19/18, pp. 207-208. She (Jaclyn) owns an SUV and drives Petitioner to grocery stores and restaurants. Since the accident, they have eaten out a lot. A visit to a restaurant is "kind of chaotic" because Petitioner will choose a seat where no one will bump her right arm. If someone inadvertently bumps that arm, Petitioner will cry in pain and might go to the restroom for a few minutes. Petitioner will then return to the table but will be "just different" during the rest of the meal. A couple of weeks ago, Petitioner, she and three other family members went to a Hawks game. They enclosed Petitioner in a "bubble," with her father in the lead and another person to Petitioner's right covering Petitioner's right arm. Petitioner does not sleep well at night and thus naps a lot during the day. None of these behaviors existed before the accident. T. 11/19/18, pp. 213-214.

Under cross-examination, Kosmicki testified she moved out of her parents' house a year ago. She moved to a location fifteen minutes away so that she could continue to help out. She works full-time. She definitely sees Petitioner when her father is out of town. On average, she seeks Petitioner once a week or once every two weeks. It is typically her father who takes Petitioner to the grocery store. She might take Petitioner to a mall every once in a while. If she and Petitioner go out alone, without other family members, they go "at odd times." T. 11/19/18, pp. 215-216.

Petitioner testified she listened to the testimony of her husband and daughters. Their statements concerning the assistance they provide to her were accurate. T. 11/19/18, p. 218.

Petitioner testified she graduated from high school, obtained an associate degree in nursing from Triton and attended Northern Illinois for a year and a half. She stopped attending Northern because her mother became ill and she had three children to take care of. She went back to college on a part-time basis in 2008 and took more classes but did not finish due to her work schedule. T. 11/19/18, p. 219.

Petitioner testified she started working for Respondent in 1984. Initially, she worked part-time. She began working full-time in February 2008. As far as she knows, she is still employed by Respondent but she has not worked since the accident. T. 11/19/18, p. 220. She worked as a registered nurse at certain Respondent clinics, including family planning, STD, immunization and flu clinics. T. 11/19/18, p. 221. Her nursing job involved some lifting of medicine supply boxes. The boxes varied in weight, with the heaviest weighing 20 pounds. T. 11/19/18, p. 221.

Petitioner testified she was injured on August 22, 2013, while leaving work. It was almost completely dark out. She was carrying a heavy book bag and her purse in front of her. She exited the handicapped entrance and tripped over a small cone that she did not see. She later found out the cone was there because the cement underneath it was chipped. She fell and hit the cement. She was "sure [she] shattered [her] arm." It was her right arm that was injured. Paramedics took her to Northwest Community Hospital. T. 11/19/18, pp. 223, 303-304. She later signed an accident report (PX 31) indicating she struck her right arm, elbow, knee and hip when she fell. T. 11/19/18, p. 305.

Petitioner testified she is aware that Respondent does not dispute she has a complex regional pain syndrome in her right arm that has resulted in contractures and essentially no use of that arm. T. 11/19/18, p. 223. After the initial Emergency Room visit, she saw her primary care physician, Dr. Diaz. She also saw Dr. Diaz's partner, Dr. Behnke. She had seen Dr. Behnke before the accident. She went on to see Dr. Murray, an orthopedic surgeon, at Dr. Behnke's referral. She underwent therapy and injections at St. Alexius. She saw Dr. Patel, a pain physician, and then began seeing a different pain physician, Dr. Candido, in July 2014. She remains under Dr. Candido's care. It was Meg Elby, a nurse case manager, who referred her to Dr. Candido. She initially resisted the idea because she lives in Schaumburg and Dr. Candido is at Illinois Masonic. Elby continued to recommend Candido so she eventually agreed to see him. T. 11/19/18, p. 225. He was "wonderful" and she has continued seeing him. She has also been hospitalized at Alexian Brothers for a bowel obstruction related to opioid intake. She saw Dr. Biafora and also saw Dr. Bednar at Dr. Candido's referral. Dr. Bednar evaluated her left hand as well as her right arm. She saw Dr. Carroll once. She has seen Claire LaFrance for mental health care. She has seen Dr. Sefer at an employee health facility at CCHS. She has undergone therapy at Athletico and a driving assessment at Marianjoy. At Respondent's request, she saw Dr. Konowitz three times and Dr. Reilly once. T. 11/19/18, pp. 228-229. She has undergone many stellate ganglion blocks and is awaiting her 40th brachial plexus block. The brachial plexus blocks are performed so that a doctor

can attempt to open up her right hand, which is in a fist, and clip her nails. Her nails are "gross and black and smelly and soft." The blocks are "amazing." They completely numb her right arm and provide her with a period of time when she can be pain free. She is conscious during the blocks and observes them. T. 11/19/18, p. 231. Without the blocks, her nails would grow into the palm of her right hand. Her husband clips her toenails and the nails on her left hand. T. 11/19/18, p. 232. At one point, she tried using a large JAS device that had knobs. Turning the knobs was supposed to increase the extension of her arm but it was painful. On four or five occasions she obtained a compound cream that helped to an extent but then the adjusters denied refills. She was never able to get the cream after that. T. 11/19/18, p. 233.

Petitioner testified she is currently wearing a sling on her right arm. She wears this sling more in the winter, when cold air increases her pain, and when she is in a crowd. She might or might not wear the sling if she and her husband are going to a store. T. 11/19/18, pp. 233-234.

Petitioner testified she is also wearing an orthotic device on her left hand. She wears the device to relieve her left thumb pain, which increases with usage. She used to walk five miles a day before the accident. She was very fit. She tried to continue walking after the accident but she feels like she is a "mark" when she wears the orthotic device. A 10-year-old child could knock her down and take her purse. This has not happened but she is very afraid it will. Before the accident, she protected everybody and "did for" everybody. Now she is "the baby that everybody is taking care of and protecting." That "doesn't sit very well." T. 11/19/18, pp. 235-236.

Petitioner testified she has undergone therapy, injections and bracing for her left thumb condition. She wears the brace when she needs to use her left hand. When her husband is not home, she typically sits on a recliner, to reduce the weightiness of her right arm, which curves forward. She does not use the brace when she is reclining. T. 11/19/18, p. 237.

Petitioner testified she currently uses Fentanyl pain patches, Zolpidem for sleep, Percocet for pain and Movantik to avoid opioid-related constipation. In the past, she has tried Gabapentin, Lyrica, Valium, various anti-inflammatories, various anti-convulsants, Nucynta, Trazodone and topical pain compounds. T. 11/19/18, pp. 239-240.

Petitioner testified she has seen the surveillance videos, which show her driving. She drove in 2013, after the initial injury. At that point, her right arm hurt but she was able to start the car with her left hand and drive herself to medical appointments. She continued driving into 2014 but began driving less and less as her right arm contracted. When she drove, she drove locally. She continued to drive in 2015 but used only the four fingers on her left hand to hold and turn the steering wheel. Her left thumb pain started within a couple of months of the accident. The doctors attributed her left thumb problem to overuse. T. 11/19/18, pp. 242-243. Her doctors had recommended she not operate a motor vehicle but she needed to do so to pick up medication and buy new clothes. After the accident, her weight dropped from 144 or 145 to 112 pounds. In early November 2015, she stopped driving after a near collision. She was driving on Higgins Road when someone pulled out in front of her. The fear of not being able to grab the wheel to avoid a collision prompted her to stop driving. T. 11/19/18, pp. 244-245. Prior to this incident, she had tried to be very careful by driving only in good weather during the day but she realized she could not control the actions of other drivers. T. 11/19/18, p. 245. She still has a valid Illinois driver's license but uses it only for identification purposes. T. 11/19/18, p. 246. After she stopped driving, her car sat in her garage for over a year until one of her daughters bought it from her.

At Dr. Candido's recommendation, she underwent a driving assessment at Marianjoy in October 2016. The person who assessed her recommended that she not drive. T. 11/19/18, pp. 247-248. PX 6, PX 6a.

Petitioner testified she received a letter dated July 23, 2015 from Paris Partee, a human resources Respondent employee. In the letter, Partee extended an offer of one-armed work. She contacted Partee via telephone within a day or two of receiving the letter. Partee told her that Respondent had a light duty job for her and that her employment would be terminated if she did not report to Employee Health Services. She was "very upset" by this news. She told Partee she was in a lot of pain and struggling to perform daily activities. She asked Partee, "what job do you have that I could possibly do?" She also explained she had the use of only four fingers and could not get herself to a location to perform a job. Partee did not explain what kind of job was available. She simply indicated that Petitioner needed to report to Employee Health Services. To this day, no one has explained to her what kind of job was available. She appeared in front of the Arbitrator some years back, at which point she was represented by Donald Gallagher. At that meeting, no one representing Respondent identified a real job for her. T. 11/19/18, pp. 249-251. She returned to Dr. Sefer at Employee Health Services in September and December 2015. Her husband drove her to these appointments and waited outside for her. Sometimes the appointment lasted more than three hours. If the paperwork indicates she saw Dr. Sefer on September 11, 2015, she would have no reason to disagree with the date. Dr. Sefer, a female employee of Respondent, examined her on that date. No one else was in the examination room. Dr. Sefer looked at her right arm and left thumb. She told the doctor about her exchange with Partee. [After the Arbitrator sustained Respondent's hearsay objection, Petitioner's counsel made an offer of proof, with Petitioner testifying that Dr. Sefer told her she had not been provided with any prospective job description and did not believe Respondent truly had a light duty job for her. Petitioner further testified that Dr. Sefer questioned her ability to work in any nursing capacity if she was physically unable to wash her hands. T. 11/19/18, pp. 258-259.] Dr. Sefer did not release her to work. T. 11/19/18, p. 259.

Petitioner testified she would "absolutely" not be able to drive or take public transportation from her home in Schaumburg to a job downtown, work eight hours and then go home. She cannot drive and is fearful of people coming in close proximity to her arm, let alone touching it. There are many days on which she barely functions inside her own home. She will "stay in [her] pajamas from the day before because there is nobody to help [her] change" out of them. She is in pain 24/7. The pain becomes excruciating if anyone touches her arm. It takes her time to recover from being bumped. She becomes a "nasty person" when she is bumped. T. 11/19/18, pp. 260-262. After the accident, she went from an energetic, very athletic person to a "blob." If she manages to retrieve the mail from the mailbox, she cannot open the mail. She cannot fasten certain types of clothing. She purchased a plastic device called a "bra assist" to help her try to hook the fasteners on her bra. She also purchased a button hook but it "doesn't work" as it is intended to. She also bought a device called a "blow dryer stand." The dryer sits in a stand. She is able to turn the dryer on and off. T. 11/19/18, p. 266.

Petitioner denied being angry about her situation but admitted she is depressed. She sees a therapist for this. She "needs [her] life back" but knows this is "not a possibility." T. 11/19/18, p. 267. She does not know if there is any other kind of mental health care that would help her. She is "not going on more medicine." T. 11/19/18, pp. 266-268.

Petitioner testified her pain increases if air blows on her, hitting her arm. Cold air from air conditioning is "terrible." T. 11/19/18, p. 269. She is unable to open a bottle of water on her own. She

uses a circular Rubbermaid implement to gain leverage and help her grab objects. Sometimes she has sufficient dexterity to be able to pick a coin up off the ground. T. 11/19/18, pp. 269-270.

Petitioner testified her left thumb does not hurt when she is inactive. As soon as she tries to use her left hand, the pain begins, even if she is simply attempting to lift a lightweight object such as a paper clip. She can open an automatic umbrella by depressing the button but has difficulty holding the umbrella. She cannot close an umbrella. "People should actually tie one hand behind their back and tie their thumb up and see what it's like to function in life." T. 11/19/18, p. 272.

Petitioner testified she has "come a long way" in terms of being able to toilet herself. She "wound up with three urinary tract infections just learning how to wipe [herself] properly." She uses a spray bottle filled with water to help clean herself. T. 11/19/18, pp. 272-273.

Petitioner testified she passed a typing test "with flying colors" when she transitioned from part-time to full-time employment with Respondent. Now she can only use one finger to type. She can also "voice text." T. 11/19/18, p. 273.

Petitioner testified her "favorite thing in life" is to do things with her family but it is now very stressful for her to go to an event with family members. They go to an event maybe once a year. She loves her family but "cannot shake them." They are "all over [her]", trying to protect her right arm. She finds this embarrassing. T. 11/19/18, p. 274. When they attended a Hawks game, she slept on the way to the game and on the way back. It was difficult for her to sit throughout the game because of the weight of her arm. She is "used to reclining." Her posture has been affected by her injury because her right arm now "curves forward." Reclining helps relieve the pain in her shoulder, neck and back. T. 11/19/18, pp. 275-276.

Petitioner denied traveling alone by air since the accident. She has always had someone travel with her. T. 11/19/18, p. 276.

Petitioner testified that Dr. Candido has prescribed an adjustable bed for her. Her husband's testimony that she sleeps for only short intervals is accurate. Once she lowers herself into the bed, she cannot change position. She would "kill [her]self" if she rolled onto her right side. Any change in positioning increases her pain. She was able to sleep through the night before the accident. Now she turns on the television or goes downstairs to lie on the recliner after a brief interval of sleep. T. 11/19/18, p. 279. Her husband now sleeps on top of the sheets because the weight of a sheet bothers her right arm. When her husband slept under the sheets and happened to roll over, she would wake up immediately due to the added pain. T. 11/19/18, p. 285.

Petitioner testified her dentist has prescribed an air flosser for her because she wound up with three cavities last year, due to her inability to manually floss her teeth. Respondent would not agree to pay for the air flosser. T. 11/19/18, pp. 279-280.

Petitioner testified she does not believe she would be able to live alone because she needs help every day just to get through the day. Her husband recently went on a business trip. Before he left town, on a Tuesday, he prepared her breakfast and set up all of her remaining meals so that she simply has to microwave them. She used to cook but no longer does so. T. 11/19/18, p. 283. Her daughter stopped by on Tuesday and Wednesday and her husband returned on Thursday. There are times at which she is alone for 24 hours at a stretch. On those occasions, she is sometimes able to change her

clothes and take a shower on her own. She prefers to take a bath but does not bathe on her own. T. 11/19/18, pp. 281-282.

Petitioner testified that Dr. Candido never released her to work. T. 11/19/18, pp. 283-284.

Petitioner testified that Drs. Behnke and Candido treated her for a right hand infection in November 2014. She developed the infection because her nails grew into the palm of her right hand. T. 284. She underwent Emergency Room treatment on March 18, 2015 because she lacerated her right hand while attempting to clip her fingernails after undergoing a block. Her arm was numb due to the block and, until she saw the blood, she did not realize she had cut herself. T. 11/19/18, p. 286.

Petitioner testified that, prior to November 10, 2015, Respondent provided her with some transportation, especially to and from medical appointments. On November 10, 2015, an adjuster sent an E-mail indicating that no additional transportation would be provided. T. 11/19/18, pp. 286-287. She had stopped driving at that point and still needed help with transportation. Even if she could navigate steps at a train station and get herself on a train, using only four fingers, she could not tolerate the bumps or jarring. When she rides in the car with her husband the jarring of the driveway and potholes causes her pain. T. 11/19/18, p. 289. Respondent never offered her a job a few hours a day at its Rolling Meadows facility, which is only 11 miles from her home. T. 11/19/18, pp. 289-290.

Petitioner testified she was admitted to Alexian Brothers for a couple of days in June 2016 after she developed a bowel obstruction due to the use of narcotic medication. For a while, Respondent did not authorize Moventik, the medication that assists with opioid-related constipation. After July 2018, when Respondent stopped approving her prescriptions at Walgreen's, she ended up at the Emergency Room on two occasions because her pain increased and she started experiencing withdrawal symptoms. Prior to this, she had used pain patches consistently for five years. T. 11/19/18, pp. 291-293. She currently obtains her pain medication from Injured Workers Pharmacy. It is "like a miracle." The medication arrives at her home and she does not have to fight anybody to get it. T. 11/19/18, p. 293. In the past, she has used a compound topical pain medication, per Dr. Candido. This helped on the four or five occasions she used it but it was "tacky" and tended to make her clothes drag across her right arm. T. 11/19/18, p. 294.

Petitioner testified she sought psychological care from Claire LaFrance at the recommendation of Dr. Candido, Dr. Behnke and the doctors at Employee Health Services. T. 11/19/18, p. 295. If LaFrance's records reflect she feels frustrated because she went from being a caretaker to needing care, the records are correct. She believes Dr. Candido is correct in finding her incapable of taking public transportation. T. 11/19/18, p. 295. The injury and her inability to work have resulted in economic difficulties. Her husband was supposed to retire but did not do so, since she is no longer working. T. 11/19/18, p. 297.

Petitioner testified that Dr. Candido has not changed her medication regimen. Dr. Behnke currently fills her prescriptions because his office is closer to her home. It is Dr. Candido, however, and not Dr. Behnke who is prescribing the medication. Dr. Behnke is an internist, not a pain specialist. T. 11/19/18, p. 298.

Petitioner testified that news of her daughter's pregnancy made her feel sad rather than happy because she will not be able to hold or change the baby. T. 11/19/18, pp. 298-300.

Petitioner acknowledged that there has been discussion of her having a spinal cord stimulator implanted. She would never allow anyone to touch her spine because she has had friends and relatives who have had problems with stimulators. Too many things can go wrong. T. 11/19/18, p. 301. She continues to need and take pain medication, despite Respondent's denial. Dr. Candido has told her there is nothing that would work better than her current medication. T. 11/19/18, p. 302.

Petitioner testified she saw Brennan's life care report long ago. She would prefer to have family members assist her but she is sure she would accept whatever help was offered. T. 11/19/18, p. 302.

Petitioner testified she saw Steve Blumenthal in April 2017, at her attorney's request. T. 11/19/18, p. 305.

Petitioner identified PX 31 as an accident report she signed, using her right hand. The report describes her as having struck her right arm, right knee, right elbow and right hip when she fell. T. 11/19/18, p. 305.

Under cross-examination, Petitioner acknowledged having bilateral "tennis elbow" prior to the work accident. This condition stemmed from golfing. Dr. Lopez treated this condition. He administered an injection and she was then "fine." It probably never crossed her mind to mention this to the doctors who treated her after the accident. T. 11/19/18, pp. 307-308. When she saw Dr. Lopez on May 9, 2013, she rated her right arm pain at 7/10 and her left arm pain at 4/10. The pain was in her elbows. T. 11/19/18, pp. 308-309. She described her symptoms as moderate to severe and reported burning. T. 11/19/18, p. 309. Dr. Lopez injected her right epicondyle on that date. She had undergone two months of therapy prior to this visit and was also utilizing a band on her right arm. T. 11/19/18, pp. 308-310.

