BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

LISA DYSON, Claimant, v. TRINITY HEALTH CORPORATION/SAINT ALPHONSUS REGIONAL MEDICAL CENTER, Self-Insured Employer, Defendant.	**IC 2020-017964** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** **FILED JUNE 30, 2026** **INDUSTRIAL COMMISSION**

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Sonnet Robinson. A hearing was conducted on June 20, 2025 in Boise, Idaho. Claimant, Lisa Dyson, was represented by Bryan Storer of Boise. Jim Ford of Boise represented Defendant. The parties presented oral and documentary evidence. Post-hearing depositions were taken. The matter came under advisement on April 9, 2026 and is ready for decision.

ISSUES

1. Whether the conditions for which Claimant seeks benefits was caused by the alleged industrial accident;
2. Whether Claimant is entitled[1] to:
    a. Medical benefits;

[1] Claimant withdrew the issue of entitlement to past TPD/TTD benefits at hearing. Defendants did not argue the issue of apportionment.

b. Permanent partial impairment;

c. Permanent partial disability;

d. Attorney's fees.

CONTENTIONS OF THE PARTIES

Claimant contends her pre-existing degeneration was aggravated by her industrial accident on July 23, 2020. Dr. Radnovich's opinions on restrictions, impairment, and future medical care are superior to Dr. Montalbano's and Claimant is entitled to 13% whole person impairment (WPI) per his opinion. Claimant is entitled to permanent disability of 56% based on the opinion of Mr. Porter. Claimant should be awarded attorney fees for Defendant's failure to pay PPD or authorize compensable palliative care.

Defendant responds that they agree Claimant suffered an accident and injury, but she is entitled to no more impairment or disability in excess of her previously paid impairment. If Claimant needs follow-up care, she is directed to Dr. Montalbano. Claimant has worked consistently since her accident and made more money in these positions than she did for Defendant. Defendant has not unreasonably denied PPD because Claimant has no PPD above impairment and Defendant has not unreasonably denied medical care as she has not sought medical care with Dr. Montalbano.

Claimant replies that Dr. Montalbano has not evaluated Claimant since 2022, so his opinion on her need for ongoing treatment is uninformed; Dr. Radnovich opined she needs palliative care and Defendants are responsible for providing it. Dr. Montalbano's 50-pound lifting restriction is inadequate to protect Claimant's spine and Dr. Radnovich's restrictions are more sensible for Claimant's age and condition. Dr. Montalbano is biased, has abandoned Claimant as a patient, and

she should not be required to return to him. Claimant's PPD is 56% per Porter's opinion. Claimant is entitled to attorney's fees because Defendants have not provided palliative care or paid PPD.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. Claimant's exhibits (CE) A-L;
3. Defendant's exhibits (DE) 1-30;
4. The hearing testimony of Claimant, Lisa Dyson;
5. The post-hearing deposition of Paul Montalbano, MD, taken by Defendant;
6. The post-hearing deposition of Richard Radnovich, MD, taken by Claimant.

All outstanding objections are OVERRULED.

After having considered the above evidence and the arguments of the parties, the Referee submits the following findings of fact and conclusions of law for review by the Commission.

FINDINGS OF FACT

1. Claimant was born in California and was 62 years old at the time of hearing. HT 26:17-27:15.

2. Claimant was hired by Employer on September 3, 2019. CE A:1.

3. On July 23, 2020, Claimant tripped over a curb and landed face first. HT 59:1-6. Claimant presented to Primary Health and complained of nose pain. CE C:1. Claimant received a Toradol injection and advised not much more could be done for her until the swelling went down. *Id.*

4. On July 27, 2020, Claimant presented to occupational health and reported left hip, low back, and neck pain along with concussion like-symptoms. CE D:1. Claimant was referred to

the emergency room. *Id.* at 2.

5. On July 27, 2020, Claimant presented to the ER and underwent CT scans of her face, head, and neck, which showed no bleeding; Claimant was diagnosed with a concussion and released the next day. CE C:8.

