BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

AMBER M. LAWSON, Claimant, v. ADDUS HEALTHCARE, INC., Employer, and LIBERTY INSURANCE CORPORATION, Surety, Defendants.	**IC 2012-024774** **2013-031337** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** Filed January 19, 2016

INTRODUCTION AND BACKGROUND

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Brian Harper, who conducted a hearing in Coeur D'Alene, Idaho, on July 18, 2014. Claimant was represented by Starr Kelso, of Coeur D'Alene. Joseph M. Wager, of Boise, represented Addus Healthcare, Inc., ("Employer") and Liberty Insurance Corporation ("Surety"), Defendants. The matter came under advisement, and in due course the Referee issued his Findings of Fact and Conclusions of Law (FOF). The Commission adopted the Referee's FOF and issued their Order on March 24, 2015.

As noted in the FOF, a primary issue in the previous decision (Lawson I) was whether Claimant had proven she was entitled to a repeat MRI. The Referee concluded, and Commission affirmed, that Claimant had, at the time of the decision, failed to submit sufficient evidence to prove her entitlement to the MRI. The main problem with

Claimant's case at the time of hearing was that her physician, John McNulty, M.D., testified that he could not attribute the need for the repeat MRI to a particular accident or event unless and until he could compare Claimant's original MRI with the contemplated repeat MRI. Since Claimant submitted no medical testimony to provide the causative link for the repeat MRI, she did not prevail in Lawson I.

On or about April 11, 2015, Claimant obtained a repeat MRI, which Dr. McNulty reviewed. She then moved the Commission to re-open the matter for the introduction of additional medical evidence, since she felt she now had the required medical testimony linking her condition to an industrial accident. On October 22, 2015, the Commission granted the motion under the "manifest injustice" provision of Idaho Code § 72-719(3), and allowed the parties sixty days in which to present additional evidence relating to the compensability of the repeat MRI, and the impact of that study on Claimant's claim for additional medical care. The parties submitted such evidence, and on December 22, 2015, the matter came under advisement.

ISSUES

By order of the Commission, the issues to be decided are:

1. The compensability of the April 11, 2015 MRI; and

2. Claimant's entitlement to additional medical care.

CONTENTIONS OF THE PARTIES

Claimant argues she injured her back in August 2012 in an accident arising out of and in the course of her employment with Employer. Her claim was accepted, and she received medical attention. On January 2, 2013, Claimant fell while working for Employer, exacerbating her symptoms from the August incident. Soon after her second

accident, Claimant's treating physician determined she was at MMI based solely upon the August 2012 injury, while discounting Claimant's complaints from the January accident.

Claimant's personal physician, after reviewing Claimant's April 11, 2015 MRI, opined that Claimant's January 2, 2013 fall resulted in a new compensable injury. Claimant is entitled to further reasonable medical care under Idaho Code § 72-432. In addition, Defendants are liable for the cost of the April 2015 MRI, which they wrongfully refused to obtain.

Defendants argue Claimant's latest MRI does not show any compensable injury. Defendants are not liable for the cost of the April 2015 MRI, and further have no obligation to provide Claimant with additional medical benefits.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file, which includes the previous hearing's exhibits, documents, and depositions, as well as the original decision in the instant matter;

2. The deposition transcript of John McNulty, M.D., taken on December 1, 2015, together with his deposition Exhibit 1; and

3. Defendants' Exhibit A.

Claimant's objection posed during Dr. McNulty's deposition is overruled. Claimant also filed an objection to Defendants' proposed Exhibit B on numerous grounds. Defendants responded to the objection. The ruling on the objection will be made via separate order.

Having considered the above evidence, the Referee submits the following findings of fact and conclusions of law for review by the Commission.

FINDINGS OF FACT

1. Findings 1 through 27 contained in the *Findings of Fact and Conclusions of Law and Recommendation* dated March 24, 2015, in the matter of *Amber Lawson v. Addus Heathcare, Inc, et al.*, IC 2012–024774, 2013–031337, March 24, 2015 are incorporated by reference herein. If certain findings are of particular importance to the discussion, they will be specifically reiterated and/or discussed in further detail herein.