Petitioner initially did not recall having any difficulty performing routine activities before the work accident. She did not disagree with Dr. Lopez's note of May 9, 2013, which described her as having difficulty cleaning and vacuuming. The "tennis elbow" made it difficult to push and pull a vacuum. T. 11/19/18, pp. 310-311. The injection helped the right elbow "and the other elbow took care of itself." She stopped golfing. T. 11/19/18, p. 311. When she had "tennis elbow," she probably had difficulty putting on shoes and socks and cooking, to the extent it would have been difficult for her to lift a pot of hot water. T. 11/19/18, p. 311. If Dr. Lopez's note of May 9, 2013 states she reported having difficulty with cooking, she "probably did have that issue." She has not purchased an adjustable bed. She previously underwent varicose vein treatment. Her legs are currently fine. She has no restrictions relative to her lower extremities. T. 11/19/18, pp. 312-313. She can use a phone, via voice commands. She can use her two good fingers to move a computer "mouse" and "hunt and peck." T. 11/19/18, p. 313. She is not currently working and has not attempted to return to work since the accident. T. 11/19/18, p. 314. The letter of July 23, 2015 directed her to contact Paris Partee to arrange to return to work. She contacted Partee on approximately July 30, 2015. She told Partee she could not return due to her pain and inability to travel to the workplace. T. 11/19/18, p. 316. Respondent never provided her with a job description. T. 11/19/18, p. 317. She did report to Employee Health Services, as required, on several occasions. Employee Health Services "is where you have to go and they release you back to work." T. 11/19/18, p. 318. Dr. Candido advised her not to drive any distance. T. 11/19/18, p. 318. The surveillance obtained in September and October 2015 showed her driving but she only drove locally. She does not recall Paris Partee calling her on April 19, 2016 and leaving her a voice mail message. She believes Partee called a couple of times over the years telling her she had to return to work or face the possibility of being laid off. T. 11/19/18, p. 320. It is "possible" Partee asked her to return to a sedentary job with no use of the right arm. She went to Employee Health each time she was asked to

go. T. 11/19/18, p. 321. At the end of each Employee Health visit, she received papers which she then delivered to human resources. No one affiliated with Respondent told her to begin an accommodated job on May 2, 2016. She has "absolutely not" looked for other jobs since the accident. She struggles to get through normal daily activities. T. 11/19/18, p. 325. She is not currently receiving Social Security disability benefits. She called a Social Security office and was told she has not worked enough time to qualify. T. 11/19/18, p. 326. She is undergoing psychological care but is not taking any antidepressants. She does not recall whether anyone recommended she take this medication. She would not disagree if records show she received temporary total disability benefits from August 23, 2013 through August 27, 2015. T. 11/19/18, p. 327. She later received permanency benefits. T. 11/19/18, p. 327. She does not believe she ever formally applied for Social Security disability benefits but she believes a man completed a form via telephone and told her she did not qualify. T. 11/19/18, pp. 329-330.

On redirect, Petitioner reiterated that Dr. Candido did not release her to work. The bilateral elbow problems she had in the past were not disabling. She continued to work full-time. Blumenthal did not recommend that she re-enter the workplace. T. 11/19/18, p. 331. She saw Dr. Sefer at Employee Health on several occasions in 2016 and 2017. Dr. Sefer did not release her to work. T. 11/19/18, p. 333.

At this point in the hearing, the Arbitrator conducted a viewing of Petitioner's right arm and part of her right hand. The Arbitrator observed that the arm is curved inward and very close to Petitioner's body. The Arbitrator was not able to see the nails on Petitioner's right hand. T. 11/19/18, pp. 334-335.

At a continued hearing, held on January 16, 2019, James Kosla was recalled, over Respondent's objection, for the purpose of updating information concerning the hours he and other family members have spent caring for Petitioner. He identified PX 42 and 43 as an Excel spreadsheet he created concerning the hours he and his three daughters have spent since November 19, 2018. In December 2018, the hours totaled 99. T. 1/16/19, pp. 8-9. For the most part, the caretaking his daughters provided took place in his presence. The time estimates are "very conservative" in his opinion. The need for care arises each day and he cannot take the time to document everything. T. 1/16/19, p. 12. [With respect to PX 42 and PX 43, the Arbitrator sustained Respondent's objection to the portion of those exhibits that relates to caretaking provided by the three daughters. T. 1/16/19, p. 13.

Under cross-examination, Kosla testified he uses a watch to time the caretaking activities. He did not record the actual start and finish times for each task due to time restraints. He has a job of his own and is not a professional bookkeeper. He devised the spreadsheet and would be willing to use any alternative document that Respondent could come up with. T. 1/16/19, p. 14. He fills in the time as he can, depending on his own work schedule. T. 1/16/19, p. 15.

The Arbitrator sustained Respondent's objection to Petitioner providing additional testimony concerning the assistive devices she identified at the initial hearing. Petitioner's counsel then made an offer of proof, with Petitioner identifying photographs of those devices. T. 1/16/19, pp. 17-20. PX 41 A-G [rejected by the Arbitrator].

Tekuila McGee, a Respondent employee who handles workers' compensation claims, testified pursuant to Petitioner's subpoena. McGee testified she works in Respondent's risk management department. She makes decisions concerning claimants' requests for temporary total disability benefits, medical care and vocational rehabilitation. T. 1/16/19, p. 24. She has handled Petitioner's claim since at least May 2018. T. 1/16/19, pp. 24-25.

McGee testified she relies on treatment records, IMEs and utilization review in making decisions concerning medical care. T. 1/16/19, pp. 26, 34, 37-38. If a treating physician and IME disagree as to the need for care, and the case is being litigated, she consults with defense counsel in making the decision whether to authorize the care. T. 1/16/19, pp. 27-29.

McGee initially testified she has handled Petitioner's claim for a few months. She is familiar with Petitioner's file. Respondent's IME, Dr. Konowitz, agrees with Dr. Candido's opinion that Petitioner has lost 100% use of her right arm. Dr. Konowitz does not believe that Petitioner's claimed left thumb condition is related to the work accident. She believes Dr. Konowitz testified the left thumb is not related. She has not read any summary of Dr. Konowitz's deposition testimony. T. 1/16/19, pp. 41-43. After Petitioner's counsel read some of this testimony out loud, McGee testified she cannot say whether Dr. Konowitz opined that part of the left thumb condition could be causally related. T. 1/16/19, pp. 45-48. She would have to read "the entire report" and discuss it again with defense counsel to reach that conclusion. T. 1/16/19, pp. 49-50. As of the time she walked into the hearing, Respondent's position as to the left thumb was based on Dr. Konowitz's report. T. 1/16/19, p. 50. Respondent's system is to "consult with defense counsel regarding exposure." The decision is made collectively. T. 1/16/19, p. 54. Respondent uses the treatment records and Dr. Konowitz's report to project exposure and future risk. T. 1/16/19, p. 57. She has not seen Brennan's life care plan (PX 25). T. 1/16/19, p. 57. She is not aware of Respondent having prepared any such plan. T. 1/16/19, p. 58. She would know if such a plan existed. T. 1/16/19, p. 58. She is not familiar with Petitioner having requested an adjustable hospital bed. T. 1/16/19, p. 60. She has not reviewed the transcript of testimony taken on November 19, 2013. T. 1/18/19, p. 61. She has no information as to what transpired at that hearing. T. 1/18/19, pp. 61-62. She is also unfamiliar with Petitioner's request for an air flosser. T. 1/18/19, p. 65. She is aware that surveillance of Petitioner was conducted in 2015. She has an idea of what the surveillance showed. She is not aware of any other surveillance having been conducted via a previous adjuster. T. 1/16/19, p. 66. She knows what the term "ADL" means. She is aware that Petitioner is claiming companion care, as recommended by Dr. Candido, but "no script was provided" to Respondent. T. 1/16/19, pp. 68-70. She has not reviewed Dr. Candido's July 31, 2018 deposition or any of the attachments to the deposition. T. 1/16/19, pp. 70-71. A different adjuster handled Petitioner's claim when Dr. Candido issued his 2017 report and it would be more appropriate for him to address this. T. 1/16/19, pp. 72-74. McGee testified she "never said [she] was denying" the claim for companion care. She probably took over the handling of the claim in late 2018. With respect to an E-mail of May 22, 2018 [PX 51] that was addressed to her, requesting authorization of the flosser, she responded on May 24th, indicating that the previous adjuster, Jason Henschel, already informed Petitioner's counsel that the flosser was denied in an E-mail of May 17, 2018. T. 1/16/19, pp. 82-83. She recalls the E-mail of May 22, 2018 but cannot recall exactly when she took over the file. The file was assigned to her as of at least May 2018. T. 1/16/19, p. 84. She does not currently have access to the attachment referenced in the E-mail but the previous adjuster responded to the request for the air flosser. By the time Petitioner's counsel sent her an E-mail on May 22, 2018, Henschel had already denied the air flosser. T. 1/16/19, pp. 88-90. The prescribing physician could have appealed the denial. She is aware that Dr. Candido says Petitioner cannot return to full duty. However, the IME has said Petitioner can return to light duty. T. 1/16/19, p. 94. There is nothing beyond what the two doctors have said about Petitioner's work capacity that plays into her thinking. T. 1/16/19, p. 96. She understands that Petitioner is right-handed. She is aware of some of the activities that Petitioner claims to be unable to perform. T. 1/16/19, pp. 97, 100. She is also aware that Respondent offered a return to work, at Stroger Hospital, and that Petitioner refused this offer, as well as offers of two other positions at Cermak. T. 1/16/19, p. 100. She is not aware of Petitioner having trouble with zippers, donning/removing coats, adjusting jewelry, putting on make-up, opening cans and

bottles, using scissors or attaching paper clips. She is "not aware of the specifics." T. 1/16/19, pp. 105-107. The report from the IME, stating that Petitioner can return to light duty, could make her doubt some of Petitioner's claims. T. 1/16/19, pp. 106-107. [At this point in the hearing, the Arbitrator suggested that Dr. Candido issue a written prescription for the services he is recommending. Respondent's counsel indicated she did not believe this would cause Respondent to change its position since those recommendations are set forth in the doctor's deposition transcript.] T. 1/16/19, pp. 111-112.

McGee testified that, when she was out in the hall, talking with Respondent's counsel during a break, she indicated she needs to get back to work. Respondent's counsel did not tell her to say anything. T. 1/16/19, p. 113.

McGee testified she has not previously seen Blumenthal's rehabilitation-related reports. She is familiar with the services provided by a vocational rehabilitation counselor. To her knowledge, Respondent does not have a vocational opinion that contradicts Blumenthal's. T. 1/16/19, p. 115. Blumenthal mentions Dr. Candido's opinions but not Dr. Konowitz's. He is "considering only one side of the coin." T. 1/16/19, p. 118. "All factors would be considered . . . but we would stand by the IME report." T. 1/16/19, p. 120. She cannot say she would continue to rely on that report because she does not know what was testified to on November 19, 2018. T. 1/16/19, p. 120. If a transcript of the hearing was made available to her, she would consult with defense counsel as to whether to read it. T. 1/16/19, p. 121. Because Petitioner's claim is being litigated, she would prefer that Dr. Candido go through defense counsel rather than her to secure authorization for treatment. She is not aware that Petitioner has to have a doctor clip the fingernails on her right hand. T. 1/16/19, pp. 123-124. She is aware that Petitioner's right hand is clawed. T. 1/16/19, p. 124. She does not understand why Petitioner would need permission to schedule visits with her treating physician. Respondent does not tell her she can or cannot schedule appointments. T. 1/16/19, p. 126. She is aware that Petitioner is on medication. Respondent addresses treatment outcomes. Respondent does not tell claimants they cannot schedule appointments with their doctors. T. 1/16/19, pp. 127-129. "There is no protocol that says that we have to provide written authorization for a visit for the employees to have a visit with [their] treating physicians because it's a regular visit." We do not direct care. T. 1/16/19, p. 131. Respondent's counsel then indicated that, because the trial is still pending and the treating and examining physicians differ as to how future treatment should be handled, Respondent is not required to continue to authorize care. T. 1/16/19, p. 133. The Arbitrator then recommended that Respondent timely provide authorization for routine care that has never previously been disputed. T. 1/16/19, p. 135.

In response to questions posed by Respondent's counsel, McGee testified she is considering the five IME reports and can potentially consider the UR reports as well. The job offers pre-date her handling of the claim. It would be best for the previous adjuster, Jason Henschel, to address this issue. T. 1/16/19, p. 138.

Jason Henschel testified he has worked as a claims adjuster for Respondent since May 2011. T. 1/16/19, p. 141. He investigates workers' compensation claims, reviews medical records and bills and arranges for surveillance. T. 1/16/19, p. 141. He arranges for claimants to return to work. T. 1/16/19, pp. 141-142.

Henschel testified he handled Petitioner's claim from the inception until about May 2018. Only he and McGee have been assigned to Petitioner's claim. T. 1/16/19, p. 143. He reviewed Petitioner's file before appearing at the hearing. T. 1/16/19, p. 144.

Henschel testified Petitioner began working for Respondent in July 1984. As of the accident, she worked full-time as a Clinical Nurse 1. Petitioner has not returned to work since the accident. T. 1/16/19, p. 146.

Henschel identified RX 17 as a letter he sent to Petitioner's prior counsel on July 23, 2015. In this letter, he advised counsel that Respondent was terminating the payment of benefits based on its ability to accommodate the restrictions outlined in Dr. Konowitz's report of April 23, 2015. T. 1/16/19, pp. 150-151. In that report, Dr. Konowitz found Petitioner capable of working with no use of the right arm. T. 1/16/19, p. 151. [At this point in the hearing, Petitioner's counsel stipulated that Petitioner testified she called Paris Partee in response to Henschel's letter.] T. 1/16/19, p. 156.

Henschel testified that Petitioner's former counsel, Mr. Gallagher, contacted him via E-mail on July 29, 2015, in response to his letter. Gallagher indicated that Petitioner did not return to work based on her driving-related restrictions. T. 1/16/19, p. 160.

Henschel testified that, to his knowledge, Petitioner called Paris Partee, director of Human Resources at Cermak Health Services, on July 30, 2015. It was Partee who had the potential job. T. 1/16/19, p. 162. Petitioner did not return to work after she contacted Partee. T. 1/16/19, p. 162. The job was at Cermak Health Services, 2800 South California, in Chicago. T. 1/16/19, p. 163. [At this point in the hearing, Petitioner's counsel stipulated that Petitioner never went to any Respondent location to attempt to return to work. T. 1/16/19, pp. 166, 180.] The contact person at Cermak was Pamela Brown, Director of Patient Services at Cermak. T. 1/16/19, p. 172. Brown stopped working at Cermak in approximately March 2018. T. 1/16/19, p. 172.

Henschel testified he obtained video surveillance of Petitioner in September and October 2015. The footage showed Petitioner driving. T. 1/16/19, p. 172. He sent the disks to Dr. Konowitz. After the doctor reviewed the footage, he again found Petitioner capable of working with no use of the right arm. He saw no need for any driving-related restrictions. T. 1/16/19, p. 173. Henschel testified that, after he received Dr. Konowitz's report of September 15, 2015, he contacted Cermak and determined that the job was still available. T. 1/16/19, p. 173.

Henschel testified he contacted Petitioner's former counsel, Mr. Gallagher, after receiving Dr. Konowitz's report of September 15, 2015. He sent the report to Mr. Gallagher via E-mail. T. 1/16/19, p. 176. He also advised Mr. Gallagher that benefits were being terminated based on the report and job offer. T. 1/16/19, p. 177. Petitioner did not return to work for Respondent thereafter. T. 1/16/19, p. 182.

Henschel testified he again attempted to bring Petitioner back to work, to the same job, in April 2016. Pamela Brown had the job available. T. 1/16/19, p. 182. Petitioner was to start the job on May 2, 2016, at the Cermak location. Henschel acknowledged he does not recall how he knows that Paris Partee called Petitioner on April 19, 2016. After April 2016, no additional attempts to bring Petitioner back to work. T. 1/16/19, p. 186.

Henschel testified he spoke with Devon McBride, Senior Human Resources Coordinator at Cermak, on December 22, 2016.

Henschel testified he has not spoken with anyone at Respondent concerning the "bed control" position since he stopped handling Petitioner's claim in May 2018. T. 1/16/19, p. 190

Under cross-examination, Henschel acknowledged that, during the time he handled Petitioner's claim, Respondent accepted that Petitioner has chronic regional pain syndrome affecting her right arm. T. 1/16/19, p. 191. Dr. Konowitz said that Petitioner was not able to use her right arm. T. 1/16/19, p. 193. Henschel did not recall what restrictions, if any, Petitioner had with respect to her left upper extremity. T. 1/16/19, p. 195. He relied on Dr. Konowitz's report of September 15, 2015, stating that no driving-related restrictions were needed. T. 1/16/19, p. 195. The October 2015 surveillance footage showed Petitioner driving on three separate days. T. 1/16/19, p. 196. He does not know the duration of the driving shown in this surveillance. He does not recall that Petitioner was driving using four fingers. T. 1/16/19, p. 199. He decided to rely on Dr. Konowitz's opinion that Petitioner could drive safely. T. 1/16/19, p. 200. When he attempted to have Petitioner return to work, he was aware she would need to travel from Schaumburg to downtown Chicago. T. 1/16/19, p. 202.

At a continued hearing, on March 14, 2019, **Linda Follenweider** testified on behalf of Respondent. Follenweider is a registered nurse and licensed advanced practice nurse. T. 3/14/19, p. 15. She began working for Respondent in 2005 or 2006. At that point, she worked remotely as an asthma clinical director for three and a half years T. 3/14/19, pp. 8-9, 17. She then worked elsewhere. In March 2015, she resumed working for Respondent on a consultant basis. In November 2016. At that point, she was interim Chief Operating Officer for Correctional Health. She accepted the position the following May and became interim Director of Nursing at the same time. T. 3/14/19, p. 8.

Follenweider testified that, as Chief Operating Officer, she handles all health services offered in the adult jail and the juvenile detention center. Some of her duties are personnel-related. She completes paperwork concerning disability claims. Since 2015, her duties have included reviewing employees' restrictions to determine whether they can be put back to work. T. 3/14/19, p. 20. She also completes incident reports. T. 3/14/19, p. 31.

Follenweider testified that, at some point within the last four to six months, Sandy Navaro, an attorney in Respondent's General Counsel office, mentioned Petitioner's claim to her during a meeting. T. 3/14/19, pp. 25-26.