6. On August 21, 2020, Claimant was referred for concussion protocol and evaluation at STARS. CE C:12.

7. On September 16, 2020, Claimant continued to complain of low back pain and now shooting pains down her right leg; Claimant was referred for a lumbar MRI. CE D:20. Claimant's MRI showed multiple abnormalities, but notably a cyst was displacing the L5 right nerve root which her physician opined might be responsible for her radiculopathy symptoms. CE D:29. On September 30, 2020, Claimant complained of shooting pain down into her right calf. CE D:25. Claimant was referred to neurosurgery. *Id.*

8. On October 7, 2020, Claimant saw Paul Montalbano, MD and reported low back pain and left buttock pain. CE H:3. Dr. Montalbano reviewed her imaging and wrote: "[the MRI] demonstrates a synovial cyst emanated from the L4-5 facet joint. This results in lateral recess stenosis and facet incompetence and Grade 1 spondylolisthesis." CE H:4. Dr. Montalbano assigned temporary restrictions and referred her to physical therapy. *Id.*

9. On December 2, 2020, Claimant returned to Dr. Montalbano and reported an increase in her symptoms and Claimant had bilateral positive straight leg raises; Dr. Montalbano ordered another MRI. CE H:10.

10. On December 10, 2020, Claimant reported pain and weakness in her right leg; Dr. Holthouse, her primary care physician, noted her osteoporosis score was -2.9 and diagnosed Claimant with "disorder of bone density and structured, unspecified." DE 14:14. Claimant's

fracture risk was "high." *Id.* at 51. Claimant began bone supplements. *Id.* at 63.

11. On January 20, 2021, Dr. Montalbano reviewed the updated MRI and opined it showed no significant canal or foraminal stenosis and slight anterolisthesis at L4-5 secondary to facet competence. JE H:15. Dr. Montalbano recorded Claimant reported no back or leg pain, that she was working without restrictions, and that she was MMI with no impairment or need for future treatment. *Id.*

12. On January 25, 2021, Claimant wrote to Dr. Holthouse that her "back seems to be doing better." DE 14:77.

13. On March 9, 2021, Claimant returned to Dr. Holthouse and reported muscle aches in her legs. DE 14:18. Regarding her low back pain, Claimant still had some low back soreness, but her "legs are fine. No radiation of pain. No leg weakness mentioned." DE 14:20. On April 26, 2021, Claimant reported periodic low back pain and numbness down her right leg. DE 14:28.

14. On May 5, 2021, Claimant returned to Dr. Montalbano and reported her symptomology had worsened; Dr. Montalbano ordered another MRI. CE H:17. Claimants updated MRI showed moderate canal stenosis as well as lateral recess stenosis secondary to facet arthropathy and showed her synovial cyst at L4-5 was now a grade 2 spondylolisthesis. CE H:23. Dr. Montalbano recommended fusion and decompression at L4-5. *Id.* Dr. Montalbano did not believe her need for surgery was related to pre-existing degeneration because she was asymptomatic prior to the injury according to the records he had. *Id.* at 25.

15. On March 14, 2022, Claimant underwent an L4-5 decompression and fusion with Dr. Montalbano. CE H:31.

16. Claimant did well post-surgery, reporting to her physical therapist on May 20, 2022, that she was "very happy" with where she was at now and on June 3, 2022, reporting that she was

going for an hour walk every day. DE 21:11.

17. On June 22, 2022, Claimant returned to Dr. Montalbano and reported groin and hip pain after working out, but not back pain. CE H:43. Dr. Montalbano wrote that he explained to her that her current pain was not related to her lumbar surgery and referred her to Dr. Schwarztman for her hip. *Id.* Claimant underwent a pelvis MRI which showed a pelvic fracture. DE 14:158.

18. On August 3, 2022, Dr. Montalbano reiterated his opinion that her pelvic fracture was unrelated to the lumbar surgery, noting she had severe osteopenia, and that she was neurologically intact. CE H:45. Dr. Montalbano wrote she had a 50-pound lifting limitation, was medically stable, and should return for x-rays a year after her surgery in March of 2023 to evaluate her fusion. *Id.* Dr. Montalbano assigned her 6% whole person impairment with no apportionment, at Table 17-4, Class 1 data according to the *6th Edition AMA Guides to Evaluation of Permanent Impairment*. *Id.* at 46.

19. On April 17, 2023, Claimant reported after surgery she was "feeling stiff but is better than what it was. Back can get fatigued." DE 14:135. Claimant's pelvic pain was resolved. *Id.*

20. Claimant was deposed on May 19, 2023. DE 6-7. At the time of her deposition, Claimant reported she took ibuprofen four times a day because she was stiff and sore; however, before the surgery she was in chronic pain every day. DE 6:13-14, 25.

21. On August 9, 2023, Claimant reported walking daily, up to almost an hour on the weekends; Claimant denied back pain and did not otherwise report issues with her back. DE 14:138-139. On September 23, 2023, Claimant complained of low back stiffness and was referred to physical therapy and neurosurgery for follow-up, but it does not appear she followed up on either referral. See DE 14 and DE 16. On December 13, 2023, Claimant again reported walking daily and did not report back pain, but did report muscle aches. DE 14:237.