DISCUSSION AND FURTHER FINDINGS

2. Claimant has the burden of proving, by a preponderance of the evidence, all facts essential to recovery. *Evans v. Hara's, Inc.,* 123 Idaho 473, 849 P.2d 934, (1993). Employer and its surety are only liable for medical expenses incurred as a result of an employment-related injury. I.C. § 72– 432(1). An employer can not be held liable for medical expenses unrelated to an on-the-job accident. *Sweeney v. Great West Transp.*, 110 Idaho 67, 714 P.2d 36 (1986). The fact that Claimant suffered a covered injury to a particular part of her body does not make the employer liable for all future medical care to that part of the employee's body, even if the medical care is reasonable. *Henderson v. McCain Foods, Inc.,* 142 Idaho 559, 130 P.3d 1097, (2006).

April 11, 2015 MRI Analysis

3. At issue is Claimant's entitlement to reimbursement for the April 11, 2015 MRI, which Defendants refused to authorize and pay for. Idaho Code § 72-432(1) mandates that an employer shall provide for an injured employee such reasonable medical, surgical or other attendance or treatment, which would include needed and reasonable diagnostic studies, causally related to a covered injury. If the employer fails to provide the same, the injured employee may do so at the expense of the employer. On the other hand, if Claimant seeks

medical treatment which is not causally related to a compensable industrial accident, she is not entitled to reimbursement from Surety. *Accord. Sweeney, supra.*

4. Claimant underwent an MRI of her low back on October 12, 2012, in conjunction with an industrial lifting accident. The MRI was read by radiologist Gilbert Maulsby, M.D., who noted a broad-based central and slightly rightward protrusion with annular tear at L5-S1, superimposed on degenerative disk disease and endplate ridging, with no high-grade neural effacement. At L4-5, central noncompressive protrusion with annular tear, and no focal or high-grade neural effacement throughout the lumbar spine was noted.

5. After Claimant's treating physician, Michael Ludwig, M.D., pronounced Claimant to be at MMI on January 9, 2013, in spite of a work-related slip-and-fall accident on January 2, 2013, (which Claimant argues caused a new low back injury), Claimant sought a second opinion evaluation. On May 29, 2013, she saw John McNulty, M.D., a North Idaho orthopedic surgeon who was asked to evaluate her current condition to determine if she needed additional treatment. Dr. McNulty suggested an MRI could assist him in making his causation analysis, as he could compare it to the original film taken in October 2012. His concern, as stated at his July 28, 2014 deposition, included the possibility that Claimant had, on January 2, 2013, herniated a disk at a different level than shown on her 2012 MRI. McNulty depo. of July 28, 2014 pp. 23, 24.

6. Dr. Ludwig believed a repeat MRI was not required to assess the effects of Claimant's January 2, 2013 slip-and-fall, or her previous lifting injury. He testified that while a repeat MRI would show anatomy, it would not, in his opinion, demonstrate a causative relationship between the MRI findings and Claimant's fall in January 2013. In other words, the study could show changes in Claimant's anatomy, but not what caused those changes.

7. On April 11, 2015, Claimant underwent a repeat lumbar MRI at her own expense. Radiologist Arne Michalson, M.D., reviewed it and compared it to Claimant's previous MRI film, taken in 2012.

8. Dr. Michalson's impression included an L3-4 small left paracentral disk bulge without spinal stenosis or neural foraminal narrowing; an L4-5 central posterior protrusion with annular tear, no resulting spinal stenosis or neural foraminal narrowing; and an L5-S1 broad-based disk bulge with right lateral protrusion resulting in neural foraminal narrowings with disk abutting the exiting left L5 nerve root, narrowed right lateral recess with disk abutting the right S1 nerve root sleeve, no central spinal stenosis.

9. Dr. Michalson compared these findings with Claimant's previous MRI. He initially noted the 2012 film was "limited by technical factors and ha[d] significantly decreased resolution compared to the 2015 MRI. Notwithstanding that limitation, Dr. Micholson made the following comparison findings; L4-5 stable central disk protrusion with annular tear; L5-S1 left neural foramen appears grossly stable with disk abutting the exiting left L5 nerve root. The lateral recess stenosis with disk abutting the right S1 nerve root sleeve appears grossly stable. Claimant's Exhibit 1 to Dr. McNulty's deposition, p. 3.

10. Dr. McNulty also reviewed and compared the MRIs in question. He then authored a document entitled "Medical Record Review" with a date of June 1, 2015. Therein he indicated he had reviewed the April 11, 2015 MRI, which demonstrated an L5-S1 disk herniation resulting in abutment of the exiting left L5 nerve root, along with a right lateral recess narrowing with disk abutting the right S1 nerve root. He interpreted these findings as a "significant change" from the October 12, 2012 MRI.