Follenweider testified she has not seen Petitioner's personnel file. To her knowledge, Petitioner's job at Respondent was classified as a "Clinical Nurse 1" position. The duties associated with this position vary, depending on patients' needs and the clinical area where the nurse works. T. 3/14/19, p. 37. At the Cermak jail, CN1 nurses might pass medication, take vitals or perform "bed control." The jail is "just shy of 100 acres" and has eight living areas, some of which have 24/7 nursing care. T. 3/14/19, p. 39. As of the day before the hearing, there were 5,700 detainees at Cermak. T. 3/14/19, p. 43. A nurse performing "bed control" reviews electronic medical records three times a day and prepares reports to ensure that detainees are housed in areas where they could obtain care appropriate to their needs. T. 3/14/19, p. 40. At the beginning of the shift, the "bed control" nurse receives an E-mail indicating where all the patient detainees are housed. For privacy reasons, the patients are divided into "M" and "P" categories according to their medical needs. T. 3/14/19, pp. 42-43. For example, a detainee categorized as "M-3" needs "detox housing." T. 3/14/19, p. 45. "Bed control" is a "huge patient safety issue" in that detainees have to be housed where their needs can be met. A detainee who is at risk of going through withdrawal must be based in one specific area where nurses can perform screenings. T. 3/14/19, p. 44. A "bed control" nurse must be able to look at a

report, which is transmitted three times per day, and determine, for example, whether a detainee categorized as "M-3" is in the right spot or needs to be transferred out of the general population. T. 3/14/19, pp. 45-46. The "bed control" job involves clinical decision making. T. 3/14/19, p. 46. From a physical perspective, it involves using a computer "mouse" to "cut and paste" items in the report, deleting detainees' protected medical information along the way, E-mail those items to "DOC", a/k/a "the sheriff side," which is in charge of detainee transfers, and then follow up to make sure that detainees have been moved to the proper locations. T. 3/14/19, p. 47. A "bed control" nurse sits in a cubicle on the first floor of Cermak, where the medical records department is located. The area has natural light. A bathroom and kitchen are nearby. T. 3/14/19, p. 49. The address is 2800 South California. T. 3/14/19, pp. 50-51.

Follenweider testified that a "bed control" nurse has no patient contact whatsoever. The job involves typing only to the extent that the nurse has to enter his or her password to activate the computer. It primarily involves using a "mouse." T. 3/14/19, p. 51.

Follenweider testified that the "bed control" job is currently available. A person who held the job just retired. Another person is performing the job, with coverage from other nurses. "Bed control" can be an assigned task as well as a full-time job. The "CN1" position is a permanent, full-time position. "Bed control" needs to be performed seven days per week. A "bed control" worker does not have to be a registered nurse. CMTs, or "certified medical technicians," and nurse supervisors have performed the job. The job is "so critical for patient safety" that Cermak's medical director "has made sure to look at it." T. 3/14/19, p. 53.

Follenweider testified the "bed control" job is sedentary in nature. T. 3/14/19, p. 53. Since it "just" involves mouse usage, a person with no use of the right arm could perform the job if he or she could operate the "mouse" with his or her left hand. T. 3/14/19, p. 56.

Under cross-examination, Follenweider reiterated that "bed control" is one task associated with the "CN1" position. Nurses at Cermak do not rotate through "bed control" because the collective bargaining agreement prohibits such rotation. T. 3/14/19, pp. 56-57. Follenweider testified she would be able to produce a written description of a "CN1" job but no such description exists for the "bed control" position. T. 3/14/19, p. 57. Cermak's electronic medical record system has the capacity to create a "grid" to show the location of detainees based on their "M" and "P" classifications. The "grid" might show that three detainees with "M-3" status are housed in the general population. The "bed control" worker "double clicks" on that and a box comes up, showing the names of the three detainees. Detainees are "sometimes in bad shape" on arrival at Cermak. They have to be screened. A detainee with a medical condition sees a physician or a physician assistant. A detainee with a mental health condition sees a mental health specialist or psychologist. T. 3/14/19, p. 61.

Follenweider acknowledged that a "bed control" job, per se, would never be posted on Respondent's website. She is unable to comment on whether nurses complete their training so that they can pursue careers in "bed control." T. 3/14/19, p. 63. A person assigned to "bed control" for a shift works four days, eight hours per day. T. 3/14/19, pp. 65. Since coverage is needed every day, people perform the "bed control" job on the weekends too. T. 3/14/19, p. 66. It typically takes a "bed control" worker two to two and a half hours to respond to the initial morning E-mailed report. Once "DOC" responds, the worker has to look at that response and make sure the detainees are being moved appropriately. T. 3/14/19, p. 67. It is difficult to say whether the job is "busy," in the conventional sense, but it requires vigilance. Cermak has to be "reactive" rather than "proactive" because it does not

have control of movement the way a hospital does. T. 3/14/19, p. 70. The morning "bed control" shift is "important and critical." T. 3/14/19, p. 70. If a catastrophic "call off" occurs, with employees calling off work, Cermak's medical director will perform "bed control" herself because of its critical patient safety function. T. 3/14/19, p. 71. The Excel spreadsheet that is transmitted to the worker in the morning can be printed off the computer. The spreadsheet alerts the worker to the detainees who are "housed inappropriately." T. 3/14/19, pp. 72-73. It is up to the worker to triage those detainees and alert DOC to those who are "the most critical to move" versus those whose move can be delayed. T. 3/14/19, p. 75. The "cut and paste" function is done via a "mouse," not manually. T. 3/14/19, p. 77. Beyond typing in a password, the worker might have to type in comments where appropriate. T. 3/14/19, p. 78. The 7:00 AM to 3:00 PM shift is the busiest. T. 78-79. The nurses at Cermak understand the significance of the "bed control" task. The person performing the task "closes loops" by ensuring, for example, that a detainee in the hospital undergoes a test or X-ray that a physician has ordered. T. 80. The worker could interact with co-workers in the adjacent medical records department as much or as little as he or she wants. T. 3/14/19, p. 81. The only mandatory interaction is the E-mail communication required of the job. T. 3/14/19, p. 81. If the worker becomes concerned about an emergent transfer, he or she can call, using the phone at the desk. The CN1 salary applies, whether the nurse is passing medications or performing "bed control." Petitioner is a CN1, to her understanding. T. 3/14/19, p. 84. She would receive CN1 wages if she performed "bed control." T. 3/14/19, pp. 84-85.

Follenweider testified that, when she reviews return-to-work options, she does not have access to the person's medical records. When an employee is on disability, whether stemming from a work accident or not, she completes a form listing what the employee's job entails. It is someone in employee health who reviews the restrictions imposed by that employee's physician. She might receive an inquiry from human resources asking whether an unidentified person could perform a certain job. She likes the fact she never learns the person's name. She does not review any employee medical records, for privacy reasons. T. 3/14/19, p. 91. She interacts with employee health services, or EHS, to an extent but not with respect to workers' compensation or return to work issues. As to those issues, she interacts with human resources. T. 3/14/19, pp. 95-96. When she first learned of the claim from Sandy Navaro, she was given a document that Navaro created with questions as to the "bed control" job. She does not know whether she is the right person to answer a question asking whether the "bed control" job could be performed at a location other than Cermak. T. 3/14/19, p. 99. She cannot answer the question of whether the "bed control" job could be modified so that it could be performed by a person accompanied by an assistant. T. 3/14/19, pp. 101-102. She wants to be respectful of Petitioner's privacy. If she could be told what ADL needs to be accommodated, she could answer the question. If a physician said that Petitioner could attempt working four hours a day with a personal assistant, with no use of the right arm and use of the left hand for up to 10 minutes at a time, Respondent could accommodate these restrictions. Respondent would have to cover the other four hours of the eight-hour shift. T. 3/14/19, pp. 104-106.

Arbitrator's Summary of Medical Records

Due to the volume of records in evidence, the Arbitrator focuses primarily on the records bearing on the disputed left-sided complaints and the efficacy of the opioid regimen.

After the August 22, 2013 accident, Petitioner was transferred by ambulance to the Emergency Room at Northwest Community Hospital. Paramedics noted a quarter-sized abrasion on the elbow and a complaint of tingling in the fingers. They also noted a pain rating of 5/10. At the hospital, Petitioner reported tripping over a parking cone in a lot at work forty minutes earlier, falling onto her right elbow

and right knee. Hospital personnel noted a 1.5 cm laceration to the right elbow and a 1 cm abrasion to the right knee. They described Petitioner as anxious and "refusing to use right elbow." Right elbow X-rays showed no joint effusion and no fracture. The Emergency Room physician diagnosed a bone bruise and laceration. At discharge, Petitioner was given prescriptions for Hydrocodone and Flexeril and directions to follow up with her primary care physician. PX 12.

Petitioner saw Dr. Diaz in follow-up on August 24, 2013. The doctor noted healing of the right elbow abrasion and ecchymoses over the lateral aspect of the right hip. She prescribed right hip X-rays. PX 15. Petitioner returned to Dr. Diaz on August 28, 2013. The doctor noted that Petitioner's right hip pain had resolved but that she was still experiencing right elbow pain. She indicated Petitioner reported pain shooting to her hand with elbow flexion and extension. She also noted a complaint of pain at the base of the head. On examination, she noted some edema of the right elbow. She described the elbow as very tender to touch. She refilled the Norco and Flexeril and provided Petitioner with an orthopedics referral. PX 15.

Petitioner first saw Dr. Murray, an orthopedic surgeon, on September 3, 2013. He noted a history of the accident and subsequent care. On right elbow examination, he noted a 3-4 cm laceration over the olecranon. He also noted diffuse tenderness over this area as well as mild tenderness about the medial and lateral humeral epicondyles. He prescribed Ultram and physical therapy. He directed Petitioner to remain off work and return in two weeks. PX 9. On September 17, 2013, Petitioner rated her pain at 7/10 and indicated she "feels that she cannot work with her right hand." Dr. Murray prescribed Naprosyn and additional therapy. He kept Petitioner off work. PX 9. Dr. Murray noted improvement in the range of motion on October 8, 2013 and anticipated Petitioner being able to return to work in three weeks. PX 9. At a subsequent visit, on October 29, 2013, he prescribed a right elbow MRI "to assess bone marrow edema or other joint-related issues that may be related to a diagnosis of CRPS [chronic regional pain syndrome]." He continued to keep Petitioner off work. PX 9. The MRI, performed on November 5, 2013 showed a non-specific bone marrow edema pattern in the proximal ulna, "likely due to post-traumatic condition." PX 9. A week later, Dr. Murray noted significant loss of motion in the right elbow. He indicated the MRI results could be consistent with an early CRPS. He continued to keep Petitioner off work and directed her to continue therapy. PX 9. On December 17, 2013, Dr. Murray noted a pain rating of 6/10. He described Petitioner as "very guarded with respect to the arm and elbow." He referred Petitioner to Premier Pain and continued to keep her off work. PX 9. On February 20, 2014, following some blocks performed by Dr. Patel, Dr. Murray started Petitioner on Lyrica. He continued to keep Petitioner off work. PX 9. Dr. Murray noted "significant improvement" and a 2/10 pain rating on March 20, 2014. On a form bearing that date, however, he noted a complaint of "overuse of lt hand due to rt arm being bad." He continued to keep Petitioner off work. PX 9. On April 21, 2014, he noted a two-month history of left thumb pain and a right-sided pain rating of 7/10. He described Petitioner as wearing a splint on her left hand. He described Petitioner as "very frustrated with her ongoing complaints." On examination, he noted "exquisite focal tenderness with light touch" and pain with any motion at the right shoulder, elbow or wrist. He described Petitioner as holding her right hand in a "somewhat clenched position." He obtained X-rays of the fingers of the left hand. He noted no significant abnormalities on review of the films. With respect to the left thumb, he diagnosed MCP joint synovitis. He recommended a customized left thumb splint and additional therapy. He continued to keep Petitioner off work. PX 9. Dr. Murray's last note of May 27, 2014 reflects ongoing left thumb complaints relieved by brace usage and "exquisite" right hand pain. The doctor noted that Petitioner was unable to tolerate anyone touching her right hand. He indicated her right hand almost resembled a claw. He recommended that Petitioner stay off work and see a hand specialist. He

indicated that EMG/NCV testing might also be beneficial, although difficult for Petitioner to tolerate. He described Petitioner as having a significant complex regional pain syndrome. PX 9.

At Dr. Murray's referral, Petitioner saw Dr. Patel at Premier Pain Specialists between January 7, 2014 and May 2014. Dr. Patel administered right-sided stellate ganglion blocks during this period, with Petitioner reporting significant improvement after the first block and less improvement thereafter. On April 22, 2014, Dr. Patel noted a significant increase in Petitioner's right upper extremity symptoms secondary to reaching for a pot in her kitchen two to three weeks earlier. He described Petitioner as crying, "very distraught" and having difficulty sleeping. He also noted that Petitioner reported being diagnosed with left thumb tendinitis which she attributed to overuse of her left hand while compensating for the right arm. He administered another block, increased the Nucynta dosage and transitioned Petitioner from Lyrica to Topamax. He continued a previously prescribed compounding cream, prescribed Trazodone and recommended that Petitioner continue therapy and see Dr. Lofland, a pain psychologist. He noted a subthreshold value on psychometric testing. PX 10. By May 20, 2014, Petitioner had seen Dr. Lofland and discontinued therapy due to lack of progress. [The Arbitrator notes that no records from Dr. Lofland are in evidence.] Dr. Patel indicated her function was continuing to worsen. He noted she did not want to pursue a spinal cord stimulator. He performed a urine drug screen. On May 27, 2014, Dr. Patel noted that Petitioner had not followed up with Dr. Lofland "as she feels she does not need a psychologist." He also noted a "baseline of burning pain" and severe right hand and arm cramping. He indicated that Petitioner "does not seem open to many of the approaches we discussed." PX 10.

Between February 13, 2014 and May 27, 2014, Petitioner underwent occupational therapy at St. Alexius Medical Center. A discharge summary dated May 27, 2014 describes Petitioner as "cont[inuing] to regress in OT since incident in beginning of April 2014." The incident is not otherwise described. The therapist recommended continued pain management and a "psych consult for behavioral therapy." PX 7.

On March 20, 2014, Dr. Barnett wrote to Dr. Behnke, describing treatment he rendered for epigastnum pain of four months' duration. He noted that the pain worsened when Petitioner "developed RSD in right arm and was forced to put her compression stockings on [in connection with varicose veins] with one hand around Thanksgiving time." Dr. Barnett indicated he did not appreciate a hernia. PX 7.

On May 15, 2014, Dr. Behnke noted that Petitioner was scheduled to see "Dr. Olfandt" [presumably Dr. Lofland], a pain psychologist, the following day. He described Petitioner as refusing anti-depressants and denying suicidal ideation. [As noted above, no note from Dr. Lofland is in evidence.]

On June 3, 2014, Petitioner saw Dr. Biafora, a hand specialist, at Dr. Murray's recommendation. The doctor recorded a history of the work accident and subsequent care. He noted that Petitioner described her right wrist and hand complaints as worsening two months earlier when she attempted to reach out to grab an object that was falling from a shelf. He indicated that Petitioner reported some improvement secondary to six ganglion stellate blocks. On examination, he noted internal rotation of the right shoulder, flexion of the right elbow to 90 degrees, flexion of the right wrist to 80 degrees and clenching of the right fist. He also noted trophic changes. He described the nature of Petitioner's condition as "not clear." He obtained X-rays which showed no bony abnormalities to explain the contractures. He recommended EMG/NCV testing to rule out brachial plexopathy.

Dr. Biafora also noted pain at the left thumb CMC joint, with positive grind. He indicated that Petitioner described this pain as starting a few months earlier secondary to overuse. PX 11.

On June 10, 2014, Petitioner underwent care at the Emergency Room at Alexian Brothers Medical Center. Petitioner provided a history of the work fall and complained of worsening right hand, elbow and arm pain, as well as a right hand contracture, starting two months earlier. Petitioner also reported that her nails were growing into her hand and that her pain medication was not helping her. Petitioner was given Dilaudid and Valium intravenously. She reported improvement. At discharge, she was directed to continue her medications and follow up with Dr. Patel. PX 8.

Dr. Patel administered additional blocks after the June 10, 2014 Emergency Room visit. PX 10.

At Respondent's request, Petitioner saw Dr. Reilly of M & M Orthopaedics for purposes of a Section 12 examination on July 21, 2014. Dr. Reilly examined Petitioner and reviewed her records. He diagnosed complex regional pain syndrome in the right upper extremity. He attributed this condition to the work fall and elbow trauma. He described Petitioner as having no use of her right upper extremity and obviously in need of further care. He found Petitioner unable to work. He noted that Petitioner reported having driven. He indicated this "would be an issue regarding insurance coverage if she is one-handed." PX 21.

Petitioner first saw Dr. Candido, a pain physician, on July 24, 2014. The doctor's note of that date sets forth an account of the work fall and subsequent care. Petitioner complained of 9-10/10 pain in the right elbow down to the right hand. She reported taking Norco "mostly daily" along with Nucynta BiD. The doctor also noted a complaint of left hand pain. On examination, he noted a right wrist drop along with a right hand deformity, swelling and redness with shining of the skin up to mid forearm. He described Petitioner as "very sensitive to light touch." He diagnosed CRPS type 2 "following an injury to ulnar nerve (elbow) and wrist drop due to radial nerve injury." He prescribed Fentanyl patches, 25 mcg/hr every 72 hours, Gabapentin, a brachial plexus block, hydrotherapy and passive movement of the right hand and arm. He indicated Petitioner would likely benefit from a spinal cord stimulator.

At Respondent's request, Dr. Konowitz, a board certified internist and pain management physician, examined Petitioner and reviewed her medical records on August 13, 2014. He recorded a history of the work accident. He noted an average pain rating of 7/10 in the right hand, elbow and shoulder affecting sleep. He indicated that Petitioner derived relief only when reclining with her arm against her body. He described Petitioner as using Fentynal patches, compounding cream, Norco and a variety of other medications. He described inconsistent behavioral responses as absent. He conducted a "special" examination specific to chronic regional pain syndrome, noting right arm hyperalgesia, allodynia and edema.

Dr. Konowitz diagnosed complex regional pain syndrome. He viewed the work fall as causing a right elbow injury, with Petitioner later developing a "secondary complex regional pain syndrome." He found a "significant level of disability with limited right arm function." He did not identify any pre-existing condition. He recommended 3T MRI imaging of the right shoulder, brachial plexus and elbow, medication management, consideration of a spinal cord stimulator and Lidoderm and Pennsaid for a "left wrist overuse syndrome" not mentioned elsewhere in the report. He found Petitioner capable of performing sedentary duty 8 hours per day, with "no right arm use" and use of the left arm limited to a maximum of 20 pounds. He opined that Petitioner "cannot operate a motor vehicle."

Petitioner underwent MRIs of her right elbow and right shoulder on September 3, 2014.

On September 19, 2014, Dr. Candido noted a constant pain rating of 5/10 and indicated "this can be 10/10." He administered a brachial plexus block. He refilled the Fentanyl patches and Norco.