22. On February 21, 2024, Claimant was diagnosed with osteonecrosis of her left knee and reports of knee pain and swelling. DE 24:2.

23. On April 30, 2025, Claimant was evaluated for IME with Richard Radnovich, DO, at her request. CE J:1. Claimant gave a history of her injury, and reported the surgery resolved her leg pain, but not her back pain and that she continued to have back pain. *Id.* at 2. Dr. Radnovich recorded muscle atrophy on the left side, noting a 2 cm difference in circumference above the patella and a "subtle" difference in strength, again on the left side. *Id.* at 3. Dr. Radnovich rated Claimant as Class 2 AOSMI/herniation, with grade modifiers of pain and atrophy, which increased her impairment to 13% whole person, with no apportionment. *Id.* Dr. Radnovich recorded Claimant was not taking medications to treat her pain due to side effects but noted medication or a TENS unit would help her pain. *Id.* Dr. Radnovich provided restrictions as follows: No repetitive bending, squatting, stooping, crawling or climbing. No frequent lifting of greater than 30 pounds. No lift and carry greater than 20 pounds. *Id.* at 4.

24. On October 20, 2025, Dr. Radnovich was deposed by Claimant. Dr. Radnovich agreed he didn't see anything in her pre-accident records which suggested she had pre-existing low back issues. Radnovich Depo. 15:4-9. When he saw Claimant in 2025, she was complaining of "sharp" low back pain. *Id.* at 17:17-21. Dr. Radnovich did not see any records related to Claimant's pelvic fracture, so could not comment. *Id.* at 18:5-15. Dr. Radnovich testified generally consistent with his opinion and Dr. Montalbano's records that Claimant suffered an aggravation of her pre-existing, asymptomatic degeneration. *See* 19-29. Dr. Radnovich testified that it was significant that Claimant had atrophy and weakness on her left side, which reinforced Claimant had a nerve injury. *Id.* at 35:16-24. Dr. Radnovich explained he rated Claimant in Class 2 of lumbar motion segment impairments because she had weakness and atrophy on her left side which

corresponded with the "appropriate level." *Id.* at 40:6-41:10. Dr. Radnovich assigned his restrictions to prevent injury and he thought Dr. Montalbano's 50-pound restrictions was too heavy: "not to be sexist or ageist, but I think a 50-pound restriction for a 60-year-old woman with a spinal fusion is too high and risks reinjury." *Id.* at 47:6-48:18. Regarding his specific additional restrictions of bending, stooping, squatting, crawling, and climbing, Dr. Radnovich explained that although most of the bending happens at the hips, these restrictions protect the area on either side of the joint from stress and are "actually pretty typical for a lumbar fusion." *Id.* at 49:18-50:6. Specifically, her weakness and atrophy makes her less safe on things like ladders. *Id.* at 50:7-11.

25. On cross-examination, Dr. Radnovich explained he put her in Class 2 also because she had radiculopathy at the time of his examination. Radnovich Depo. 54:9-19. Dr. Radnovich confirmed that Claimant had a number of age-related degenerative findings on both her pre-surgery and post-surgery MRIs which could cause ongoing pain, such as disc desiccation. *See* 57-60.

26. Dr. Montalbano was deposed on January 22, 2026. Dr. Montalbano explained Claimant's anterolisthesis definitely predated Claimant's accident, but her synovial cyst could have been caused by the accident or been pre-existing, but asymptomatic. Montalbano Depo. 16:10-24. Dr. Montalbano explained that Claimant did not have disc herniation; her symptoms were caused by joint arthritis and instability. *Id.* at 20:15-21:11. Dr. Montalbano gave Claimant a 50-pound lifting restriction due to her "overall body habitus" noting that sometimes he does not give a restriction for a lumbar fusion, but here it was appropriate. *Id.* at 39:6-12. Dr. Montalbano explained his 6% PPI rating was because her surgery treated instability, not her cyst, and her radiculopathy resolved with surgery. *Id.* at 41:10-19. Dr. Montalbano disagreed with Dr. Radnovich's rating because Claimant never had a disc herniation: "she had issues with instability and the facet arthritis. And the synovial cyst to a degree. So she doesn't fall into Class

2 data as it relates to the disc herniation because that was never her issue." *Id.* at 42:11-24. Regarding Claimant's current symptomology, Dr. Montalbano opined it was impossible to tell what was causing her pain right now without updated imaging. *Id.* at 43:5-20.

