

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
MIAMI DISTRICT OFFICE

Martha F. Solorzano,
Employee/Claimant,

OJCC Case No. 12-016261ERA

vs.

Accident date: 6/18/2012

McDonald's/Amerisure Insurance,
Employer/ Carrier/ Servicing Agent.

Judge: Edward Almeyda

FINAL COMPENSATION ORDER

This matter came before me, the undersigned authority, for a duly noticed final hearing on 9/26/2016. The Claimant was represented by Albert Marroquin, Esquire, and the Employer/Carrier by Andrew Borah, Esquire.

The adjudicated petitions are dated 3/10/2016 and 8/25/2016. A petition dated 9/26/2016 has yet to be mediated; therefore it is not ripe for adjudication.

Claims:

- a. TTD/TPD from 12/18/2013 continuing
- b. PTD along with supplemental from MMI
- c. IIBs
- d. Follow up appointment with Dr. Epstein and Trombly
- e. Penalties interests, costs and attorneys fees.

Defenses:

1. Claimant at MMI as of 12/17/2013, therefore not entitled to temporary indemnity.
2. Claimant has no work restrictions relating to the industrial injury.
3. Claimant continued to work for the employer through November 2014. Carrier seeks offset for any indemnity that may be due.
4. Claimant has been paid all impairment benefits due and owing on a 5% basis.
5. The MCC of any further need for treatment is not the industrial injury.
6. It is not medically necessary for the Claimant to return to Dr. Epstein or Dr. Trombly.
7. No further medical care is necessary.
8. Claimant not PTD as she is capable of performing at least sedentary employment within a 50 mile radius of her residence.

9. Deny PICA.

Documentary exhibits and testimony:

Claimant:

1. Medical records of Dr. Trombly, Dr. Epstein, Mercy Hospital, Dr. Pagan and Occupational Medical Center. (119)
2. Dr. Langone's deposition (150)
3. Payroll records (153)
4. Carrier's pay history (154)
5. Deposition of Mr. Forchielli (157)

Employer/Carrier:

- a. Dr. Epstein's deposition (151)
- b. Dr. Trombly's deposition (152)

Judges Exhibits:

1. Pretrial (140)
2. Claimant trial memo (155)
3. E/C trial memo (156)

Live testimony:

Claimant

Stipulations:

1. 5% IIB already paid.
2. AWW is \$258.76.
3. Indemnity claim from 12/18/2013 to present.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

1. In this matter, the parties have lumped together the Claimant's injuries to the head, neck and low back into one package, yet the evidence shows that they are subject of different considerations as shown below.

2. MARTHA SOLORZANO: the Claimant is a non English speaking lady, age 61, who migrated from Nicaragua. While in the United States her work history is basically that at cafeterias and cleaning houses. She worked as a cook for the Employer when she fell on

6/18/2012. She had some problems with her health before the accident, but was able to work. The accident happened when she slipped on a wet floor landing on her back.

3. Since the accident her back pain has not gone away. She returned to work for the Employer on several occasions, the last being two years ago. She stopped because she had no transportation, and in pain and could not bend over. She has not worked since then. She is currently receiving social security disability and psychiatric treatment.

4. Presently the Claimant cooks at her house for others, and sells the food. She testified that she cannot do any of the jobs which she previously did.

5. DR. MICHAEL LANGONE: He is the Claimant's IME and an orthopedic surgeon who examined the Claimant on 8/15/2016. Her chief complaints are to the entire back, neck, headaches, together with upper and lower extremities tingling and pain.

6. Following the examination, Dr. Langone diagnosed a post concussive syndrome, status post L1 compression fracture, and aggravation of pre-existing osteoarthritis and degenerative disc disease of the lumbar spine. The MCC is combined. The MCC of the fracture and the aggravation of the chronic complaints is the fall. The Claimant was not at MMI, and Dr. Langone recommended a re-evaluation at the University of Miami with repeat MRI studies. He also recommended physical therapy and a lumbosacral corset. She is not able to work in her present condition.

7. Dr. Langone testified that the Claimant would not have been able to work since December 2013 until his visit. He based that opinion on Dr. Trombly's conclusion that 70% of the Claimant's complaints are related to the fall event. He could not explain the inability of Dr. Epstein to relate this to the accident, which is inconsistent with Dr. Trombly's findings.

8. He explained that in his opinion Dr. Trombly wanted to do a kyphoplasty, and when the Claimant declined, he found her to be at MMI. Dr. Epstein then went along with that opinion.

9. If the Claimant were found to be at MMI, then she would have a rating 7% to 10%, which rating includes the sacral fracture. The radiographic studies were objective for the positive findings of a protrusion at the L1-L2 level and the fracture of the vertebral body. Dr. Langone testified that he is on an equal footing with Dr. Epstein or Trombly in assessing the Claimant, as those physicians had not seen her in two years.