Petitioner began a course of occupational therapy at Athletico in September 2014. A note dated December 13, 2014 reflects that Petitioner was unable to quantify her improvement but was no longer experiencing "10/10 screaming pain." On February 11, 2015, the therapist noted a complaint of 10/10 left thumb pain, with this pain having increased "since [Petitioner] stopped using her right arm." The therapist noted decreased left thumb and left hand strength. On May 22, 2015, the therapist indicated that Petitioner reported decreased pain and sensitivity in her right arm and hand, secondary to therapy, but that "her ability to use her right hand has not improved at all." On June 17, 2015, the therapist noted that Petitioner was now reporting left elbow and left second digit pain as well as ongoing left thumb pain. The therapist described Petitioner as reporting "she knows she is over working her left arm and hand but she does not have an option." On July 17, 2015, the therapist noted a complaint of worsening left thumb pain. She indicated that Petitioner reported being unable to use her left hand one day due to this pain. On July 31, 2015, the therapist indicated Petitioner was reporting "consistently high pain levels in her left thumb." Petitioner was discharged from therapy in late September 2015, with the therapist noting "slow progress."

On October 7, 2014, Dr. Candido noted that "overall pt feels there has been minimal improvement of pain long-term but block helped for 11 hours and swelling has greatly decreased." He increased the Fentanyl dosage to 50 mcg.

On November 7, 2014, Dr. Candido described Petitioner as 68 inches tall and weighing 128 pounds. He indicated she was "anxious and thin." He noted that the left thumb trigger point injections had provided total pain relief and that the last block provided a week of pain relief. He also noted a pain rating of 6-7/10. He indicated Petitioner had been taking Keflex due to a right hand infection. He described the regimen of cream, Fentanyl patches and Norco as providing "some relief." He administered another block.

On February 17, 2015, Petitioner reported nausea to Dr. Candido secondary to starting a higher dose (75 mcg) Fentanyl patch the previous day.

Petitioner saw Dr. Bednar, chief of the hand service at Loyola, later in the day on February 17, 2015. Dr. Bednar recorded a history of the work accident. He noted that Dr. Candido had told Petitioner that tendon transfers might help relieve her right finger contractures. He also noted a complaint of left thumb pain diagnosed as tendonitis by Dr. Murray.

Despite the fact that Petitioner had undergone a block earlier that day, Dr. Bednar had difficulty extending Petitioner's right elbow and wrist. He also noted that severe pain precluded Petitioner from moving her fingertips away from her right palm. He described her thumb as against the index finger. He noted severe maceration of the skin of the right thumb. He could not move the fingers far enough to be able to visualize the skin of the right palm. On the left side, he noted that most of the tenderness appeared to be at the thumb CMC joint. He described the Finkelstein maneuver as negative.

Dr. Bednar indicated he had a "long discussion" with Petitioner, telling her that "tendon transfers would not be an option for her until she had passive range of motion of the digits back." He recommended that she continue participating in therapy to try to improve the range of motion. If no improvement took place, and the main issue was hygiene, he could perform tendon releases but "with this [Petitioner] would not regain the ability to grasp or pinch." He indicated Petitioner was "very distraught at hearing this."

With respect to the left thumb, Dr. Bednar addressed causation as follows:

> "[Petitioner] states that she had no pain of this thumb prior to the injury on the right side. I think it is likely that [Petitioner] has arthritis of the thumb which has been aggravated by overuse secondary to inability to use the right hand."

Dr. Bednar recommended that Petitioner continue seeing Dr. Candido. PX 16.

On February 25, 2015, Petitioner again complained of nausea secondary to the increased Fentanyl intake but reported that this dose was providing better pain relief than the 50 mcg. Dr. Candido added Ambien to Petitioner's medications.

At Respondent's request, Dr. Konowitz re-examined Petitioner on April 23, 2015. On this occasion, the doctor described Petitioner as anxious and exhibiting a "depressed affect." He again noted no inconsistent behavioral responses. He again diagnosed complex regional pain syndrome, right arm. He described the prognosis for recovery as guarded. He described the extent of Petitioner's disability as "total disuse of right extremity associated with pain." He recommended an additional three months maximum of brachial plexus blocks, up to six, along with "training for spinal cord stimulator." He recommended that Petitioner decrease the Fentanyl patches to 50 mcg and then transition to Butrans 10 with Clonidine patch. He recommended that Petitioner discontinue opioids for up to 90 days and utilize Butrans, "with possible supplementation of Tramadol, if needed" to address an "opioid tolerance that has occurred". He also recommended a "left thumb removable splint and physical therapy concomitant with right hand therapy." He characterized the treatment to date as reasonable and necessary for the injuries sustained. In response to a question asking whether Petitioner could return to work, he answered "no right arm graded." He did not find any restrictions to be needed with respect to left arm or lower extremity usage but found a consultation with a hand surgeon to be appropriate. He indicated he would need a job description to be able to comment on Petitioner's specific work capacity. RX 3.

By June 17, 2015, Petitioner was using higher dosage [100 mcg] Fentanyl patches. She reported a pain level of 6/10. Dr. Candido noted the presence of a nurse case manager. He noted that Petitioner did not want to proceed with spinal cord stimulator placement because she wanted to avoid any invasive spinal procedure.

On July 31, 2015, Dr. Candido noted complaints relative to the right upper extremity and left thumb. He indicated Petitioner rated her right arm pain at "now 5-6/10 on average" and her left thumb pain at 5-10/10. He noted that Petitioner was still awaiting approval for a left upper extremity brace. He indicated that Petitioner's regimen of Fentanyl patches, Norco and Ambien was bringing her pain down by two points on a 0 to 10 scale. He indicated that Petitioner "does not qualify for work even in the light duty capacity due to severe pain, allodynia, hyperalgesia and no use of the RUE." He went on

to state she was unable to resume working "due to inability to utilize public transportation as she cannot be in a position where her RUE might be struck or moved." He administered a right interscalene block.

Dr. Carroll, a hand surgeon, evaluated Petitioner on September 9, 2015. He wrote to adjuster Jason Henschel the same day. He noted that Dr. Candido referred Petitioner to him. He described the care rendered by Drs. Candido and Bednar.

On examination, Dr. Carroll noted that, even though Petitioner had undergone a right elbow block that day, she displayed a limited arc of motion. He also noted limited right shoulder motion, 90 degrees of flexion contracture in the right wrist and a "tight flexion in [the] hand." On left hand examination, he noted pain at the metacarpophalangeal joint of the left thumb and CMC joint. He recommended EMG/NCV studies, to be performed under Dr. Candido's direction. He also recommended a thumb spica splint for the left thumb and one more injection. He further recommended at least four to six more blocks, pain management and observation of the left thumb.

Dr. Carroll found Petitioner unable to work using her right arm. He also indicated she should not perform any forceful grasping on the left. He related the need for the right-sided care to the work accident. PX 17.

On September 11, 2015, Wasay Ahmed, M.D., an Employee Health physician, saw Petitioner for purposes of a disability evaluation. Dr. Ahmed described Petitioner as having no use of her right hand or arm, having contractures of the right shoulder, elbow and hand, as well as the left thumb, wearing a sling on her right arm and "crying all through the interview." He assessed Petitioner as having severe chronic regional [sic] syndrome and severe flexure contractures. He found "disability 9/19/15 to 12/31/15." His plan was "refer to HR and supervisor." PX 60, pp. 187-188. [The Arbitrator notes Respondent raised no objection to the subpoenaed Cook County records that comprise PX 60.]

Dr. Konowitz issued an addendum on September 15, 2015, after reviewing Dr. Candido's note of July 28, 2015 and approximately fifteen minutes of surveillance footage obtained on September 1 and September 13, 2015. He found Petitioner capable of returning to work with a restriction of no right arm use. He also found that Petitioner could use public transportation or drive a car without restrictions or modifications. He indicated that driving without the assistance of another person was documented in the video. RX 4.

On October 1, 2015, CorVel issued a report certifying the neurological consultation recommended by Dr. Carroll but non-certifying the EMG/NCV studies, per a review conducted by Dr. Makda, who is identified as an orthopedic surgeon. PX 17.

On November 3, 2015, Dr. Konowitz issued another report, after reviewing surveillance footage obtained on October 8 and 9, 2015. He found Petitioner capable of returning to work with a restriction of "no right arm use with initial return to work" and "graded adjustment of right hand use in future." He again found Petitioner capable of driving a personal vehicle or using public transportation. RX 5.

On December 18, 2015 and March 16, 2016, Dr. Candido noted that Petitioner rated her current pain at 7/10 but indicated it was "tolerable with Valium and Norco." He also noted that Petitioner's pain was 15/10 at its worst. At both visits, he described Petitioner as "severely debilitated with this pain," indicating it was affecting her daily life. PX 13.

Dr. Sefer of Respondent evaluated Petitioner on December 21, 2015. Dr. Sefer wrote to Respondent's Employees' Annuity and Benefit Fund the following day, referencing a disability form completed by Dr. Candido and finding Petitioner unable to work. Dr. Sefer recommended a period of disability from January 1, 2016 through June 18, 2016. PX 60, pp. 191-196. Attached to these documents is a form completed by Kathy Dunn, Petitioner's supervisor, outlining Petitioner's typical nurse duties and indicating that no modified work was available. PX 60, pp. 197-198.

Dr. Sefer of Respondent found Petitioner to be at maximum medical improvement and "permanently disabled to work" on March 16, 2016. PX 60, pp. 203-204.

On May 27, 2016, Paris Partee, identified as Petitioner's supervisor, completed a form outlining the physical requirements of Petitioner's nursing job and indicating that modified duty was available in the form of a "position at Cermak in nursing." PX 60, pp. 212-213.

On June 3, 2016, Petitioner was admitted to Alexian Brothers Medical Center, through the Emergency Room, for progressively worsening abdominal pain. The admitting physician noted a history of CRPS and a history of a colon resection in 2010, secondary to diverticulitis. The physician also noted that Petitioner had weaned herself off Norco during the preceding ten days "since it was not helping." Petitioner underwent abdominal and pelvic CT scanning in the Emergency Room. These scans showed a possible small bowel obstruction. Chest X-rays showed left upper and lower lobe infiltrates. Petitioner was given Dilaudid for pain and started on antibiotics for pneumonia. The discharge summary reflects that, "by 6/6/16, [Petitioner] was tolerating general diet well and it was felt that her symptoms were all related to ileus from the pneumonia." She was sent home with antibiotics and directions to undergo a follow-up chest CT scan. PX 8.

Clarice Lafrance, RN, LCPC, conducted a psychiatric diagnostic interview of Petitioner on June 9, 2016. LaFrance noted complaints of reduced appetite, disturbed sleep, irritability, depressed mood, crying spells and "difficulty accepting diagnosis." She listed Petitioner's current medications. She described Petitioner's current and past history as negative for substance abuse or dependence. She diagnosed adjustment disorder with depression. She recommended individual psychotherapy. At a subsequent session, on June 30, 2016, she described Petitioner as tearful and "so angry over her limitations." On January 19, 2017, she described Petitioner as "tearful throughout session." On February 2, 2017, she indicated that Petitioner felt "very hopeless and irritable." On February 23, 2017, she indicated that Petitioner's spouse was out of town on a work trip and that it was harder for Petitioner to get around without him. On April 13, 2017, she noted that Petitioner reported "difficulties that arise when she is home alone." PX 18.

On June 10, 2016, Petitioner returned to Dr. Candido and reported pain radiating from her right shoulder down to her hand, rated "7-15/10." She described the pain as "unbearable" and indicated her nails were growing into her skin. She reported having been hospitalized and indicated she was off Norco but still using the Fentanyl patches and taking Percocet and Ambien. The doctor indicated he was unable to assess the strength, reflexes and range of motion of the right upper extremity "because pt refused due to severe allodynia and hyperalgesia throughout the RUE."

On June 10, 2016, Dr. Sefer of Respondent re-examined Petitioner, noting "additional weight loss" and "complete contracture of small joints of right hand, wrist and elbow and shoulder." Dr. Sefer

described Petitioner's dominant hand and arm as "not functional." She went on to state: "I am not aware of any nursing job at Cermak that any nurse can perform with one hand." PX 60, p. 213.

On August 16, 2016, Dr. Candido issued slips prescribing a topical compound cream, a driving assessment at Marianjoy and a right interscalene block. There is no accompanying office note.

On October 17, 2016, Petitioner underwent a driving assessment at Marianjoy Rehabilitation Hospital. The occupational therapist who conducted the assessment noted a referral from Dr. Candido. The therapist also noted the presence of Petitioner's husband. She indicated that Petitioner last drove a vehicle "last week." PX 6a. She documented a pain rating of 8/10. She described fine motor control as "diminished with left hand with primitive grasping of pen/pencil." She indicated that Petitioner frequently stood and moved about during the assessment. She also noted facial grimacing and periods of crying, noting that Petitioner reported having minimal sleep the preceding night. After a driving trial on campus, at slow speeds, she concluded that Petitioner "does not appear safe to drive at this time secondary to decreased function of upper extremities, slow processing and perceptual impairments." She noted that lack of sleep, along with several of Petitioner's medications, could adversely affect driving performance. PX 6, PX 6a.

On December 9, 2016, Devon McBride, identified as Petitioner's supervisor, completed a form outlining the physical requirements of Petitioner's nursing job and indicating that modified duty was available in the form of a "position at Cermak in nursing." PX 60, p. 230.

On December 22, 2016, Dr. Sefer of Respondent completed a form indicating Petitioner was unable to use her right hand or arm "at all" and that "adequate accommodations were not found." Dr. Sefer recommended the following period of disability: December 13, 2016 through June 19, 2017. PX 60, p. 234.

On February 23, 2017, Dr. Behnke described Petitioner as in "severe distress and chronically ill." He also noted Petitioner was "crying at times."

On June 14, 2017, Dr. Candido noted a pain rating of 8/10. He administered a right interscalene injection and recommended Botox injections into the right upper extremity.

Petitioner returned to Dr. Murray on June 27, 2017, secondary to left index finger and left thumb complaints. Dr. Murray noted having seen Petitioner in the past for chronic regional pain syndrome. After examining Petitioner and obtaining X-rays of the left hand fingers, he diagnosed "trigger finger, left index finger" and basilar thumb arthrosis. He prescribed therapy, indicating Petitioner was a candidate for home-based therapy "given her inability to drive with her right hand with her significant contractures." PX 7.

Petitioner resumed care with LaFrance on November 21, 2017. La France indicated that Petitioner "reported sadness for not being able to do much for herself and hates the dependence this has created." La France also indicated that Petitioner's husband had deferred retirement due to her situation and lack of income. She noted that this had created "tension in the marriage." She noted that Petitioner was taking pain medication but no psychiatric medication. She recommended weekly counseling. Petitioner saw her on about six or seven occasions thereafter, through March 19, 2019.

At Respondent's request, Dr. Konowitz re-examined Petitioner on January 17, 2018. In his report of that date, he noted global pain over the right upper extremity "with a consistent pain score of 9-10/10." He described the reported effects of that pain as "nausea, drowsiness, depression, constipation, sleep problems and anxiety." He also noted a complaint of left thumb pain, with Petitioner reporting she had recently refused additional injections because "the last injection triggered marked swelling."

After re-examining Petitioner and reviewing numerous updated records, Dr. Konowitz again diagnosed complex regional pain syndrome involving the right arm. He again attributed the development of this syndrome to the work accident. He saw no evidence of any pre-existing condition or accident. He did not relate the reported left thumb arthritis to the work accident. He recommended additional treatment in the form of "opioid withdrawal by addictionologist." He described Petitioner's current regimen as ineffective and causing numerous side effects. He recommended that Respondent offer Petitioner an "inpatient/outpatient" Suboxone treatment program, specifically referencing Alexian Brothers. He indicated Petitioner would be at maximum medical improvement if she did not opt to pursue such a program. With respect to the option of a spinal cord stimulator, he noted that stimulators "placed later in the disease state" are less effective. He found Petitioner "not capable of full duty" and capable of "sedentary duty with no right arm use." He indicated that "in depth psychological testing" would be needed to determine whether there was any evidence of malingering or secondary gain. He indicated that Petitioner's ability to drive would have to be assessed after the Suboxone treatment but that there was "no reason not to use public transportation and/or private options." He indicated that Petitioner's medication and its side effects influenced the results of the Marianjoy driving assessment. He characterized the treatment to date as reasonable, necessary and related to the work accident. He found no medical evidence that the recommended adjustable bed would change Petitioner's function or be related to the accident. He indicated that Brennan's life care plan should be "re-done after medication management is addressed."

On June 22, 2018, Petitioner returned to Dr. Candido and reported "constant RUE pain from the shoulder down to the hand, with increasing flexion contracture at her R wrist." The doctor noted she was taking Norco, Ambien and Valium and using Fentanyl patches 100 mcg/hr. He also noted Petitioner's weight was down to 119 pounds.

Dr. Candido administered another interscalene brachial plexus block on July 18, 2018.

On July 28, 2018, Petitioner presented to the Emergency Room at Alexian Brothers, indicating she had run out of Fentanyl patches and needed something for pain. Petitioner reported having been unable to fill her Rx due to insurance problems. Ricky Shah, a physician's assistant, noted deformity and atrophy of the right upper extremity

On July 31, 2018, Petitioner returned to the Emergency Room at Alexian Brothers, requesting one more Fentanyl patch "due to her new insurance not being active yet." Petitioner indicated she needed the medication to avoid withdrawal. On examination, Ricky Shah, P.A. noted atrophy of the right upper arm and deformity of the right hand. Shah described these conditions as "chronic due to CRPS."

On August 30, 2018, Petitioner saw Dr. Behnke. The electronic records reflect one purpose of the visit was to "sign papers for pain contract." No contract is in evidence.

On September 28, 2018, Petitioner returned to Dr. Candido and reported "constant burning pain in the right upper extremity that feels 'like the arm is on fire.'" Petitioner rated her current pain at 5/10 but indicated the pain could be "as bad as 20/10." She reported severe pain with any palpation and indicated "even the wind can provoke immense pain." Dr. Candido noted he was unable to perform a sensory examination of the right upper extremity. He noted a significant decrease in the range of motion of that extremity with an elbow contracture and severe contracture of the right wrist and fingers of the right hand. He administered a right intra scalene brachial plexus nerve block. He performed a urine toxicology screening, indicating he would review the results with Petitioner at the next visit. [No results appear in PX 4].

Petitioner saw Dr. Candido again on December 14, 2018. Petitioner complained of constant sharp pain radiating from her right shoulder down to her right hand, rated 9/10. Dr. Candido noted that Petitioner "refused to be examined." He described Petitioner as suffering from debilitating pain. He noted that Petitioner had been obtaining controlled substances from Dr. Behnke but that he could no longer prescribe these medications. He indicated Petitioner denied running out of narcotic medication. He noted that Petitioner would now be seeing him for this medication, referencing an opioid contract. [The contract does not appear in PX 13a]. He administered an interscalene brachial plexus block.