27. **Vocational Background.** Claimant graduated with her GED in 1981. HT 28:11-13. Claimant pursued an art degree but eventually dropped out and has no post-secondary degrees; Claimant secured her medical assistant certification in 2020. DE 6:78-81 Claimant has worked primarily in the medical field, working early in her career as a CNA, and gaining additional certifications to become a phlebotomist and eventually a medical assistant. DE 6:91-96. Claimant is also a skilled artist and ran a custom framing business, was the arts and craft director at a center on an Air Force base, and worked in advertising as an illustrator. DE 6:81-90. Claimant confirmed she was making more per hour for her current employer ($21) than her time-of-injury employer ($13-18). HT 95:15-20. Claimant has worked almost continuously as a medical assistant since her injury. See DE 6, 7.

28. On May 16, 2025, Delyn Porter authored a disability evaluation at Claimant's request. CE K:1. Justin Porter, Mr. Porter's son and associate, completed the interview with Claimant. *Id.* Mr. Porter recorded Claimant's restrictions and noted Dr. Montalbano had limited Claimant to medium duty and Dr. Radnovich had limited Claimant to limited light duty. *Id.* at 24. Mr. Porter concluded that Claimant had lost access to 8.9% of her labor market with Dr. Montalbano's restrictions and 71.7% of her labor market with Dr. Radnovich's restrictions. *Id.* at 29. Claimant's wage loss was based on her time-of-injury hourly wage, annualized, as compared to her current annual wages, which resulted in wage loss of 16.7%. Mr. Porter concluded that Dr. Montalbano's restrictions resulted in permanent partial disability of 12.8%, inclusive of her 6% impairment rating. Mr. Porter opined that Dr. Radnovich's restrictions resulted in permanent

partial disability of 44.2%; however, Mr. Porter then weighted her labor market loss at due to the large disparity between her wage loss and labor market loss, and concluded her disability was more accurately reflected at 56% permanent partial disability. *Id.* at 31.

29. **Credibility.** Claimant had poor recall and testified her brain surgery made her a "little fuzzy" on dates. DE 6:86. Claimant's testimony is also rendered less reliable by a number of inconsistencies and lack of recall. For example, Claimant claims Dr. Montalbano "never did any exams on me that I recall," despite documented straight leg raise tests with variable degrees of positive in eight visits. HT 72:17 vs. CE H. Claimant testified at deposition, adamantly, that she never took any bone supplements and did not know she had bone density issues prior to her surgery, despite her records frankly contradicting both statements. DE 6:41-48 vs. DE 14. Claimant testified her back never got better in the winter/spring of 2021 despite it being documented by her in her own message to her primary care physician in addition to being documented several other places in the record. At hearing, Claimant testified she had talked to her supervisor about lifting at her current job and that they were accommodating her but later testified she had not told them about her restrictions because she was afraid she would get fired. HT 46:8-13 vs. 95:23-96:2. Where Claimant's testimony contradicts the medical record, the medical record will be relied upon.

30. **Condition at Hearing.** Claimant testified she had declined "in the last couple of months" and that her back was "much worse lately" but testified consistent with her medical records that her leg pain was resolved by the surgery and that her back pain was much improved in the years following the surgery until very recently. HT 83:4-91:9.

DISCUSSION

31. A worker's compensation claimant has the burden of proving, by a preponderance of the evidence, all the facts essential to recovery. *Evans v. Hara's, Inc.*, 123 Idaho 473, 849 P.2d

934 (1993). Claimant must adduce medical proof in support of his claim, and he must prove his claim to a reasonable degree of medical probability. *Dean v. Dravo Corporation*, 95 Idaho 558, 511 P.2d 1334 (1973). The permanent aggravation of a preexisting condition or disease is compensable. *Bowman v. Twin Falls Construction Company, Inc.*, 99 Idaho 312, 581 P.2d 770 (1978).

32. The Industrial Commission, as the fact finder, is free to determine the weight to be given to the testimony of a medical expert. *Rivas v. K.C. Loggin*g, 134 Idaho 603, 608, 7 P.3d 212, 217 (2000). "When deciding the weight to be given an expert opinion, the Commission can certainly consider whether the expert's reasoning and methodology has been sufficiently disclosed and whether or not the opinion takes into consideration all relevant facts." *Eacret v. Clearwater Forest Industries*, 136 Idaho 733, 737, 40 P.3d 91, 95 (2002).