10. DR. BRYCE EPSTEIN: He is a physician specializing in physical medicine and rehabilitation who first treated the Claimant on 11/7/2013. The Claimant described the accident occurring when she slipped and injured her low back. An MRI of the lumbar spine showed a fracture at the L1 vertebra, without significant compression. An MRI of the sacrum was unremarkable.

11. The X-rays taken at the doctor's office showed no fracture, as it was by then well healed. The Doctor's impression was of mechanical low back pain. No treatment was then offered the Claimant.

12. A second visit took place on 2/6/2013. A second MRI had been done and it showed a small herniation at the L2-3 level, and no evidence of fracture. At the time of the examination the Doctor had the Claimant walk up and down the clinic hallway. The Claimant had a forward stooped posture, and at times banging into the walls for no apparent reason. The Claimant had no neurological deficits, but had tenderness over the lumbar spine and sacral region.

13. Dr. Epstein could not explain the Claimant's symptoms. He agreed that she was at

MMI with 5% impairment.

14. At the time of the third visit on 3/25/2013 the Claimant reported she tried to return to work and only lasted fifteen minutes. She walked in a robotic fashion, again holding onto the furniture for support. Neurologically he could not find anything focal. Dr. Epstein could not find any evidence to support the Claimant's subjective complaints of walking in a robotic fashion.

15. At a visit in June 2014, the Claimant required a cane to ambulate, and again had to hold onto walls to walk. The examination was basically unremarkable. As of that visit Dr. Epstein concluded that the Claimant did not need further medical treatment or palliative treatment. He could not find anything wrong with the Claimant and the symptom complex did not match what was found on the physical examination. He did not need to see her again. He deferred to Dr. Trombly for the Claimant's work status, and would agree that the Claimant had no work restrictions.

16. DR. RYAN TROMBLY: He is a neurosurgeon who treated the Claimant a total of four times. At the first visit on 4/25/2013 the Claimant described a fall at work and that ever since then she has been in a lot of pain into her neck, head, arms, and lower back. He then ordered further radiographic studies and again saw her on 6/13/2013. At the time of that second visit, the Claimant's complaints of pain were diffused. These complaints were hard to isolate because the injury was to the L1 fracture, and that would not give neck pain and spasms. At the time of the first visit in April he had noted degenerative changes at the L5-S1. And therefore if that was contributing to her problem.

17. By the third visit on 8/29/2013 the Claimant had another MRI and Dr. Trombly thought the lower back and leg pain could be coming from the problem at the L5-S1 level. He

again recommended epidural injections.

18. A final visit was on 12/17/2013. At that time Dr. Trombly concluded that “the Claimant was not a surgical candidate because there wasn’t a strong correlation between her traumatic findings and her persistent symptoms radiating from the thoracic region down into the legs.” He did not believe that further neurosurgical treatment was necessary, and that the Claimant was at MMI with 5% impairment. From a neurosurgical perspective, she is without work restrictions.

19. On cross examination Dr. Trombly testified that once the fracture heals (such as it did here), there’s no further problems that come up relating to the fracture. The Doctor did not see any evidence of a sacral fracture, and the 2013 CAT scans did not show one. The central disk bulges as well as the facet hypotrophy at the L5-L1 potentially contributed to the Claimant’s problems, but were not caused by the trauma (accident).

20. MEDICAL RECORDS IN EVIDENCE: The records from Mercy Hospital show an admission on 6/18/2012. The diagnoses were: head injury, sprained neck and back.

21. There is a visit to Occupational Medical Center on 6/27/2012 where the injury is described to be to the head, back, elbows and shoulder.

22. The Claimant then sees Dr. Pagan on 8/21/2012. She walks with a cane and the neurological examination is normal. On 10/30/2012 he comments that the X-Rays and MRI of the lumbosacral spine are consistent with a fracture at the L1.

23. STEPHEN FORCHIELLI: He is the adjuster in this case since 7/14/2015. The accident was accepted as compensable with injuries to the lower back, head and neck. Ultimately ten weeks of impairment benefits were paid, representing 5% impairment, with an MMI of

2/6/13.

ANALYSIS

24. The Claims in this case are separated into two major categories. The first is that of compensation, whether for temporary or permanent disability and the second is for medical benefits. They will be analyzed separately.

25. MAXIMUM MEDICAL IMPROVEMENT: As the Claimant is seeking either temporary or permanent benefits, MMI becomes the starting point in this analysis. Collateral to this determination of MMI is a consideration for the injured body parts. In the pre-trial stipulation there is a concurrence between the parties that the low back, head and neck were injured in this subject accident. That pretrial stipulation is accepted and adopted as a finding of fact. Notably there is no pending claim for adjudication of the other body (not accepted by the E/C as compensable) parts asserted by the Claimant; therefore no findings are made therein.

26. When first seen by the emergency room on the day of the accident, the diagnoses were: head injury, sprained neck and back. The examination of the head revealed a contusion. She underwent there a CT brain scan.