Arbitrator's Summary of Medical Testimony

Dr. Kenneth Candido testified by way of evidence deposition on July 31, 2018. Dr. Candido testified he focuses on anesthesiology and pain management. PX 5, p. 4. He identified Candido Dep Exh 1 as his current CV. He is on staff at Advocate Illinois Masonic Medical Center and is a clinical professor at the University of Illinois College of Medicine. PX 5, p. 5.

Dr. Candido testified he treats patients with chronic regional pain syndrome, or CRPS. CRPS is a chronic pain condition associated with some type of injury or condition that leads to a cascade of events affecting the sensory and motor systems and sometimes the sympathetic nervous system. PX 5, pp. 5-6.

Dr. Candido testified he has treated Petitioner since July 2014. He identified Candido Dep Exh 2 as two reports he generated concerning Petitioner. When Petitioner fell on August 22, 2013, she "landed upon the flexed right arm and elbow." She later began seeing Dr. Patel, who diagnosed complex regional pain syndrome. Petitioner worsened thereafter and developed severe contractures of her right wrist and elbow, along with severe hypersensitivity of the entire right arm, despite Dr. Patel's efforts. PX 5, pp. 8-9. The contractures are a "very severe sequelae not found in the majority of CRPS patients." When contractures occur, they are "pretty much synonymous with a very severe level" of the disease. PX 5, pp. 9-10.

Dr. Candido testified he attributes Petitioner's left thumb tendinitis to overuse stemming from the right arm disability. In February 2015, he noted Petitioner was having difficulty opposing the fourth and fifth fingers with the left thumb. PX 5, pp. 10-11. He referred Petitioner to Dr. Bednar, director of the hand service at Loyola. In his opinion, Dr. Bednar's causation opinions support his own. PX 5, pp. 12-13. After four years of observing Petitioner, he recommended that she avoid lifting or carrying over five pounds with her left hand and avoid using her left hand and arm for more than ten minutes at a time. PX 5, p. 13. Based on the Jamar dynamometer testing he has performed, he knows Petitioner cannot use the left hand or arm "for greater than five pounds." When he watched the surveillance footage, he observed Petitioner pushing a roller cart and grabbing a wheeled suitcase that had gotten

away from her. He did not see her doing anything exceeding about a five-pound limitation. PX 5, pp. 14-15. Petitioner has reported to him that she has difficulty with routine activities. She needs help in order to button a shirt, fasten a belt or tie her shoes. PX 5, pp. 16-17. She also cannot cut her nails. This is "not just a cosmetic issue" because, if those nails dig into her flesh, causing an abrasion, she could develop a life-threatening bacterial infection. At Petitioner's request, he cuts her nails. PX 5, p. 16.

Dr. Candido acknowledged that the surveillance videos show Petitioner driving, against his and other physicians' advice. While Petitioner did not pass a driving assessment at Marianjoy, in October 2016, there was no evidence that her opioids affected her cognition. She performed within normal limits on cognitive tasks. PX 5, p. 19. She would still be unable to drive if she did not take narcotics. PX 5, p. 19.

Dr. Candido testified that he is currently prescribing Zolpidem or Ambien, Valium, Fentanyl patches and Percocet, or Oxycodone with Acetaminophen, for Petitioner. He has also prescribed a compound topical gel, which Respondent has not authorized. He is very conservative in the prescribing of compound medications but such medications make sense for Petitioner, given her inability to use her right arm. For five years, he has discussed the possible benefit of a spinal cord stimulator with Petitioner but she has clearly indicated she does not want to have anything implanted in her spine. She has known individuals who have experienced failures of such devices. PX 5, pp. 22-23.

Dr. Candido acknowledged that Petitioner's pain ratings have remained high despite her opioid regimen. Regardless, he believes the opioids have made a difference for her because, when she runs low, she has had to seek emergency treatment. PX 5, pp. 24-25. Withdrawing, under medical supervision, or changing her to a different class of opioids, "is not necessarily going to do anything to improve [Petitioner's] condition." Suboxone has been efficient in some cases but for individuals who are constantly or chronically escalating their medication use. In his experience with Petitioner, he does not think he has ever, or at least not recently, escalated her medication use over many years. PX 5, p. 26. Suboxone is still a narcotic but it has "less ability to stimulate the center of the brain which is associated with opioid liking." If recovering drug addicts were asked to rate various narcotics, they would say they do not like Suboxone or Buprenorphine. These medications still work to manage pain, however. PX 5, p. 27. He does not recommend that Petitioner go through a supervised withdrawal "based on the historic precedent of her seeking emergency medical treatment when she has run short." PX 5, p. 27. It is reasonable for Petitioner to seek such treatment because she is not seeking relief from withdrawal. PX 5, p. 28. Petitioner would still be disabled and unable to drive if she were on Suboxone. PX 5, p. 28. In his opinion, Petitioner has not demonstrated any of the features of opioid addiction, including drug seeking, cravings, early refills or escalation of her medication use. That is "always a risk." PX 5, p. 29. Petitioner would experience a withdrawal reaction if the opioids were abruptly discontinued but she is not addicted. Addiction is a neurophysiological, biological and psychiatric condition and a "dysfunctional process." Petitioner has "not been dysfunctional in the use of opioids." PX 5, pp. 29-30.

Dr. Candido testified he has considered Petitioner to be permanently disabled since the time of her first visit, in July 2014. The only person who has suggested she can work is Dr. Konowitz. PX 5, p. 31.

Dr. Candido testified he prescribed an adjustable king mattress for Petitioner in 2017 (Candido Exh 4) because he believes she needs some type of supportive bed which conforms to her body type. Petitioner has told him she has slept in a recliner on many days. PX 5, p. 32. Petitioner is one of only two or three patients for whom he has prescribed such a mattress. PX 5, p. 33. He is not a dentist but the fact that Petitioner's dentist has prescribed an air flosser for her makes sense in view of her inability

to use the upper extremities. Flossing requires the use of both hands. PX 5, p. 33. He concurs with Dr. Behnke's Zolpidem or Ambien prescription. PX 5, p. 33.

Dr. Candido testified it would be acceptable for Petitioner to use public transportation if she were the sole passenger but no one can predict the number or type of individuals a person might ride with. If someone jostled Petitioner's arm, that would likely lead to her seeking emergency care. PX 5, p. 34. Due to her condition, Petitioner will require psychological care, a thumb spica splint, a right arm sling, assistance with hygiene and activities of daily life, pain management, urine toxicology screenings and a walk-in shower. PX 5, pp. 35-37.

Dr. Candido testified Petitioner's entire right arm is "hemiplegic," meaning that arm has a complete absence of function. A formal pain management program, such as the one at Marianjoy, could be useful for Petitioner, although it would not change the outcome at all. PX 5, p. 39. Via biofeedback and imagery training, it could help Petitioner live with less pain-related stress. PX 5, p. 39.

Dr. Candido testified Petitioner is not capable of working an eight-hour day. She could potentially work up to four hours with "not just sedentary duties but no use of the right upper extremity and minimal use of the left upper extremity" as previously outlined. PX 5, p. 41. She might be able to work in a call center, using headphones, but only if she could take breaks and work about four hours a day. PX 5, p. 41. He has never seen a description of any proposed job and thus agrees with Petitioner not appearing to attempt a job. PX 5, pp. 41-42.

Under cross-examination, Dr. Candido testified he performs certain surgeries dealing with pain relief. The only type of upper extremity or hand surgery he would perform would be the implantation of a peripheral nerve stimulator. PX 5, p. 43. Petitioner is limited not only by pain but a complete contracture of the right arm, both at the elbow and the wrist. She cannot move the fingers of her right hand. PX 5, p. 44. All pain complaints are subjective. Petitioner "has never reported having good days" but it is hypothetically possible. CRPS can spread to other extremities but he has not seen spreading in Petitioner's case. PX 5, p. 46. Petitioner occasionally drives to a pharmacy or does light shopping but by and large she is restricted in all of her duties. For the most part, she is confined to her home. PX 5, p. 48. Before he issued a report to Petitioner's counsel, he did not recommend formal assistance for Petitioner but "this is a very unique case." Petitioner told him Respondent was asking her to work eight hours per day, five days per week. He "absolutely refused to acknowledge that would be acceptable for her." PX 5, p. 50. He is aware that Petitioner has not attempted to return to work since the accident. Work could occupy Petitioner's time and potentially benefit her from a psychological perspective. PX 5, p. 52. Petitioner can speak and is cognitively unimpaired so she could dictate. She could use a computer "mouse" with her left hand if it were for less than ten minutes at a time. PX 5, p. 52. With appropriate accommodations, Petitioner could return to work. PX 5, p. 53. Against his advice, Petitioner continues to drive very brief distances and for no more than 15 minutes at a time. He has not reported to the Secretary of State that she should not be driving. PX 5, p. 56. He is not aware of any such requirement. PX 5, p. 57.

Dr. Candido testified it is mandatory for Petitioner to undergo periodic brachial plexus blocks about six times per year. This allows him to address her arm and clip her fingernails. PX 5, p. 57. The blocks also provide periods of very substantial pain relief. PX 5, p. 61.

Dr. Candido testified that most people who take opioids over time develop some degree of tolerance. Each time he has attempted to adjust her medication downward, Petitioner has not tolerated

this well. He has not recommended a very gradual reduction, over time, because "if it is not broken, why try to fix it?" PX 5, p. 60. Petitioner might benefit from the type of nerve graft surgery being performed by a very few individuals, including Dr. McKinnon, but "even that surgery is extremely risky." Petitioner does not want to proceed with this kind of surgery. Topical compounded gels make sense for Petitioner, given her limited dexterity. PX 5, p. 63. The typical individual moves 100 times per hour while sleeping so it is very difficult to maintain a specific posture. Petitioner has used pillows and wedges without success. PX 5, p. 64. He does not know why his records do not mention this because he has discussed it with Petitioner. PX 5, p. 66. He has injected Petitioner's left thumb on multiple occasions. PX 5, p. 67. He does not believe the left hand problems could have occurred regardless of the accident and overuse. PX 5, p. 68.

On redirect, Dr. Candido testified Petitioner could not tolerate eight hours of job activity on a daily basis. She could possibly tolerate four hours. PX 5, p. 69. Petitioner's pain affects her ability to focus and retain information. PX 5, p. 69. There is no medical reason to reduce Petitioner's medication, even by 10%. PX 5, p. 70.

Under re-cross, Dr. Candido testified there is no potential for Petitioner to work for more than four hours, even if she did well at that level. Petitioner is a "very unique case" since she has eating- and hygiene-related issues. PX 5, p. 71.

On further redirect, Dr. Candido testified Petitioner would "absolutely" need someone to assist her during a four-hour workday. She might need a personal assistant to help with toileting, dressing, etc. PX 5, p. 71.

Under additional re-cross, Dr. Candido testified Petitioner could obtain assistance from a "work buddy" if Respondent were to provide her with one. PX 5, p. 72.

Dr. Howard Konowitz testified by way of evidence deposition on August 29, 2018. RX 7. Dr. Konowitz identified Konowitz Dep Exh 6 as his current CV. He has practiced anesthesia and pain management since 1987. He is licensed in both Illinois and Wisconsin. He is board certified in internal medicine and anesthesia, with subspecialty boards in pain management. RX 7, p. 5.

Dr. Konowitz testified he focuses on the care and treatment of patients who are in acute or chronic pain. He conducts two to three independent medical examinations per week, on average. RX 7, pp. 6-7.

Dr. Konowitz testified he examined Petitioner on August 13, 2014. He remembers the case by reading his reports but has no other recollection of Petitioner. RX 7, p. 8. He reviewed Petitioner's records at the time of the examination. The "pertinent positive," in terms of examination findings, was a "flexed right arm with a wrist drop and mild right hand edema." RX 7, pp. 9-10. Light touch was globally increased for the right arm. He noted no inconsistent responses. He also noted hyperalgesia and allodynia. He diagnosed Petitioner with chronic regional pain syndrome. He also diagnosed left wrist overuse syndrome which was "compensatory to" the work accident. He recommended Lidoderm and Pennsaid for the left wrist. RX 7, pp. 10-11. He found Petitioner capable of performing sedentary duty with no right arm use. RX 7, p. 11.

Dr. Konowitz testified he re-examined Petitioner and reviewed additional records on April 23, 2015. His diagnosis did not change. He found the chronic regional pain syndrome to be secondary to

trauma. He saw no need for left arm or lower extremity restrictions. He recommended a restriction of "no right arm work." RX 7, pp. 12-13.

Dr. Konowitz testified he issued a third report on September 15, 2015, after reviewing surveillance footage obtained on September 1 and 13, 2015. The videos showed Petitioner driving "without assistance with another person." He did not recommend any restrictions relative to Petitioner's driving or ability to take public transportation. He continued to say she could work with no use of the right arm. RX 7, p. 13.

Dr. Konowitz testified he authored a fourth report dated November 3, 2015, after reviewing additional surveillance footage obtained on October 8 and 9, 2015. Petitioner could be seen in the driver's seat, handing something out the window with her right hand, buckling with her right hand and accepting something with her right hand. On this date, he recommended no right arm usage with initial return to work and "graded adjustment of right hand use in the future." RX 7, p. 15. He felt Petitioner could drive, despite her medication, because she had used the medication on a long-term basis, adjusting to it over time, and "demonstrated use of a vehicle." RX 7, pp. 15-16. He has recommended on many occasions that Petitioner discontinue her current opioids "because of efficacy, not because of side effects." In his experience, many patients who undergo weaning report that the weaning caused no change in their pain state. RX 7, p. 16. Additionally, there are studies showing that opioids may worsen a neuropathic pain state. RX 7, p. 17. Petitioner does not require any modification of her car because "she was able to drive in the videos without adaptation." RX 7, p. 17. Some patients require such modifications but Petitioner does not. RX 7, p. 17.

Dr. Konowitz testified he examined Petitioner a third time on January 17, 2018. Petitioner exhibited the same posturing of the right arm and there were temperature, skin color and tropic changes in the right arm. RX 7, p. 18. The left wrist range of motion was normal. Petitioner was now complaining of her left thumb, not her left wrist. He diagnosed left thumb arthritis. He felt the previous left wrist problem was secondary to overuse but the left thumb arthritis was not. RX 7, p. 22. He found Petitioner capable of working eight hours per day at a sedentary job with no right arm usage. RX 7, p. 23. He saw no need for restrictions relative to the left hand or arm. RX 7, p. 23. He again concluded that Petitioner's opioid use should be addressed. One way to wean opioids is to use Suboxone. Other treaters might opt to reduce the opioids by 25% per month. RX 7, p. 24. You "can't just stop opioids because the body is used to" them but you can use Suboxone to provide a "soft landing" and "prevent withdrawal side effects." RX 7, p. 24. Weaning without Suboxone usage can be performed over four months. Dr. Candido will have a weaning protocol since he has weaned patients. No one can argue that Petitioner's current regimen is effective since she is reporting scores of 9/10 despite being on the equivalent of "hundreds [sic] of morphine." RX 7, p. 26. Weaning will occur at some point. The current CDC guidelines do not condone this type of usage. RX 7, p. 27. If Dr. Candido testified there is no reason to reduce Petitioner's pain medication, he would disagree. RX 7, p. 27. Petitioner has developed a physical dependence, as all people do. Petitioner's presentation is "very consistent with other patients who are not getting the benefit out of the opioid treatment." RX 7, p. 27. [The Arbitrator sustained Petitioner's Ghere-based objection to questions concerning the use of compound medications, RX 7, pp. 28-31.]

Dr. Konowitz opined that Petitioner should "finish off" the interscalene brachial plexus blocks. These blocks have not effectively controlled Petitioner's chronic regional pain syndrome. Additionally, there are risks associated with the blocks. As for using a block to open Petitioner's hand and cut her nails, the block involves freezing the entire arm. You could potentially do this a better way. Interdigital

blocks could be used, for example. Repetitive, long-term blocks can cause scar tissue and tracks. Dr. Candido is "technically performing the blocks fine" but he remains concerned about the number of injections into the same spot. RX 7, pp. 32-33.

Dr. Konowitz testified that Petitioner does not require an adjustable king mattress as a result of the accident. He has never prescribed such a mattress. RX 7, p. 34. He has also never recommended an air flosser to any of his patients. RX 7, p. 34. Normally, he does not recommend personal assistants for his one-armed patients. He does not believe Petitioner requires such an assistant. Petitioner can use her left arm and both legs. Her neck is not restricted. RX 7, p. 35. Petitioner does not require a walk-in shower. She is capable of stepping in and out of a bathtub. RX 7, p. 35. Petitioner is capable of taking public transportation. RX 7, p. 36.

Dr. Konowitz testified that Petitioner has sustained permanent disability to her right arm due to the accident. RX 7, p. 36.

Under cross-examination, Dr. Konowitz testified that Petitioner marked both her left thumb and wrist on a pain diagram when he first examined her. He is aware of Dr. Behnke's causation opinion but does not agree with it. RX 7, p. 39. He did not document any left wrist or left thumb examination findings in his first report. RX 7, p. 39. He is aware that the chronic regional pain syndrome involves Petitioner's dominant arm. Theoretically, Petitioner's left thumb arthritis could have been aggravated by overuse but the examination was consistent with tendinitis. Petitioner's left-sided symptoms occurred after she lost the use of her dominant arm. RX 7, p. 43. There is thus some causal relationship. RX 7, p. 43. It would be illogical to advise Petitioner to avoid using her left hand and arm because, without use, an arm begins to atrophy. He would not restrict Petitioner beyond what he would restrict another person in her age range. RX 7, pp. 43-44. Petitioner "can use the left hand unrestricted." It would be okay for Petitioner to use that hand to type, drive, or manipulate a "mouse." RX 7, pp. 45-46. As for the splint recommendation, "you do not use that splint for life." You "do not over-splint arthritis." RX 7, p. 46. Topical Pennsaid, which he previously recommended, works in the vast majority of patients. RX 7, p. 47. You can still use a painful joint but the pain should not be ignored. RX 7, p. 48. He would not restrict Petitioner from driving based solely on a single report concerning the thumb. RX 7, p. 49. He recommended that Petitioner stop the opioids and "have her fully functional at driving." Other patients drive while taking opioids but, for Petitioner, he would stop the medications. RX 7, p. 50. When he first examined Petitioner, he recommended she use the left arm up to 20 pounds. RX 7, p. 52.