33. **Medical Care/Change of Physician.** Idaho Code § 72-432 provides that the employer shall provide for an injured employee such reasonable medical, surgical or other attendance or treatment, nurse and hospital services, medicines, crutches and apparatus, as may be reasonably required by the employee's physician or needed immediately after an injury or manifestation of an occupational disease, and for a reasonable time thereafter. What constitutes reasonable medical care is to be determined by a totality of the circumstances approach. *Chavez v. Stokes*, 158 Idaho 793, 353 P.3d 414 (2015).

34. There are two medical care issues. First, Claimant's need for fusion-related care (follow-up imaging) and two, Claimant's request for palliative care. Claimant requires ongoing follow-up for her industrially related fusion; she did not return to Dr. Montalbano for an x-ray to check on her hardware placement. Claimant essentially is moving for a change of physician from Dr. Montalbano; she wants the x-ray and follow-up with a neurosurgeon, but not with

Dr. Montalbano ("Lisa should now be able to see a physician of her choosing.") Clt's Reply Brief, p. 7.

35. The normal process for a change of physician is that a claimant files a petition listing their selected physician and the surety can: (1) grant it and let the claimant see the new listed physician; (2) deny it for reasons *other* than no additional treatment is reasonable or necessary; or (3) deny it for the reason that no additional treatment is reasonable or necessary, and proceed to hearing on that issue. See JRP 20 and Appendix 7A and 7B. The employer may direct employees to a designated provider and employees do not have a statutory right to choose their medical provider. *Davis v. 45th Parallel Electric LLC*, IIC 2007-043709 (November 24, 2009). An employee has the burden to demonstrate reasonable grounds for a petition to change physicians. Such grounds are based upon "the pertinent facts and circumstances presented by the parties and is a factual determination solely within the discretion of the Commission." JRP 20(H)(1).

36. The parties did not notice change of physician as an issue to be decided in this proceeding. Claimant has not identified a specific physician in briefing, and Claimant may wish to select her own physician and proceed under the JRP 22 process. However, in the interests of judicial economy, Claimant has proven that the imaging recommended by Dr. Montalbano is reasonable and necessary and related to her industrial injury. In other words, the JRP 22 petition process outlined as (3) above is unavailable to the parties because that issue is decided here. The decision of what physician Claimant sees for her imaging is not decided here for the reasons stated above, it was not a noticed issue and the parties may wish to proceed under the JRP 22 process or negotiate outside of it and mutually select a physician other than Dr. Montalbano.

37. Claimant is also seeking the additional palliative care recommended by Dr. Radnovich, which he has related to her industrial accident and injury. Claimant would be

"open" to trying medications per her testimony and would like to try a TENS unit to decrease her pain. Claimant testified her low back condition has recently declined.

38. Per Dr. Montalbano, any investigation into what may be *currently* wrong with Claimant's back starts with imaging, and all of Claimant's low back imaging was over three years old by the time Dr. Radnovich reviewed it and made treatment recommendations. Dr. Radnovich's current treatment recommendations are unpersuasive because: (1) there is no recent imaging; (2) Dr. Radnovich assumed Claimant's presentation in 2025 was the same as her presentation in 2022, which was not the case; and (3) Dr. Radnovich did not have all her relevant medical records to consider in making his recommendations. Claimant has not shown entitlement to the specific care she requests.

39. However, the status of Claimant's fusion is currently unknown and whether Claimant needs palliative care vs. curative care or whether her recent decline is related to her fusion, are open questions which must be investigated with imaging. Dr. Radnovich's opinion is not persuasive, but it would be premature to rule that she is not entitled to future medical care related to her fusion when the predicate medical care, the imaging, must be done first. Claimant is not entitled to the specific care she has requested, but may be entitled to future care which is reasonable, related, and required by her physician.

40. **Permanent Partial Impairment.** Permanent impairment is any anatomic or functional abnormality or loss after maximal medical rehabilitation has been achieved and a claimant's position is considered medically stable. *See* Idaho Code § 72-422; *Henderson v. McCain Foods*, 142 Idaho 559, 567, 130 P.3d 1097, 1105 (2006).