27. When treated by the Occupational Medical Center her complaints to the head were similar and she was again ordered to have a brain scan due to a closed head injury. No further mention of the head injury is made on the records in evidence.

28. The records from Dr. Pagan do not mention any treatment other than to the back, but do mention an examination of the head.

29. Next the Claimant is seen by Dr. Trombly with complaints over the neck, head and back as well. In his follow up examinations he only mentions the back, clearly focusing on the

L1 fracture and the degenerative disc disease at the lumbar level. The letter to/from Dr. Trombly confirming a conference addresses only the lower back injury and MMI with an impairment to that body part. There is no mention of the neck and head.

30. Dr. Epstein takes over treatment and following the lead from Dr. Trombly and the other neurosurgeons, only addresses the back.

31. Finally, an IME on 8/15/2016 on behalf of the Claimant by Dr. Langone, addresses all the injuries, concludes that the Claimant is not at MMI, and discusses a possible post concussion syndrome.

32. We are not really dealing with accepting the opinion of one doctor over another in this case. What we have is which doctor's opinion is more logical based upon a complete examination and treatment of the injured body parts. In this regard, Dr. Langone's opinion that there is no MMI is more logical, as the neck and head injury were not really addressed by the neurosurgeons or the pain management doctor.

33. Only as it pertains to MMI, Dr. Langone's opinion is accepted over that of Dr. Trombly and collaterally adopted by Dr. Epstein because of the above reasons. In view of this conclusion, the undersigned finds that the Claimant is not at overall MMI from the injuries in the subject accident.

34. CLAIM FOR IIB and PTD: Having found the Claimant not to be at MMI, these claims are not ripe for adjudication at this time, and are denied without prejudice.

35. CLAIM FOR TTD/TPD: Both Dr. Trombly and Dr. Epstein released the Claimant without restrictions in 2013, the last day being 12/17/13. There is no medical evidence to support any medical restriction until the Claimant is examined by Dr. Langone on 8/16/2016, on

which date he opined she was unable to work in her present condition. In this regard, the opinion of Dr. Langone is accepted over the contrary opinion of Drs. Trombly and Epstein for two main reasons. The first is the same as that on MMI, as neither Dr. Trombly nor Dr. Epstein fully addressed the Claimants total injuries, specifically the neck and head. Their opinions on work status were considering only the low back and healed vertebral fracture.

36. The second reason is chronological, as Dr. Trombly and Dr. Epstein's opinion are stale by close to three years, and does not consider the Claimant's current status.

37. The claim for TTD or TPD from 12/18/2013 to 8/16/2016 is denied for lack of medical evidence. Commencing on 8/17/2016 the opinion of Dr. Langone as to work status is accepted and the Claimant is entitled to TPD as long as that category of disability applies. In so doing the undersigned is mindful that the Claimant is not gainfully employed outside her house, yet she testified that she is cooking for others from her home.

38. CLAIM FOR RETURN TO DR. TROMBLY: this claim is denied for two reasons. The first is that there is no evidence that the Claimant is in need of further neurosurgical intervention. To this extent, the opinion of Dr. Trombly is accepted, as he is the last neurosurgeon to treat the Claimant.

39. The second reason is that of impossibility. Dr. Trombly is no longer practicing in the State of Florida, as noted in his deposition. This fact was made clear at the time of his deposition, and the Claimant made no effort to amend the claim to correct this defect. The Claimant has not established that Dr. Trombly is the only qualified neurosurgeon who could treat the Claimant.

40. RETURN APPOINTMENT WITH DR. EPSTEIN: Dr. Epstein almost made it clear in his testimony that there was no further reason for the Claimant to return to him. The record is

not clear whether he was authorized to treat body parts beyond the back, therefore he may have not been aware of the neck and head injuries. In view of this, a return appointment with him is awarded for the purpose of clarifying the need for treatment to the neck and head/headaches.

41. PENALTIES AND INTEREST: This is awarded on the temporary partial awarded herein as provided by law.

42. FEES AND COSTS: This is reserved for a hearing after a proper motion for fees and costs is filed.

WHEREFORE, IT IS ORDERED AND ADJUDGED THAT:

1. The Claim for TTD is denied.
2. The claim for TPD from 12/18/2013 to 8/16/2016 is denied and dismissed with prejudice.
3. The claims for IIB and PTD are denied as they are not ripe.
4. The claim for TPD from 8/17/2016 continuing as long as that category of disability applies is granted, and penalties and interest are due on any paid compensation.
5. The claim for return appointment with Dr. Trombly is denied and dismissed with prejudice.
6. The claim for return appointment with Dr. Epstein is granted.
7. Attorney's fees and costs are reserved for a later hearing.

DONE AND SERVED this 13th day of October, 2016, in Miami, Dade County, Florida.

S *Edward R. Almeyda*

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