Dr. Konowitz opined that all the treatment to date was reasonable, necessary and related to the work accident. RX 7, p. 53. That treatment would include compound creams. RX 7, p. 54. Only certain pharmacies formulate compounds. Major chains will not do it. RX 7, p. 55. He has stopped prescribing compounds because of problems relating to the ingredients. "You just don't know what you're getting." RX 7, p. 56. There was also a period during which intense overpricing of compounds occurred. RX 7, p. 56.

Dr. Konowitz testified that Suboxone "has some problems" because heroin users can end up on it. He has used Butrans many times in weaning patients. Suboxone and Butrans are both opioids but "the receptors are totally different than those in Fentanyl or Nucynta or Morphine or Norco." If Petitioner had walked in his office as a patient, he would have recommended weaning at the first visit. All treaters make their own choices. RX 7, p. 59. The only breach of standard of care that is approaching is with the duration of Petitioner's opioid usage and the current CDC guidelines. RX 7, p. 59. Dr. Candido is "right up to the edge" and "would not want to probably go further." Pain physicians have

some extra license but that does not mean the CDC guidelines are wrong. RX 7, p. 60. "The reality is that when you wean [patients] off [opioids], the pain scores are either the same or better." RX 7, p. 61.

Dr. Konowitz acknowledged he does not anticipate any improvement of the function of Petitioner's right arm. He saw one video in which Petitioner used that arm but he still restricted its use "because of the disease state." RX 7, p. 62.

Dr. Konowitz acknowledged that, in April 2015, Respondent asked him to comment on a specific job, referencing a job description that was supposedly enclosed, but he received no such enclosure. To date he has not received any job description. RX 7, pp. 63, 87. He believed the October 2015 surveillance showed right hand usage but, on re-watching the videos, during his deposition, he acknowledged he was mistaken. He agreed that the October 8 and 9, 2015 videos showed no use of the right arm other than a transient raise of the right hand. RX 7, p. 68. Petitioner reported multiple symptoms, including anxiety, depression, memory loss and difficulty concentrating, to him. RX 7, p. 70. Petitioner's right arm is sensitive to touch. Tolerance and addiction are two different disease states. Petitioner is a tolerant but not addicted patient. RX 7, p. 73. A spinal cord stimulator might have altered the outcome if it had been implanted early on but he would agree 150% that delayed implantation would not be helpful. A patient who wants to have a stimulator implanted has to undergo a psychological assessment. Petitioner is not the first patient to decline to undergo implantation. RX 7, p. 74. Dr. Candido's opinions do not prompt him to change his own. He has read the Marianjoy assessment. It did not prompt him to conclude Petitioner should not drive. RX 7, p. 78. He has never restricted a CRPS patient from using public transportation. RX 7, p. 78. Petitioner should be active and avoid isolating herself. RX 7, p. 78. Patients of his whose CRPS is as severe as Petitioner's take public transportation to get to his office. RX 7, pp. 79-80. CRPS is not a common disease but it is common in a pain practice such as his. RX 7, p. 79. Petitioner is "not too severely handicapped to drive" but her "medications could be adjusted to optimize that." RX 7, p. 81. The depression, constipation and memory loss that Petitioner reported "are all opioid-related." Those "all go away when you stop the opioids." RX 7, p. 82. The right arm symptoms are due to the CRPS while other symptoms are opioid-related. RX 7, p. 82. Petitioner "needs to be treated differently." He disagrees with Dr. Candido's opinion that Petitioner is limited to working four hours per day, with limited left arm use and the help of a personal assistant. RX 7, p. 83. Petitioner's left hand is "not a CRPS hand." Dr. Candido is imposing significant restrictions on the "non-CRPS hand." Patients who have no usage of one arm "modify. . . to take care of everything" and "do a very good job of having a quality of life." RX 7, p. 85. He has patients who use Lyft to get to work, based on a fixed monthly rate, but Petitioner can drive. RX 7, p. 86. Splints should be used intermittently. In Petitioner's case, a splint was not a permanent, long-term solution for the thumb. RX 7, p. 87.

On redirect, Dr. Konowitz testified he does not need a job description to place restrictions. RX 7, p. 91. The fact that Petitioner was actually using her left arm, not her right, on the videos does not prompt him to change his restrictions. RX 7, p. 91.

Dr. Kimberly Middleton testified by way of evidence deposition on January 25, 2019. RX 27. Dr. Middleton testified she is board certified in family medicine. She is licensed in Illinois and Indiana. RX 27, pp. 4-5. She attended medical school at the University of Illinois at Chicago, graduating in 1997. She underwent fellowship training in maternal-child health at West Suburban Hospital thereafter. RX 27, p. 5. She worked as a maternal-child physician for six years and then as both an occupational medicine physician and a family medicine practitioner. RX 27, pp. 6-7. Middleton Dep Exh 1. She also works for Vein Clinics of America, a company that performs vein procedures. RX 27, p. 22. She has been

performing utilization reviews for over six years. RX 27, p. 8. In Petitioner's case, Claims Eval hired her and CorVel retained Claims Eval. RX 27, p. 9. Claims Eval is accredited under URAC. RX 27, p. 9. She currently devotes less than 5% of her time to utilization reviews. RX 27, p. 10.

Dr. Middleton testified she generated a report in Petitioner's claim on September 19, 2019. She has not generated any other reports concerning Petitioner. RX 27, pp. 10-11. The amount she is paid to generate such a report depends on the length of the report. She believes she was paid less than $100 for the report she generated in Petitioner's claim. RX 27, p. 11. She performs between two and six utilization reviews per month. It probably took her four to five hours to prepare the report in Petitioner's claim. RX 27, p. 12. She reviewed about 103 pages of records in Petitioner's claim. The records she reviewed related to the medications under review. RX 27, pp. 13-14. She reviewed Dr. Konowitz's reports as well as Dr. Candido's records. She also reviewed Dr. Behnke's records. RX 27, pp. 29-30. She underwent phone-based training in URAC when she started working for Claims Eval. She has since been recredentialed. RX 27, p. 14. She has never read the URAC guidelines. She is not a pain management physician but, as an occupational medicine physician, she has worked closely with pain medicine specialists. RX 27, p. 15. When a CRPS patient came in through her occupational medicine practice, she would usually refer that patient to a pain management specialist or neurologist. RX 27, p. 16.

Dr. Middleton testified she is familiar with Official Disability Guidelines [ODG]. She has read portions of them. She was last employed in occupational medicine in December 2016. She provides services at MidMed, which just added a laser wellness center, and for "Missing Ink," a tattoo removal company. RX 27, pp. 18-19.

Dr. Middleton testified she has probably seen several hundred CRPS patients over the 21-year course of her practice. She has diagnosed the condition in her occupational medicine practice. RX 27, pp. 20-21. She does not provide medication management for patients with CRPS. RX 27, p. 22. She does not hold any teaching positions and is not on staff at any hospitals. RX 27, p. 23. She does not provide narcotic medication management at MidMed Services. She does provide narcotic medicine at Vein Clinics of America but "it's very rare." RX 27, p. 24. She is not an expert in the treatment of CRPS but she would say she is experienced. RX 27, p. 24. In the report she signed (Middleton Dep Exh 2), she attested she has the certification that typically manages the condition under review. She also attested she is currently providing direct patient care in this field of expertise. RX 27, p. 25.

Dr. Middleton acknowledged she did not review every medical record in this claim. Where she referred a CRPS patient out for care, she retained a "co-management position." RX 27, p. 28. She did not discuss the claim with the physicians who authored the records she reviewed. RX 27, p. 30. She based her conclusions on the ODG guidelines and her own knowledge. RX 27, p. 31. She non-certified the Fentanyl patches because "the records failed to support the need for it." There was a "lack of documentation on the efficacy" and a "lack of drug monitoring." There was "no urine drug screen." There was no recent pain management contract, no risk assessment and no documentation of improvement of pain and function. RX 27, p. 32. She "would have expected very clear documentation" on all of these. The urine screens are supposed to be performed to make sure the patient is taking that opioid alone and no other drugs. That is normally done every six months. She saw no documentation that the Fentanyl patches were benefiting Petitioner. Petitioner was "still in such severe pain." RX 27, p. 34.

Dr. Middleton testified she non-certified the Movantik because "there was no documentation of improvement of constipation." RX 27, p. 35.

Dr. Middleton testified she non-certified the Oxycodone-Acetaminophen for the same reasons she non-certified the Fentanyl patches. She also felt Petitioner should not be on both the patches and the Oxycodone-Acetaminophen. RX 27, p. 36. She saw no evidence of an opioid agreement or random monitoring to ensure that Petitioner was not obtaining narcotics from other providers. RX 27, p. 36. She also non-certified the Zolpidem or Ambien. That medication is to be used on a short-term basis for the treatment of insomnia. It is habit-forming, which is why you do not want to keep a patient on it for a long time. RX 27, pp. 37-38.

Dr. Middleton acknowledged she has never met Petitioner or treated her. RX 27, p. 39.

Under cross-examination, Dr. Middleton acknowledged that Petitioner's treating physicians documented pain complaints. RX 27, p. 40. However, there was no documentation as to how Petitioner responded to the pain medication. RX 27, p. 41. There is no evidence of drug-seeking behavior.

Dr. Middleton testified that, in her opinion, it is irresponsible to not perform urine screenings on a patient who is in chronic pain and taking multiple opioids because there are several cases where people have died due to opioid overdose. RX 27, p. 43. The ODG guidelines call for a treatment plan tailored to the patient but there is no real documentation of a plan in Petitioner's records. RX 27, p. 45. A signed pain contract is "nationally recommended." RX 27, p. 46. She reviewed 103 pages of records. RX 27, p. 46. Those records provided enough information for her to determine that the treatment was not consistent with national recommendations. RX 27, p. 48. She does not believe the care of Petitioner was necessarily safe. RX 27, p. 49. There was insufficient information in the records for her to be able to determine whether the opioids were necessary. RX 27, p. 50.

Dr. Middleton acknowledged that opioid usage can cause bowel obstructions. She was not aware Petitioner ended up with such an obstruction. She non-certified the Movantik because there was "no documentation of failure of first-line treatment." She did not opine that the medication is unnecessary. RX 27, p. 52. Records indicating Petitioner was unable to sleep due to pain would affect her opinion but she would still like to know whether Petitioner was benefiting from the Zolpidem/Ambien or developing a tolerance to it. RX 27, p. 53. ODG guidelines are not sanctioned by the state of Illinois. They are guidelines used by companies that work for insurance carriers. RX 27, p. 55. Other guidelines, including the California Medical Board guidelines, recommend that controlled substances be monitored monthly, quarterly or semi-annually. RX 27, p. 56. The guidelines do not take into account the uniqueness of a patient's circumstances. RX 27, p. 57. A patient would have to be weaned off opioids. RX 27, p. 58. The ODG guidelines allow for extenuating circumstances. RX 27, p. 58. A patient whose CRPS is so bad that her arm and hand have retracted could have such circumstances. RX 27, p. 58.

On redirect, Dr. Middleton testified that, while there is no evidence of Petitioner abusing opioids, there is also no indication that she was asked questions to determine whether she was in fact abusing them. RX 27, p. 59. If a patient shows no improvement over an extended period while taking opioids there should be a recommendation to wean the patient off that medication. RX 27, p. 60. There was nothing in the records she reviewed to show that Petitioner was assessed in terms of how she was handling the opioids. RX 27, p. 60. Colace and Mutamucil would be "first line" treatments for constipation. There is no documentation of Petitioner having tried these treatments. RX 27, p. 60.

Dr. Candido gave a supplemental evidence deposition on February 28, 2019, in response to Dr. Middleton's testimony.

Dr. Candido testified that interventional pain physicians do not rely on ODG guidelines. Instead, they rely on guidelines promulgated by the American Society of Interventional Pain Physicians. He is a member of the board of directors of this organization. PX 5a, p. 6.

Dr. Candido opined that some cases of chronic regional pain syndrome [CRPS] are so severe that guidelines would not apply to them. Evidence-based guidelines would not apply to Petitioner, who has "the worst case of CRPS" he has dealt with in 35 years. PX 5a, pp. 7, 16.

Dr. Candido opined that Dr. Middleton does not have the requisite training or qualifications to comment on any pain condition. PX 5a, pp. 10-12. From what he understands, Dr. Middleton is an occupational or family medicine physician who refers out patients like Petitioner to qualified individuals to manage pain. PX 5a, p. 15. In his opinion, it is reasonable and necessary for Petitioner to use Fentanyl. He disagrees with Dr. Middleton's testimony as to the lack of records, in the form of drug screening and monitoring, to support ongoing Fentanyl usage. No patient in his practice ever receives opioids without signing an opioid agreement. This agreement is updated at least one time per year. He reviews the Illinois Prescription Drug Monitoring Program website for all of his patients to ensure they are not receiving prescriptions elsewhere. PX 5a, pp. 17-18. Additionally, all of his patients undergo random urine toxicology monitoring. A patient who has been on a long-term opioid regimen who displays no known side effects undergoes less frequent monitoring. PX 5a, p. 19. He also takes a patient's mental status and respiratory rate into consideration when checking for possible overuse of medications. He knows that Petitioner has undergone urine toxicology monitoring because he has "personally escorted her to the restroom on more than one occasion for that purpose." PX 5a, pp. 19-20. For Dr. Middleton to say that monitoring should occur at six-month intervals is "arbitrary and capricious." PX 5a, p. 20. His office checks the Illinois Prescription Drug Monitoring Program website at each and every visit Petitioner makes. PX 5a, p. 21.

Dr. Candido testified it remains his opinion that the use of Fentanyl for Petitioner in the dosages he has ordered is medically reasonable and necessary. PX 5a, p. 21. Fentanyl is "80 to 100 times more potent than morphine on a milligram-to-milligram basis" but, used in a controlled-release preparation, it provides a nice background analgesic for individuals who have moderate to severe levels of chronic pain for whom the use of immediate-release medications should be reserved for either break-through pain or flare-up pain or incident-related pain, as in the present case." He would not modify any part of Petitioner's regimen based on Dr. Middleton's opinions. In 2016, the CDC came out with guidelines stating that family physicians such as Dr. Middleton should not be prescribing opioids to patients for more than five to seven days. PX 5a, pp. 22-23. The CDC said this because "they believed that people who practice family medicine . . . did not have the training, experience, certifications or knowledge upon which to use opioids reliably, reasonably and responsibly." PX 5a, p. 23.

Dr. Candido opined that Petitioner has responded to Fentanyl "in the sense that her pain has not escalated." Petitioner "hasn't made marked improvements on Fentanyl but certainly hasn't gotten worse in terms of her day-to-day functioning." PX 5a, p. 24.

With respect to Petitioner's Percocet usage, Dr. Candido disagreed with Dr. Middleton's non-certification based on the lack of monitoring/screening documents and the fact Petitioner was also using

Fentanyl. Dr. Candido testified he does not know what chart Dr. Middleton reviewed but all of his patients, including Petitioner, are assessed via the database. He also "personally know[s] of multiple urine toxicologies that have been conducted on [Petitioner's] behalf." The "first indication of a problem with opioids" is a behavioral change. He has carefully assessed Petitioner's behavior and has not noticed any indication of aberrant use of opioids. PX 5a, pp. 25-26. Additionally, Oxycodone, which is an immediate-release short-acting opioid, is a standard medication in the armamentarium of pain physicians because it provides for relief of break-through type of pain or flare-ups of pain or incident-related pain in contradistinction to Fentanyl," which is an extended-release medication. Dr. Middleton's opinion that urine drug screenings would be required every six months, with or without cause, is "arbitrary and capricious and not supported by any peer-reviewed literature." PX 5a, p. 27. Dr. Candido also disagreed with Dr. Middleton's conclusion that the Percocet has not been beneficial to Petitioner. Although Petitioner's upper extremity condition has worsened, "she maintains her functionality" and has not been hospitalized for pain. Nor has she had to seek emergency care on a recurring basis due to untreated pain. If Petitioner's drugs were removed, she would probably have to be in a custodial setting having her pain managed via an intravenous infusion. PX 5a, pp. 29, 32. When Petitioner has not received her medication, she has ended up in the Emergency Room. PX 5a, pp. 29, 32. Petitioner's intake has been 50% of the CDC guidelines and not excessive, as Dr. Middleton testified. PX 5a, p. 30. Opioids cannot cure Petitioner but they have allowed her to "maintain some level of activity on a daily basis." PX 5a, p. 33. Petitioner "remains active to the extent that she can." Despite his "proclamation that she ought not to operate a motor vehicle, a couple of times a week she feels compelled to do so because of her sense of isolation and her experience of cabin fever." PX 5a, p. 35. Petitioner has always been "completely appropriate," behavior-wise, during her office visits. PX 5a, p. 36. No mental cloudiness has been documented. PX 5a, p. 37. Of the six known side effects of narcotics, Petitioner has manifested only constipation, for which she takes Movantik. All the information Dr. Middleton would have required, in the form of vital signs and mental status checks, should have been in the chart. PX 5a, p. 40. It was "irresponsible" for Dr. Middleton to characterize Petitioner's care as "not safe." The ODG guidelines, which she cites, "cannot take into account the uniqueness of each patient's clinical circumstances." PX 5a, p. 42.

Dr. Candido testified he "undoubtedly" has a pain agreement with Petitioner. He physically assessed Petitioner at each visit. The first thing one notices with unsafe opioid prescribing is a reduction in the respiratory rate. Petitioner's rate has "always been within reasonable standards." PX 5a, p. 43. Dr. Middleton's opinions do not prompt him to modify any part of Petitioner's treatment plan. PX 5a, p. 44.

Dr. Candido testified he disagrees with Dr. Middleton's non-certification of Movantik because it has worked for Petitioner. Petitioner tried "first-line treatment," starting with prune juice, before moving on to Movantik. He did not bring his records to the deposition and cannot say what those records say as to the need for Movantik. If his note of January 27, 2017 says Petitioner had failed several over the counter constipation medications, that sounds accurate. PX 5a, p. 46.

Dr. Candido testified he also disagrees with Dr. Middleton's denial of Zopidem or Ambien for sleep. At some hospitals, Ambien is being used to manage chronic pain. Even using Ambien, Petitioner is only able to sleep two to three hours because any arm movement or contact immediately causes arousal. PX 5a, p. 50. He considers Petitioner's CRPS to be an "extenuating circumstance" that brings her outside of the ODG guidelines. PX 5a, p. 52.