11. In a subsequent deposition, Dr. McNulty expanded on his opinions. He opined that on a 51 percent or better basis, the April 2015 MRI demonstrated new changes attributable to Claimant's slip-and-fall accident of January 2, 2013. Specifically, Dr. McNulty felt that at L5-S1 there is "more collapse of the disk" and "more Modic changes on the L-5 vertebral body." He went on to point out that given Claimant's "very low" activity level over the past 2.5 to 3 years, the "rapid degeneration or changes in the vertebral body" he noted were greater than he would expect to see with "normal degeneration." He attributed those changes to Claimant's January 2013 fall. Finally, Dr. McNulty testified the April 2015 MRI was helpful in his analysis. McNulty depo. of December 1, 2015, pp. 7-9.

12. Claimant also supplied the Commission certain medical records and correspondence from Bret Dirks, M.D., an Idaho neurosurgeon. Apparently, Dr. Dirks saw Claimant on or around July 2, 2015. While much of his records go to Claimant's proposed future medical care, he did opine on the relative changes on Claimant's two MRI films. First, in a letter to Claimant's attorney dated July 23, 2015, Dr. Dirks wrote;

> I believe there is some disk degeneration at the levels … L4-5 and L5-S1. It probably is a natural progression of [Claimant's] degenerative disk disease from the 2012 MRI, however, the injury that she sustained while at work would have accelerated this degeneration on a more probable than not basis. So, I do believe she has degenerative disk disease that was pre-existing her work related injury, however, this injury certainly could have accelerated this degeneration on a more probable than not basis.

Claimant's Exhibit 1 to Dr. McNulty's deposition, p. 12.

13. On November 19, 2015, in a document entitled **ADDENDUM**, Dr. Dirks stated that he had reviewed the two MRIs at issue, and as a result he opined that Claimant "clearly has more disk degeneration at L5-S1 with more collapse of the disk. The disk is present and causing

compression on the nerve roots. Her L4-5 area has also showed increased degeneration with increasing desiccation of the disk and collapse as well when compared to the previous study." Claimant's Exhibit 1 to Dr. McNulty's deposition, p. 13.

14. Lastly, in what appears to be a response to an inquiry from Claimant's attorney, Dr. Ludwig indicated he reviewed the April 2015 MRI, along with the October 2012 MRI, and radiographs of Claimant's back from 2004, 2006, and 2009. He noted a comparison of the two MRIs revealed grossly stable spinal canal diameters at L4-5 (14.9mm in 2012 v. 15.0mm in 2015), and L5-S1 (10.9mm in 2012 v. 11.8mm in 2015). Dr. Ludwig acknowledged Claimant's L5-S1 segment has undergone continued degenerative Modic endplate changes, but opined that such would be expected over a span of 2.5 years. The doctor pointed out that Claimant had a long-standing history of lumbar complaints dating back to at least 2004. While he conceded Claimant's fall on January 2, 2013 may have possibly accelerated her low back degenerative changes, he could not state such to a medical probability of more likely than not. As he noted, "I cannot state that the solitary event of 1/2/13 altered the natural course of degenerative disc disease on a more likely than not basis based upon the imaging findings of 4/11/15."[1] Claimant's Exhibit 1 to Dr. McNulty's deposition, p. 7.

15. It is necessary to determine whether the April 11, 2015 MRI provides evidence that Claimant suffered a work-related injury which plagues her to this day when she fell on ice in January, 2013. If the MRI findings link Claimant's current condition to her slip-and-fall accident, then Defendants are liable for the cost of the MRI, as well as further related medical treatment. Conversely, if the MRI simply documents the natural progression of Claimant's degenerative disk

[1] Defendants' Exhibit A is an additional letter from Dr. Ludwig, apparently in response to follow up questions posed by Claimant's attorney. While Dr. Ludwig does not repeat his spinal canal measurements, most of this second letter mirrors his original opinions as discussed above. He noted that he did not "appreciate" a bulge at L3-4, as was described by Dr. Michalson, and saw no focal protrusion or herniation at that level.

disease which pre-existed her work-related accidents discussed herein, then Defendants have no obligation to reimburse Claimant for the 2015 MRI, nor are they obligated to provide additional medical care for her low back.

16. Dr. McNulty twice used the expression "to my eyes" during his deposition to indicate that the progression of degeneration looked, in his subjective, albeit educated, opinion, to be more than one would expect to see in the 2.5 years between MRIs. In part, he based his opinion on his belief that Claimant, because she was not working, was very sedentary during this time frame. He provided no insight into what she was doing with her time, or how her activities, whatever they were, could impact the progression of her disk disease. He listed no studies or references as to what degree of degeneration he would have expected to see had Claimant not slipped on the ice in 2013. In short, there are simply too many variables to make Dr. McNulty's analysis persuasive, especially in light of the other evidence discussed below.