41. Dr. Montalbano rated Claimant at 6% whole person impairment, with no apportionment, and Dr. Radnovich rated Claimant at 13% whole person impairment, with no

apportionment. Both doctors agree that although Claimant had pre-existing degeneration, there was no need for apportionment as there was no evidence of pre-existing symptomatology. Although Dr. Radnovich used the term "herniation" in his written report, both physicians agree that Claimant did not have a herniation but did have instability. Dr. Montalbano rated Claimant's condition as "spondylolisthesis" and Dr. Radnovich rated her condition as "intervertebral disc herniation/AOSMI[2]." In other words, their "diagnosis" of her condition for purposes of rating are different. Dr. Montalbano's testimony was as follows:

> So I do not agree with his opinion. And the reason being is that she didn't have a disc herniation. She did have a single level. She did have a single level radiculopathy. But the issue of her symptoms, as identified on her history, her clinical examination, and her objective radiographic studies, the MRI and x-rays, she never had an issue with the disc herniation. She had issues with the instability and the facet arthritis. And the synovial cysts to a degree. So she doesn't fall into class two data as it relates to disc herniation because that was never her issue. It relates to her spondylolisthesis. Now there is a little bit of leeway in terms of giving percentages. There is a range in each class. <u>But there is not a leeway in terms of causation of her symptoms.</u>

Montalbano Depo. 42:11-25 (emphasis supplied). Dr. Radnovich did not address his diagnostic choice other than to explain that he meant AOMSI, not a herniation. See Radnovich Depo. 39-45.

42. Dr. Montalbano did not explain why Claimant was not the 7% default rating under on spondylolisthesis Class 1; his explanation seemed to circle back to his explanation for the diagnostic choice and that the *Guides* "give you a range." See Montalbano Depo 41:6-19. In other words, Dr. Montalbano did not explain why he didn't use the default rating or otherwise use grade modifiers in his rating.

43. Dr. Radnovich applied modifiers based on atrophy and pain. Critically, Dr. Radnovich did not have all the relevant documents in his possession when he made his rating.

[2] Alteration of motion segment integrity.

Claimant's left leg showed atrophy just above the patella, but Dr. Radnovich did not have any of Claimant's recent left knee records showing a diagnosis of osteonecrosis, the removal of several left-sided leg lipomas, and left knee pain. Compare CE J:1 with DE 24:2375-2383 and DE 16:136-144. Claimant also complained of bilateral leg pain prior to her surgery; one or both legs hurt depending on the day and who she was seeing. (See ⁋ 4 left, ⁋ 7 right x2, ⁋ 8 left, ⁋ 9 bilateral, ⁋ 10 right, ⁋ 13 right). The records do not show that Claimant has had left-sided leg pain since 2020 as assumed by Dr. Radnovich in attributing the atrophy to her industrial injury. Further, Claimant consistently testified her radiating leg pain was resolved by the surgery.

44. The diagnostic choice is critical to the rating per the Guides and both experts' testimony but only Dr. Montalbano thoroughly explained his choice. Dr. Radnovich did not have all the records he needed to make an informed rating for Claimant's condition. Although both ratings have flaws, Dr. Montalbano's is accepted as the more accurate and appropriate rating for Claimant. Claimant has proven permanent partial impairment of 6%.

45. **Permanent Partial Disability.** Permanent disability results when the actual or presumed ability to engage in gainful activity is reduced or absent because of permanent impairment and no fundamental or marked change in the future can be reasonably expected. Idaho Code § 72-423. Evaluation (rating) of permanent disability is an appraisal of the injured employee's present and probable future ability to engage in gainful activity as it is affected by the medical factor of impairment and by pertinent nonmedical factors provided in Idaho Code § 72-430. Idaho Code § 72-425. Idaho Code § 72-430(1) provides that in determining percentages of permanent disabilities, account should be taken of the nature of the physical disablement, the disfigurement if of a kind likely to handicap the employee in procuring or holding employment, the cumulative effect of multiple injuries, the occupation of the employee, and his or her age at the time of the

accident causing the injury, or manifestation of the occupational disease, consideration being given to the diminished ability of the affected employee to compete in an open labor market within a reasonable geographical area considering all the personal and economic circumstances of the employee, and other factors as the Commission may deem relevant. The test for determining whether a claimant has suffered a permanent disability greater than permanent impairment is "whether the physical impairment, taken in conjunction with nonmedical factors, has reduced the claimant's capacity for gainful employment." *Graybill v. Swift & Company*, 115 Idaho 293, 294, 766 P.2d 763, 764 (1988). The claimant bears the burden of establishing permanent disability. *Seese v. Idaho of Idaho, Inc.*, 110 Idaho 32, 714 P.2d 1 (1986). Permanent disability is a question of fact, in which the Commission considers all relevant medical and non-medical factors and evaluates the purely advisory opinions of vocational experts. *See*, *Eacret v. Clearwater Forest Indus.*, 136 Idaho 733, 40 P.3d 91 (2002); *Boley v. ISIF*, 130 Idaho 278, 939 P.2d 854 (1997).