Under cross-examination, Dr. Candido testified his opinion as to opioid weaning would not change if Petitioner was instructed to go to the Emergency Room by her attorney. He assumes that the opioid agreement Petitioner signed is in his chart. If his subpoenaed records do not contain that agreement, he cannot say why. Petitioner signed the agreement in his presence. PX 5a, p. 54. He would also assume the toxicology results would be in his records. He has treated Petitioner since July 24, 2014. He recalls escorting Petitioner to the bathroom twice but he does not know the actual number of urine screenings his staff did. PX 5a, p. 56. He reviewed the website searches when Petitioner came in. He does not know whether screenshots of the searches appear in his chart. He would disagree that Petitioner has exceeded the amount of time on pain medication. He would wean Petitioner off opioids only if something superior, which has not yet been developed, were available. There are always risks associated with long-term use of any medication. With opioids, the concern is for the possibility of hormonal shifts. There is also anecdotal evidence that immune function could change with long-term opioid use. In Petitioner's case, she has not manifested either of these contingencies. PX 5a, p. 60. The ODG guidelines apply to family practitioners, not him. PX 5a, p. 62. He does not use the American Society of Pain Disability guidelines.

Arbitrator's Credibility Assessment

Petitioner and her husband gave differing accounts as to when Petitioner stopped driving. Petitioner testified she gave up driving in November 2015, after a near-collision. Her husband testified she continued driving into early 2016.

The foregoing testimony was not credible. Anne Hegberg, the occupational therapist who evaluated Petitioner's driving skills at Marianjoy on October 17, 2016 described Petitioner as having last driven the previous week and "restrict[ing] her driving to short trips, nice weather and no tollway as well as when she is having a 'good day'." Hegberg noted that Petitioner's husband "was present throughout the evaluation." PX 6a, p. 3. In February 2019, Dr. Candido testified that Petitioner was continuing to drive against his advice.

Petitioner's propensity to ignore medical advice and lie about a subject tangential to her claim is very concerning. However, the fact she has continued driving, perhaps to the present day, does not mean it has been safe for her to do so. Nor does it eliminate the stipulated chronic regional pain complex involving her dominant right arm. Respondent's second examiner, Dr. Konowitz, testified he observed "transient motion" of Petitioner's right hand in one of the surveillance videos (RX 7, p. 68) but "still restricted" Petitioner's right arm usage "because of the disease state." RX 7, p. 62. While he found Petitioner capable of driving, based on the surveillance, he undercut that finding when he acknowledged that opioid weaning would likely enhance Petitioner's driving performance and that a driving assessment should be performed after the weaning has taken place.

The Arbitrator has considered the surveillance footage in assessing Petitioner's credibility. The initial footage dates back to the fall of 2015. Some of that footage shows Petitioner briefly using her left hand to put items in the trunk of a car, carry bags into a store, converse on a cell phone, pick up shoes, grab the handle of a wheeled suitcase that is rolling down a driveway and retrieve mail. On a number of days in September and October 2015, investigators viewed Petitioner for periods varying between four and eight hours and apparently saw no activity, since videos from those days were not offered into evidence. On three days in October 2015, Petitioner can be seen operating a vehicle through a Walgreen's drive-through facility and on the road. The footage is not lengthy. RX 8-10. While it is regrettable that Petitioner continued driving, against medical advice, putting herself and others at risk,

there is no evidence indicating she used her right hand or arm to perform any task or used her left hand for any strenuous activity. The footage obtained in March and April 2017 is very brief. The most significant portion shows Petitioner leaving a restaurant, with her right arm obscured under a coat or shawl, and using her left hand to open and close a vehicle door. RX 11-12.

The Arbitrator also notes that, in his initial reports, Dr. Konowitz, noted no inconsistent behavioral responses. He has never wavered from his opinion that Petitioner has a significantly disabling pain condition involving her dominant right hand and arm. In his last report, dated January 17, 2018, he declined to comment on whether Petitioner could be malingering or motivated by secondary gain, indicating that "in depth psychological testing" would be needed to determine this. RX 6.

Although the Arbitrator finds Dr. Konowitz more persuasive than Dr. Candido as to the need for opioid weaning (see further below), some of Dr. Konowitz's other opinions simply make no sense. For example, his testimony that Petitioner, in her current state, is capable of safely operating an unmodified vehicle is very much at odds with his concession that she has permanently lost the use of her dominant right upper extremity. The testimony is also at odds with the doctor's original finding, on August 13, 2014, that Petitioner "cannot operate a motor vehicle." RX 2. It also conflicts with his January 17, 2018 opinion that a driving assessment should take place after Petitioner is weaned off her current opioids. RX 6. At his deposition, Dr. Konowitz testified, all in one breath, that Petitioner is "not too severely handicapped to drive" but "her medications could be adjusted to optimize that," i.e., her driving ability. RX 7, p. 81. From a public safety perspective, a person with sub-optimal driving skills should not be driving. Dr. Konowitz was also less than persuasive when he conceded that Petitioner suffers from depression and memory loss (which he attributed solely to her opioid regimen, RX 7, p. 82) but could nevertheless function at a workplace eight hours a day. The Arbitrator finds it significant that Dr. Konowitz was not asked to comment on the feasibility of Petitioner performing a job requiring medical decision-making. There is no evidence suggesting he endorsed Petitioner as a candidate for the "bed control" tasks that Follenweider described as involving "critical" patient safety functions.

While Dr. Candido has treated Petitioner over an extended period, and clearly has Petitioner's confidence, his credibility on the issue of her opioid usage was significantly undermined by the complete absence of urine toxicology results in his chart. [Contrary to Dr. Middleton's assertion, the very lengthy charts [PX 4 and 13a] do contain one reference to a toxicology screening, on September 28, 2018, along with three pages of prescription monitoring records, but those records cover only the periods of June 27, 2016 through January 16, 2017 and February 23, 2018 through September 25, 2018.] When Dr. Candido testified a second time, after Dr. Middleton's deposition, he was fully aware that Petitioner's opioid usage, as well as his own charting, had come under closer scrutiny yet he did not have his records available and based his responses solely on his memory. He recalled escorting Petitioner to the bathroom but did not testify to any urine screening results. PX 5a, p. 46. He testified he did not believe he increased Petitioner's opioid dosage over time but the Fentanyl dose did in fact increase from 50 to 100 mcg. He testified it is reasonable for Petitioner to seek Emergency Room care when she runs short of opioids because she is seeking pain relief rather than "relief from withdrawal" (PX 5, p. 28) but some of the Emergency Room records reflect she sought patches to avoid withdrawal symptoms. He also lost authority, in the Arbitrator's view, when he characterized Petitioner as "maintaining her functionality" on her current dosage. That characterization is completely at odds with LaFrance's records, which describe Petitioner as a tearful, very depressed, barely functional individual. It is also at odds with his own note of September 28, 2018, which reflects Petitioner complained of "persistent constant burning pain" in her right arm, "5/10 currently but can be as bad as '20/10'." PX 4. Dr. Candido's last note of December 14, 2018 undermines his claim of close monitoring and creates a whole new set of problems

for the Arbitrator since it indicates that, up to that point, Petitioner had been obtaining her narcotic medication from Dr. Behnke rather than from him. [This appears to be the case, based on medication receipts in Dr. Behnke's chart and the website screenshots, which list Dr. Behnke, rather than Dr. Candido, as the prescribing physician.] It is only in this note that Dr. Candido mentioned an opioid contract, although no such contract is in the exhibit. He described Petitioner's pain as 9/10 and 10/10 and noted she refused to be examined. PX 13a. Dr. Candido testified Petitioner requires Percocet, in addition to the extended-release Fentanyl, "because it provides for relief of break-through type of pain or flare-ups of pain or incident-related pain." Petitioner did not acknowledge obtaining any such relief. She dreads being out in public, due to fear of being jostled, and experiences extreme reactions, as her family members acknowledged, if anyone touches her right arm or comes close to doing so. Dr. Candido also claimed that Petitioner has demonstrated no alterations that would prompt him to conclude she has a physiological or psychological problem with opioids. Petitioner, however, testified to significant weight loss along with a negative change in her outlook and ability to interact with others. This testimony finds support in LaFrance's records, the driving assessment and Dr. Sefer's notes. That the change is due in part to Petitioner's undisputed right arm condition is clear but, at this point, it is very difficult to separate the effects of that condition from the effects of the opioids. It appears to the Arbitrator that Petitioner's psychological state has devolved over time. She sees herself as a "mark" and views strangers as intent on stealing from her if she happens to venture out alone. She needs help yet finds that need embarrassing. The Arbitrator concludes that Petitioner has little to lose, in terms of pain control [see Dr. Konowitz's deposition, RX 7, p. 61], and potentially something to gain from a closely monitored change in regimen.

Arbitrator's Conclusions of Law:

Did Petitioner establish a causal connection between her undisputed work accident and consequent regional pain syndrome and her claimed left hand and wrist conditions of ill-being?

Respondent stipulated to causation insofar as Petitioner's right upper extremity chronic regional pain syndrome condition is concerned. Respondent disputes Petitioner's claim of left wrist and thumb conditions resulting from overuse.

The Arbitrator finds that Petitioner established causation, via an overuse theory, as to a left wrist condition that required care but subsequently resolved. Petitioner did not testify to ongoing left wrist complaints. The Arbitrator further finds that Petitioner established causation via overuse as to her current left thumb and index finger conditions. In so finding, the Arbitrator relies on the following: 1) the fact that the undisputed chronic regional pain syndrome condition involves Petitioner's dominant right hand and arm, with that scenario enhancing the likelihood of overuse of the non-dominant contralateral side; 2) the March 20, 2014 form in Dr. Murray's records, which reflects a two-month history of left thumb pain secondary to "overuse of lt hand due to rt arm being bad" (PX 9); 3) Dr.Konowitz's August 13, 2014 recommendation of treatment in the form of Lidoderm and Pennsaid for a "left wrist overuse syndrome" (RX 2); 4) Dr. Bednar's opinion of February 17, 2015 that Petitioner's left thumb arthritis was aggravated by overuse secondary to inability to use the right hand" (PX 16); 5) the 2015 Athletico therapy records (PX 19), which document left thumb and later left index finger complaints due to "over working the left arm and hand" secondary to the inability to use the right hand; and 6) Dr. Konowitz's concession, during his deposition, that overuse could "theoretically" have aggravated an underlying condition of left thumb arthritis (RX 7, p. 42.).

Is Petitioner entitled to temporary total disability benefits from July 24, 2015 through April 18, 2019?

On July 23, 2015, Jason Henschel, a Respondent claims adjuster who testified before the Arbitrator, sent Petitioner's former counsel a letter indicating that temporary total disability benefits were being discontinued "based on the IME report from Dr. Howard Konowitz which indicates that [Petitioner] can work with restrictions, which [Petitioner's] department is able to accommodate." Henschel advised Petitioner's former counsel to have Petitioner contact Paris Partee via telephone "for return to work instructions." He indicated that Dr. Konowitz's report would be E-mailed shortly. RX 17.

The Arbitrator finds that Respondent, acting through Henschel, mischaracterized the opinions Dr. Konowitz expressed in his report of April 23, 2015. In that report, the doctor found Petitioner capable of "no right arm work graded," with no further explanation. In response to a question asking him to comment on an allegedly enclosed job description, he declined to comment, making it clear that he received no such enclosure. He also recommended significant care in the form of weaning "to address opioid dependence that has occurred." He specifically endorsed Dr. Candido's recommendation of a hand surgery consultation for the left thumb, although he felt Petitioner's chronic regional pain syndrome "remains too active for surgical intervention." RX 3, p. 20. At no subsequent point did Dr. Konowitz back off of his recommendation of weaning. Henschel should have recognized that, since Dr. Konowitz did not find Petitioner to be at maximum medical improvement, Respondent was liable for ongoing benefits, under Interstate Scaffolding v. IWCC, 236 Ill.2d 132 (2010).

As for the separate issue of availability of work within the restrictions put forth by Dr. Konowitz, the Arbitrator views the proposed Cermak jail "bed control" task as inappropriate for Petitioner, in her current state, for reasons having nothing to do with its physical requirements. As Follenweider emphasized, "bed control" at a detention center such as Cermak is a task with significant liability potential in that it involves "clinical decision making" and "huge patient safety issues." A person performing the task must use clinical judgment to determine whether a detainee with specific medical needs is housed in an area where those needs can be met. For example, a detainee who is at risk of withdrawal must be kept in an area where he can undergo screenings. T. 3/14/19, p. 44. Petitioner is currently opioid-dependent due to her stipulated chronic pain syndrome. She herself is at risk for withdrawal symptoms, as evidenced by her Emergency Room records. It would be illogical, if not hazardous, for her to attempt to monitor others in the same condition. Dr. Konowitz admitted as much when he testified that Petitioner is experiencing depression and memory loss secondary to her opioid regimen. RX 7, p. 82. As noted elsewhere in this decision, Dr. Konowitz never endorsed the "bed control" task.

Is Petitioner entitled to reasonable and necessary incurred medical expenses?

Petitioner claims various incurred medical and prescription expenses along with $1,515.93 in out of pocket expenses.

With respect to the claimed medical and prescription expenses, the Arbitrator has examined the itemized bills and receipts in PX 37 and has compared them with the treatment records in evidence.

The Arbitrator declines to award the claimed Alexian Brothers Medical Center inpatient bill of $21,745.00 along with the Alliance Laboratory , Elk Grove and Elk Grove Radiology bills relating to Emergency Room and inpatient care rendered in early June 2016. Petitioner failed to meet her burden of proving that the need for this care stemmed from the work accident and/or treatment relating to that accident. While the records mention Petitioner's use of opioids, and while there is testimony reflecting

that opioid usage can lead to constipation and bowel obstructions, the discharge summary reflects that Petitioner complained of diarrhea and vomiting, not constipation, and believed she was suffering from diverticulitis. Petitioner reported having undergone a colon resection in 2010 secondary to diverticulitis. The discharge summary also reflects Petitioner was diagnosed with pneumonia after chest X-rays showed lung infiltrates. Dr. Behnke, who dictated the summary, wrote that Petitioner's symptoms, "were all related to ileus from the pneumonia." Petitioner did not offer any opinion indicating that the pneumonia, whether due to aspiration or a virus, resulted from the pain medication she took as a result of the work accident. The Arbitrator would have to engage in speculation to assume that Petitioner developed a lung condition secondary to her CRPS and/or CRPS-related medication.

The Arbitrator also declines to award the claimed bill of $10,633.75 from Rehab Assist, the company operated by Petitioner's first witness, Henry Brennan, a life care planner. The Arbitrator views his charges as litigation-related.

The Arbitrator defers any ruling on the claimed $1,159.72 bill of Steve Blumenthal, a vocational expert retained by Petitioner, having previously found that it would be premature to consider the issue of permanency, given the need for opioid weaning.

The Arbitrator awards the remaining medical and prescription expenses outlined in PX 37, subject to the fee schedule and with Respondent receiving credit for any payments it made toward these expenses. The Arbitrator recognizes there is a potential inconsistency between her award of the recently incurred Injured Workers Pharmacy opioid expenses (14,234.41) and her award of opioid weaning per Dr. Konowitz. While the Arbitrator finds Dr. Konowitz persuasive on this issue, she does not fault Petitioner for continuing to follow Dr. Candido's protocol up to the point when proofs were closed. It was Respondent's nurse case manager, not Petitioner, who selected Dr. Candido in the first place. Moreover, pain physicians can vary in their recommendations, as Dr. Konowitz acknowledged.

The Arbitrator also awards the claimed out of pocket expenses, other than the $272.12 clothing-related charge.

Is Petitioner entitled to companion care and an award of expenses associated with the care provided by family members since the accident? Is Petitioner entitled to transportation expenses?

Before addressing the complex issue of companion care, the Arbitrator again notes that Respondent does not dispute the diagnosis of chronic regional pain syndrome and agrees Petitioner has no functional use of her dominant right hand and arm due to that syndrome.

The Arbitrator, having considered the testimony of Dr. Candido, Dr. Konowitz, Henry Brennan, Petitioner and Petitioner's family members, along with the relevant appellate decisions, including Rousey v. Industrial Commission, 224 Ill.App.3d 1096 (4th Dist. 1992) and Burd v. Industrial Commission, 207 Ill.App.3d 371 (1991), awards Petitioner four hours of companion care per day (including weekends), at the rate of $21/hour, from August 1, 2017 through the hearing of April 18, 2019. The Arbitrator uses August 1, 2017 as the start date for this award because this is the approximate date on which Petitioner's husband, Jim Kosla, began his current job. Kosla credibly testified he switched jobs because he realized that the significant travel required of his former position was having a negative impact on Petitioner. He also credibly testified that, while his current job is technically full-time, he is unable to devote forty hours per week to the job because of Petitioner's needs. The Arbitrator declines to award full-time companion care because Petitioner did not sustain a brain injury (as did the claimant

in Rousey, a case in which the Court upheld the Commission's denial of spousal compensation), has some limited ability to use her left hand, is able to walk and climb stairs, does not require quasi-medical services such as wound care or injections and has, to her credit, learned to use various devices to help her dry her hair, don clothing and open containers. The effort she has made to remain as independent as possible is a good thing, in the Arbitrator's view. While four hours may seem random, it is a period within which a reasonably competent aide could pre-prepare food, help Petitioner bathe and get dressed and drive Petitioner to a store to perform an errand. Assistance for that duration would also allow Petitioner's husband to extend his workday and maintain his employment and salary. He has been the sole breadwinner, in terms of earned income, since the accident. The Arbitrator also notes Dr. Konowitz's concessions, during cross-examination, that there are certain activities requiring manual dexterity that Petitioner is unable to perform on her own due to her undisputed right upper extremity CRPS. Dr. Konowitz correctly referred to Petitioner as "one armed." He also conceded that the contractures and functional disuse resulting from the CRPS will not improve.

The Arbitrator has separately awarded prospective care in the form of supervised opioid weaning. See below. Dr. Konowitz indicated this weaning could be performed on either an outpatient or inpatient basis. RX 6. The Arbitrator believes that Petitioner's companion care needs would likely increase to full-time, or 40 hours per week, during the period of weaning, if the weaning was performed on an outpatient basis. Petitioner would have to travel to and from a facility and might have to deal with withdrawal symptoms. See further below.

As for the claimed transportation-related expenses, the Arbitrator awards only those expenses relating to Petitioner's trips to various Respondent Employee Health facilities to undergo return-to-work evaluations. The Arbitrator views these evaluations, performed by Dr. Sefer and others, as akin to examinations afforded by Section 12 of the Act.

Is Petitioner entitled to specific medical/dental devices in the form of an adjustable king mattress, air flosser, walk-in shower and compounding cream? Is Petitioner entitled to Movantik? Is Petitioner entitled to periodic blocks to allow for nail trimming and transient pain relief?

The Arbitrator relies on Dr. Candido and Petitioner's credible testimony concerning her pain-related sleep issues in awarding the adjustable king mattress prescribed on May 9, 2017. Candido Dep Exh 4. Petitioner testified her undisputed right upper extremity condition has adversely affected her posture in the sense that her right arm curves forward and feels heavy. Her medical records confirm that her right shoulder tends to rotate forward. She has difficulty lying in a conventional bed and often feels more comfortable reclining, since that allows gravity to take over.