17. Dr. Michalson's comparison of the MRIs is telling. He did not describe "marked, dramatic, substantial", or similar changes in the films. Instead, he noted "grossly stable" foramen at L4-5 and L5-S1. Nothing in Dr. Michalson's reports suggests an accelerated rate of degeneration.

18. Dr. Ludwig provided measurements documenting the relative spinal canal diameters at L4-5 and L5-S1 from 2012 to 2015.[2] He opined the progression was what one would expect to see over the time frame involved, although he conceded that it was possible Claimant's fall might have accelerated her degenerative disk disease. He suggested that trying to isolate a

[2] Without further explanation, the relationship of those measurements to Claimant's condition is not clear, other than to show the interval changes over 2.5 years were not drastic, thus implying a non-accelerated rate of change, *i.e.* grossly stable.

singular event from over two years previous to the MRI as being responsible for the progression of degeneration would be speculative, or at least something he could not do.

19. Dr. Dirks' opinions add little to the analysis. His letter of July 23, 2015, acknowledges that Claimant's fall certainly *could have* accelerated her degenerative disk disease. All experts agree on this point, but the issue is whether the fall did in fact accelerate her condition, not whether it could have. Likewise, his observations contained in his **ADDENDUM** confirm Claimant had progressing disk degeneration and disk collapse from 2012 to 2015, but is silent on the cause(s) of the continuing degeneration.

20. Dr. Ludwig's opinion, that the April 2015 MRI does not provide grounds to establish that Claimant's fall of January 2, 2013 caused her current low back condition, when viewed in light of the totality of the evidence presented, carries more weight than Dr. McNulty's subjective analysis to the contrary. The MRI interval changes are not of such a marked nature as to lead any of the physicians other than Dr. McNulty, *i.e.*, Dirks, Ludwig, and Michalson, to conclude to a reasonable medical probability that Claimant's current condition was caused or contributed to by her slip-and-fall accident of January 2, 2013. Furthermore, no evidence of acute injury, such as a herniated disk to any other segment of Claimant's low back, was identified in the 2015 MRI.

23. When considering the totality of the evidence presented in response to the Commission's Order which allowed for the re-opening of the case and introduction of further limited medical evidence, Claimant has failed to establish the April 11, 2015 MRI was causally related to her work injury. Thus she has failed to prove her entitlement to reimbursement for charges associated with obtaining this MRI.

24. When considering the totality of all of the evidence presented in this matter, Claimant did not establish a causal connection between her current condition and her on-the-job injury. Claimant has failed to prove she is entitled to further medical care stemming from her work-related low back injury.

CONCLUSIONS OF LAW

1. Claimant has not established she is entitled to reimbursement of charges associated with her April 11, 2015 MRI scan.

2. Claimant has not established she is entitled to further medical care after January 9, 2013.

RECOMMENDATION

Based upon the foregoing Findings of Fact, Conclusions of Law, and Recommendation, the Referee recommends that the Commission adopt such findings and conclusions as its own and issue an appropriate final order.

DATED this 31st day of December, 2015.

INDUSTRIAL COMMISSION

__/s/_____
Brian Harper, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of January, 2016, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

STARR KELSO
PO BOX 1312
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JOSEPH WAGER
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BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

AMBER M. LAWSON, Claimant, v. ADDUS HEALTHCARE, INC., Employer, and LIBERTY INSURANCE CORPORATION, Surety, Defendants.	**IC 2012-024774** **2013-031337** **ORDER** Filed January 19, 2016

Pursuant to Idaho Code § 72-717, Referee Brian Harper submitted the record in the

above-entitled matter, together with his recommended findings of fact and conclusions of law, to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendations of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant has not established she is entitled to reimbursement of charges associated with her April 11, 2015 MRI scan.

2. Claimant has not established she is entitled to further medical care after January 9, 2013.

3. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 19th, day of January, 2016.

INDUSTRIAL COMMISSION

__/s/_____

R.D. Maynard, Chairman

__/s/_____

Thomas E. Limbaugh, Commissioner

__/s/_____

Thomas P. Baskin, Commissioner

ATTEST:

__/s/_____

Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of January, 2016, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

STARR KELSO	JOSEPH WAGER
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COEUR D ALENE ID 83816	BOISE ID 83707

__/s/_____