46. The first question in deciding disability is which restrictions are appropriate for Claimant. Claimant argues that Dr. Radnovich's restrictions and Mr. Porter's weighted rating for those restrictions should be accepted at 56% permanent partial disability.

47. Both physicians testified their restrictions were "typical" for a fusion and both testified their restrictions were appropriate for her age and body habitus. In terms of expertise, Dr. Montalbano has performed 1,000s of fusions in his career and worked with Claimant over a number of years. Dr. Radnovich is not a surgeon, but a sports medicine specialist, and only saw Claimant once for an IME. Dr. Montalbano's expertise and experience with Claimant weighs in favor of his restriction over Dr. Radnovich's restrictions.

48. Claimant's functioning when she recovered from surgery, prior to her pelvic fracture, was good. Her physical therapy records reflect she was completing 40-pound rows and

pulldowns, forearm planks, TRX squats, and going to the gym regularly. See DE 21. Claimant's functioning most closely matches Dr. Montalbano's restriction at that time.

49. Since that time, Claimant has experienced other health issues, most especially with her left knee and a very slow healing pelvic fracture. Claimant was under a 15-pound lifting restriction for her pelvic fracture and then three months of bedrest from June 2022 until April 2023 and Claimant had understandable difficulty in separating what activities were limited by her pelvic fracture vs. her low back. However, by the spring of 2023, Claimant's back was "stiff" but much better than it was pre-surgery and in August 2023, Claimant reported no back pain and that she was walking up to an hour every day. In 2025, Claimant testified that she was restricted from stooping and bending due to her left knee condition. DE 7:38.

50. Considering the record as a whole, Dr. Montalbano's restrictions are better supported by the evidence. Claimant's functioning after her surgery, but prior to her other health issues, most closely matches his restrictions for her injury. In 2023, Claimant appeared to reach baseline again after her pelvic fracture healed. Dr. Radnovich's restrictions were assigned many years after MMI and he did not have all the medical records necessary to get a whole picture of Claimant's status at the time of his evaluation, particularly regarding her left knee. Dr. Montalbano's 50-pound lifting restriction is accepted.

51. Defendants argue Claimant has no disability in excess of impairment. Claimant's lifting restrictions have not impacted her ability to secure a medical assistant job and perform it, and she has worked as a medical assistant almost continuously since her injury, with time off for her pelvic fracture and other medical issues. Defendants' argue Mr. Porter's analysis includes jobs Claimant has moved beyond and would not take because it would be a demotion in terms of pay, responsibility, and title. Further, Claimant makes more an hour now that she did her time of injury

job.

52. Claimant argues that she is 12.8% permanently partially disabled per Mr. Porter's opinion. Mr. Porter's opinions on labor market loss are accepted. He convincingly showed that Claimant lost access to approximately 1,000 jobs in her labor market which had heavy lifting requirements, she can no longer perform with Dr. Montalbano's lifting restrictions, approximately an 8.9% loss of access. Mr. Porter's opinions on wage loss are less compelling. Mr. Porter did not actually calculate Claimant's wages but accepted her estimation of her bi-monthly wage as $1,300 and therefore her yearly income at $31,200, which is an underestimation. Claimant makes $21 an hour with a 35-hour work week, which equals $735 weekly and $38,220 annually ($735 x 52 weeks). Claimant made $18 an hour in time of injury position with a 40-hour work week which equals $720 weekly and $37,440 annually as calculated by Mr. Porter. Claimant is making more now than she did at her time of injury position, even working less hours. Claimant has suffered no wage loss.

53. Claimant's 6% impairment rating fully accounts for her disability including her 0% wage loss and her 8.9% loss of access. Claimant is making more money now than her time of injury wages. Claimant has only lost access to a very small part of her labor market because of the 50-pound lifting restriction imposed by Dr. Montalbano. Claimant is precluded from working as an orderly[3] and as a "self-enrichment education teacher," the only two heavy lifting positions which were in Claimant's pre-injury labor market according to Mr. Porter. Claimant still has full access to *all* of the positions from her career as a medical assistant and phlebotomist. CE K:28. Claimant has failed to prove she has disability in excess of her impairment rating.

[3] Claimant testified she did not know what an orderly position was and had never worked as one, making it somewhat of a stretch to include this in her pre-injury labor market. HT 114:23-115:4.