The Arbitrator relies on Dr. Candido in awarding Movantik, the medication Petitioner has taken to deal with opioid-related constipation. The Arbitrator finds unpersuasive Dr. Middleton's testimony that this medication is not warranted. Dr. Candido credibly testified Petitioner tried more conventional remedies, including over the counter medication, without success, before he determined she needed Movantik. The Arbitrator recognizes that Petitioner's need for constipation-related medication may change once she undergoes opioid weaning.

The Arbitrator relies on the prescription of Dr. Leischner, Petitioner's dentist, in awarding the Philips air flosser recommended in April 2018. As Dr. Candido recognized, at his first deposition, one does not have to be a dentist to say, with authority, that it takes two hands to floss one's teeth. If an air flosser can help Petitioner avoid expensive dental care, it makes sense for her to have one.

The Arbitrator declines to award a walk-in shower because Petitioner already has two and testified she prefers baths over showers.

The Arbitrator also declines to award compounding creams or gels, as recommended by Dr. Candido. The Arbitrator has no dispute with the reasoning underlying the recommendation (see PX 5, p. 22) but Petitioner testified the creams are "tacky" and thus not compatible with her CRPS-related allodynia issues.

The Arbitrator finds it appropriate for Dr. Candido to continue administering blocks at intervals to allow for trimming of the nails of Petitioner's right hand and a brief period of total pain relief. Dr. Konowitz agreed with the need for nail hygiene, to prevent infections. He also agreed that Dr. Candido is performing the blocks correctly. He identified potential risks associated with repeatedly injecting the same area of the body but there is every indication Dr. Candido is aware of these risks and has explained them to Petitioner.

What is the nature and extent of the injury? Is Petitioner entitled to prospective medical and companion care?

The parties placed permanency at issue, with Petitioner seeking an award of permanent total disability and Respondent arguing in favor of an award under Section 8(d)2. The Arbitrator, however, concludes that Petitioner is not at maximum medical improvement and thus it would be premature to make a permanency finding at this time. It would take at least four months to slowly reduce her opioid intake, based on Dr. Konowitz's projection, and presumably additional time thereafter to re-check her pain ratings and determine her new medication needs.

The Arbitrator declines to address permanency and awards prospective care in the form of an evaluation by a pain physician who sub-specializes in opioid weaning, along with the program this physician recommends. In view of Dr. Candido's resistance, and the litigation-related role Dr. Konowitz has played to date, the Arbitrator recommends that the parties confer and reach an agreement as to a third, equally qualified pain physician, or "addictionologist" (RX 6), to perform the evaluation and oversee the weaning. If this physician recommends that the weaning be conducted in an inpatient setting, the Arbitrator awards all related expenses, including reasonable transportation expenses. If the weaning is performed on an outpatient basis, the Arbitrator awards full-time, i.e., 40 hours/week, companion care for its duration. The Arbitrator agrees with Dr. Konowitz that a new life care plan should be prepared "after medication management is addressed." RX 6, p. 29.

The Arbitrator recognizes that opioid weaning and/or transitioning to a different form of narcotic will not eliminate the chronic regional pain syndrome and contractures. It also may not affect the consequences of that syndrome, including the inability to drive safely. However, it might well improve Petitioner's psychological state along with the family dynamic.

The Arbitrator also awards prospective care in the form of psychological counseling. It appears, based on Dr. Behnke's records, that Claire LaFrance has moved or otherwise left her practice. The Arbitrator believes it is important for Petitioner to get back on track with sessions with another provider, preferably one who could work in conjunction with a psychiatrist who could address medication needs.

Is Respondent liable for penalties and fees?

The Arbitrator, having reviewed the entire record and considered the controlling case law, including McMahan v. Industrial Commission, 702 N.E.2d 545 (Ill. 1998) and Oliver v. IWCC, 2015 IL App (1st) 143836WC, finds that Respondent is liable for penalties under Sections 19(k) and 19(l), along with Section 16 attorney fees, based on its refusal to pay temporary total disability benefits from August 28, 2015 through the hearing of April 18, 2019. Respondent lacked an objectively reasonable basis for this refusal. Respondent's adjusters, Tekuila McGee and Jason Henschel, can readily be accused of "tunnel vision" since they simply "went with" Dr. Konowitz rather than examining "all of the existing circumstances," in handling this claim. Those circumstances included the work capacity opinions of Dr. Candido, a physician selected by Respondent's nurse case manager, and the opinions of Drs. Sefer and Ahmed. Additionally, it appears Henschel failed to thoroughly analyze Dr. Konowitz's opinions. In his letter of July 23, 2015 (RX 17), Henschel cited those opinions as the basis for discontinuing temporary total disability benefits but, in his report of April 23, 2015, Dr. Konowitz answered "no right arm work graded," with no further explanation, in response to a question asking whether Petitioner could return to work. Konowitz Dep Exh 2, p. 20. That he meant Petitioner was capable of a gradual return, with increasing right arm usage, is possible but that was not compatible with his finding of a completely dysfunctional right upper extremity. Dr. Konowitz also deferred addressing the propriety of a particular job since Respondent neglected to provide him with any formal job description. Konowitz Dep Exh 2, p. 20. [At his deposition, Dr. Konowitz confirmed he never received any such description.] Eventually, Dr. Konowitz concluded that Petitioner could only perform sedentary duty with no use of the right upper extremity. Respondent maintains it made such duty available to Petitioner in 2015 and 2016 but it is clear to the Arbitrator that Petitioner's ability to attempt such duty was conditioned on her being found fit for work by Dr. Sefer, Dr. Ahmed or another Employee Health Services physician. None of Respondent's witnesses refuted Petitioner's testimony that Employee Health "is where you have to go" to be released to work. T. 11/19/18, p. 318. The records in PX 60, to which Respondent did not object, make it clear Drs. Sefer and Ahmed did not find Petitioner fit for work. On June 10, 2016, Dr. Sefer stated: "I am not aware of any nursing job at Cermak that any nurse can perform with one hand." PX 60, p. 213. Based on those records, the Arbitrator cannot find that Petitioner refused to attempt to return to work. Petitioner took the initial step of presenting to Employee Health Services on several occasions, as required. The fact that non-physician human resource employees and adjusters conceived the "bed control" task as doable does not mean it was appropriate from a medical perspective.

At the last hearing, Respondent specifically stipulated that Follenweider's testimony concerning the availability of the "bed control" task at Cermak did not constitute a job offer. Even if Respondent had not so stipulated, the Arbitrator has previously found, based on Dr. Konowitz, that Petitioner, in her current state, is not fit for this task.

The Arbitrator recognizes that Respondent paid substantial permanency benefits, per her recommendation, after discontinuing the payment of temporary total disability in August 2015. Respondent contends it had no obligation to advance permanency but that contention runs counter to its stipulation, per Dr. Konowitz, that Petitioner is essentially "one armed." Amputation-related permanency benefits are payable as soon as the extent of the loss is ascertainable, assuming that accident is agreed, as it is in this case. See, e.g., Greene Welding and Hardware v. IWCC, 2009 Ill.App. LEXIS 1377 (4th Dist. 2009).

The period running from August 23, 2013 through April 18, 2019 comprises 295 weeks. 295 multiplied by $1,110.78 (the TTD rate, based on the stipulated average weekly wage) equals $327,680.10. Respondent has credit of $114,825.95 in TTD and $70,722.74 in permanency payments for

a total credit of $185,548.69. The net unpaid weekly benefits as of April 18, 2019 is $142,131.41. The Arbitrator awards $71,065.71 in Section 19(k) penalties, representing 50% of $142,131.41. The Arbitrator also awards Section 19(l) penalties in the maximum statutory amount of $10,000.00. Finally, the Arbitrator awards Section 16 attorney fees in the amount of $28,426.28, representing 20% of $142,131.41.

The Arbitrator declines to find Respondent liable for penalties and fees on unpaid medical expenses and claimed medical/companion care. Some of the denials were predicated on utilization reviews performed by physicians lacking the credentials and expertise of Drs. Candido and Konowitz but the Arbitrator is not able to conclude that Respondent acted in an objectively unreasonable manner in deferring to those reviews.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Alec Laule,

Petitioner,

vs.

NO: 17 WC 3679,
21 IWCC 0137

Village of Niles,

Respondent.

ORDER OF RECALL OF DECISION UNDER SECTION 19(f)

Pursuant to Section 19(f) of the Act, the Commission, *sua sponte*, finds that a clerical error exists in the Decision and Opinion on Review dated March 22, 2021 in the above captioned matter, as the permanent partial disability (PPD) benefits were awarded at a rate exceeding the maximum PPD rate for the date of accident pursuant to the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated March 22, 2021 is hereby vacated and recalled pursuant to Section 19(f) for a clerical error contained therein.

IT IS FURTHER ORDERED BY THE COMMISSION that a Corrected Decision and Opinion on Review shall be issued simultaneously with this Order.

DATED:
o: 3/18/21 MAR 22 2021
BNF/kcb
45

Barbara N. Flores

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify ☐	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Alec Laule,

Petitioner,

vs.

NO: 17 WC 3679
21 IWCC 0137

Village of Niles,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection and permanent disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission modifies the Decision of the Arbitrator with respect to the issue of the award for disfigurement. The Arbitrator awarded two weeks of partial permanent disability benefits for the disfigurement of Petitioner's right arm and two weeks of benefits for the disfigurement of the left arm. On March 11, 2021, the parties appeared before Commissioner Barbara N. Flores by agreement for a viewing via videoconference of Petitioner's disfigurement and the evidence recorded at that time was shared with the panel. The Commission finds three points of disfigurement on the right elbow, one red and the size of a dime, with two smaller white marks, all indented. Regarding the left forearm, the Commission finds one point of disfigurement, white and the size of a quarter. Given the nature and extent of the demonstrated disfigurement, the Commission modifies the Decision of the Arbitrator and awards five weeks of benefits regarding the disfigurement of Petitioner's right elbow and five weeks of benefits regarding the disfigurement of Petitioner's left forearm.

In all other respects, the Commission affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $755.22 per week for a period of 10 weeks, for the reason that the injuries sustained resulted in disfigurement as provided in §8(c) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

IT IS FURTHER ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on June 15, 2020 is hereby affirmed and adopted as modified herein.

No county, city, town, township, incorporated village, school district, body politic or municipal corporation is required to file a bond to secure the payment of the award and the costs of the proceedings in the court to authorize the court to issue such summons. 820 ILCS 305/19(f)(2). Based upon the named Respondent herein, no bond is set by the Commission. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAR 2 2 2021
o: 3/18/21
BNF/kcb
045

Barbara N. Flores

Deborah L. Simpson

Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

21IWCC0137

LAULE, ALEC
Employee/Petitioner

Case# **17WC003679**

VILLAGE OF NILES
Employer/Respondent

On 6/15/2020, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.18% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

5669 ALEKSY BELCHER
JASON CARROLL
30 N LASALLE ST SUITE 750
CHICAGO, IL 60654

2461 NYHAN BAMBRICK KINZIE & LOWRY
DANIEL EGAN
20 N CLARK ST SUITE 1000
CHICAGO, IL 60602-4195

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Alec Laule
Employee/Petitioner

v.

Village of Niles
Employer/Respondent

Case # **17 WC 3679**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Steven Fruth**, Arbitrator of the Commission, in the city of **Chicago**, on **9/30/2019**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **5/17/2016**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**90,678.12**; the average weekly wage was $**1,743.81**.

On the date of accident, Petitioner was **49** years of age, ***single*** with **1** dependent child.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has*** paid all appropriate charges for all reasonable and necessary medical services.

Petitioner received full pay while off work per collective bargaining agreement of the parties, and therefore TTD is moot.

Respondent is entitled to a credit of $**132.06** under §8(j) of the Act.

ORDER

Petitioner's claim for medical benefits in the amount of $145.99 paid by Blue Cross Blue Shield of Illinois to Illinois Bone & Joint Institute is denied as not being causally related to the instant accident.

Respondent is given a credit of $132.06 and shall hold Petitioner harmless from any claims by Rezin Orthopaedics and Sports Medicine, for which Respondent is receiving this credit, as provided in §8(j) of the Act, paid by Blue Cross Blue Shield of Illinois for medical treatment on May 23, 2016. No other medical bills were claimed.

Respondent shall pay Petitioner two weeks a permanent partial disability benefits for disfigurement of his right arm and two weeks of permanent partial disability benefits for disfigurement of his left arm.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

21IWCC0137

Signature of Arbitrator

June 9, 2020
Date

JUN 15 2020

Alec Laule v. Village of Niles
17 WC 3679

INTRODUCTION

This matter proceeded to hearing before Arbitrator Steven Fruth. The disputed issues were: ***F:*** Is Petitioner's current condition of ill-being causally related to the accident?; ***J:*** Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***L:*** What is the nature and extent of the injury?

FINDINGS OF FACT

Petitioner Alec Laule was employed by the Village of Niles from September 1992 until his retirement on September 15, 2018, as a patrol police officer. Petitioner testified that he was involved in a work-related accident at work on May 17, 2016.

On that date, Petitioner testified he was at the Niles police station when there was a call regarding three male subjects who had stolen back packs full of alcohol from the Jewel grocery store at Oakton and Milwaukee. While at the station, the car that had been described as the get-away car was spotted outside the police station at Milwaukee and Touhy. Petitioner testified that he participated in detaining the three subjects. One of the suspects tried to escape and Petitioner tackled the subject on Touhy Avenue. Petitioner testified that help to the ground injuring his right and left arms and his right knee

Petitioner testified that immediately after this incident, he noticed that he was bleeding from his arms and his right knee. Petitioner identified areas of his injuries on black and white photocopies of photographs (PX #5). The Photocopies of photographs demonstrated abrasions about both forearms and the right knee.

Petitioner was transported to Lutheran General Hospital ER by ambulance (PX #1). Petitioner was diagnosed with abrasions on his forearms and his right knee. The abrasion over the knee had a slightly deeper portion but was not amenable to suturing. Discharge orders kept off Petitioner work.

Petitioner testified he next sought treatment by Dr. Raymond Meyer at Rezin Orthopaedics May 23, 2016 (PX #2). Petitioner testified that Dr. Meyer had treated his son and was also a friend of Petitioner's from high school. Dr. Meyer focused his attention on the right knee as Petitioner reported the arm abrasions were not giving too much discomfort. Petitioner complained of pain in his anterior right knee, where the abrasion was more significant, and also medial knee pain. Dr. Meyer diagnosed a right

knee contusion and abrasion, as well as possible medial meniscal tear. He kept Petitioner off work until May 26, 2016. He provided Petitioner with prescriptions for Cleocin and EC-Naprosyn.

Petitioner followed up with Dr. Meyer on June 3, 2016. Petitioner reported overall improvement in his condition. His abrasions were healing. Petitioner was discharged from care at that time and allowed to return to work without restrictions. Dr. Meyer advised Petitioner to return if he had further complaints with his knee.

Petitioner was temporarily and totally disabled for 1 & 2/7 weeks, from May 18, 2016, through May 26, 2016, and received full pay benefits pursuant to his union contract.

Petitioner did not receive any other treatment for the injuries related to this accident.

Following his discharge by Dr. Rezin, Petitioner presented to Illinois Bone & Joint Institute for right elbow pain July 22, 2016 (PX #3). On that day, he treated with Dr. Taizoon Baxamusa. Petitioner gave a history that he had been dealing with right elbow pain for the past year. Petitioner did not give a history of being injured in a work-related accident on May 17, 2016. Petitioner testified that this was for a longstanding condition in his elbow that predated his work accident. Additional records from Hinsdale Orthopedics (RX #1) and from Athletico (RX #2) bear out that Petitioner's right elbow condition is not related to the instant work accident.

Petitioner testified that he returned to work for Respondent and worked as a patrol officer until he retired on September 15, 2018. Petitioner acknowledged that his retirement was not related to injuries claimed from his May 17, 2016 work accident.

At trial, Petitioner displayed the scars he claims resulted from his accident. The Arbitrator noted that the scar on Petitioner's left forearm is approximately the size of a dime. It was discolored from the surrounding non-injured skin. The scar was visible from at least six feet away. There is scar on Petitioner's right elbow area. It was somewhat larger that the scar on the opposite arm but was not as visible from the same distance. Finally, Petitioner has a slightly larger than dime-sized scar on his right kneecap. It was similar in appearance and size to the left arm scar.

Petitioner testified that he had used lotion on his scars up until about one year ago.

CONCLUSIONS OF LAW

F: Is Petitioner's current condition of ill-being causally related to the accident?

The Arbitrator finds that Petitioner proved by a preponderance of the evidence that his current condition of ill-being as it relates to the scars on his arms are causally related to his work accident of May 17, 2016. The contemporaneous medical records support a finding that these scars were a direct result of his accident. Further, the scars match up with the injuries as visualized in the four photographs admitted into evidence as Petitioner's Exhibit #5.

The Arbitrator notes that the scarring of Petitioner's right knee is at the patella, not below the knee. §8(c) of the Act provides for disfigurement benefits on the leg below the knee. Petitioner scarring on the right leg is not below the knee, and therefore is not compensable.

For these reasons, the Arbitrator concludes that Petitioner's current condition of ill-being as it relates to the scars on his forearms are causally related to his work accident of May 17, 2016.

J: Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

The Arbitrator finds that medical services provided to Petitioner have been reasonable and necessary. Respondent paid all appropriate charges except for the portion of the Rezin Orthopedics and Sports Medicine bill for date of service May 23, 2016, which was paid by Blue Cross Blue Shield of Illinois in the amount of $132.06.

Respondent shall be given a §8(j) credit of $132.06 for medical benefits that have been paid by Blue Cross Blue Shield, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in §8(j) of the Act.

The claim for benefits provided in the amount of $145.99 for the July 22, 2016, date of service at Illinois Bone & Joint Institute, is not causally related to Petitioner's accident in this claim and therefore no §8(j) credit is given.

L: What is the nature and extent of the injury?

As a result of his accident, Petitioner sustained disfiguring injuries to both of arms and to his right lower extremity. These scars were clearly visible from a distance at the arbitration hearing. However, as noted above, Petitioner's right knee scarring is not compensable under §8(c) of the Act.

The Arbitrator noted that Petitioner also had evidence of other but unrelated disfigurement on his forearms. The compensable scars are neither large nor significantly discolored as compared to surrounding skin. Nonetheless, the scars are noticeable and are therefore compensable. Therefore, the Arbitrator finds that Petitioner is entitled to two weeks of benefits for the disfigurement on his right arm and two weeks of benefits for the disfigurement on his left arm.

Steven J. Fruth, Arbitrator

June 9, 2020
Date