54. **Attorney's Fees.** Claimant claims Defendants unreasonably denied this claim for benefits. Attorney fees are not granted as a matter of right under the Idaho Workers Compensation Law, but may be recovered only under the circumstances set forth in Idaho Code § 72-804 which provides:

> 72-804. ATTORNEY'S FEES — PUNITIVE COSTS IN CERTAIN CASES. If the commission or any court before whom any proceedings are brought under this law determines that the employer or his surety contested a claim for compensation made by an injured employee or dependent of a deceased employee without reasonable ground, or that an employer or his surety neglected or refused within a reasonable time after receipt of a written claim for compensation to pay to the injured employee or his dependents the compensation provided by law, or without reasonable grounds discontinued payment of compensation as provided by law justly due and owing to the employee or his dependents, the employer shall pay reasonable attorney fees in addition to the compensation provided by this law. In all such cases the fees of attorneys employed by injured employees or their dependents shall be fixed by the commission.

The decision that grounds exist for awarding attorney fees is a factual determination which rests with the Commission. *Troutner v. Traffic Control Company*, 97 Idaho 525, 528, 547 P.2d 1130, 1133(1976). It is axiomatic that a surety has a duty to investigate a claim in order to make a well-founded decision regarding accepting or denying the same. *Akers v. Circle A Construction, Inc.*, IIC 1998-007887 (Issued May 26, 1999). Defendants' grounds for denying a claim must be reasonable both at the time of the denial and in hindsight. *Bostock v. GBR Restaurants*, IIC 2018-008125 (Issued November 9, 2020).

55. Claimant argues she is entitled to attorney's fees because Defendants have not paid for palliative care and have not paid permanent partial disability benefits. The first notice that Defendants had that Claimant was claiming palliative care was Dr. Radnovich's IME report provided in discovery sometime between his April 30, 2025 examination and the June 20, 2025 hearing. Defendants did not deny this care because Claimant had not sought this until the eve of hearing. Whether or not Claimant is entitled to palliative care became a litigated issue through

Claimant's own actions. Claimant cannot make a new claim for benefits on the eve of hearing and then turn around and claim foul when those benefits are not provided immediately and are now subject to being adjudicated as a noticed issue. Particularly here where Claimant did not follow up with her treating physician and has not been under the care of any physician for her back since Dr. Montalbano.

56. Claimant also claims attorney's fees because her permanent partial disability was not paid prior to hearing. Claimant is responsible for proving every element of her case, including permanent partial disability. Defendants argued Claimant had no disability in excess of her impairment and are under no obligation to pay permanent partial disability unless and until Claimant prevails in proving that element of her case. There was no unreasonable conduct or denial. Claimant is not entitled to attorney's fees.

CONCLUSIONS OF LAW

1. Claimant has proven entitlement to follow-up care for her fusion surgery in the form of imaging;

2. Claimant's entitlement to other future medical care related to her current condition is not yet ripe;

3. Claimant has permanent partial impairment of 6%;

4. Claimant has no permanent disability in excess of impairment;

5. Claimant is not entitled to attorney's fees.

RECOMMENDATION

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

DATED this 15th day of June, 2026.

INDUSTRIAL COMMISSION

Sonnet Robinson

Sonnet Robinson, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of June, 2026, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail and *E-mail transmission* upon each of the following:

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ge Gina Espinosa

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

LISA DYSON, Claimant, v. TRINITY HEALTH CORPORATION/SAINT ALPHONSUS REGIONAL MEDICAL CENTER, Self-Insured Employer, Defendant.	**IC 2020-017964** **ORDER** **FILED JUNE 30, 2026** **IDAHO INDUSTRIAL COMMISSION**

Pursuant to Idaho Code § 72-717, Referee Sonnet Robinson submitted the record in the above-entitled matter, together with her 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 recommendation 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 proven entitlement to follow-up care for her fusion surgery in the form of imaging.

2. Claimant's entitlement to other future medical care related to her current condition is not yet ripe.

3. Claimant has permanent partial impairment of 6%.

4. Claimant has no permanent disability in excess of impairment.

5. Claimant is not entitled to attorney's fees.

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

DATED this _30th_____ day of ____June_____, 2026.

INDUSTRIAL COMMISSION

Claire Sharp

Claire Sharp, Chair

Aaron White, Commissioner

ATTEST: Mary McMenomey

Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the __30th____ day of __June_____ 2026, a true and correct copy of the foregoing **ORDER** was served by *E-mail transmission* and by regular United States Mail upon each of the following:

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