

Navigating New DIME Rules

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Division Independent Medical Examination (DIME)

- DIMEs allow parties the opportunity to have an independent medical evaluation performed by a doctor with no connection to the claim. The DIME addresses issues relating to a Claimant's status with regard to Maximum Medical Improvement (MMI) and permanent impairment resulting from a work injury.
- DIMEs are utilized when a party disagrees with an authorized treating physician's (ATP) opinion regarding permanent impairment or MMI, and can be sought prior to the ATP opining Claimant is at MMI under the 24-month DIME process

Overview Regarding Rule 11 Changes

- New and/or additional fees for the number of pages in a medical records packet submitted to the DIME physician
- New Confirmation and Invoice Form
- New Medical Record Index Procedure, Process, and Fines
- Physician replacement process with regard to DIME panel
- Indigency standards

Applicability

Any Physician Confirmation and Invoice sent on or after March 2, 2023, is subject to the updated Rule 11 requirements per the Division of Workers' Compensation

Rule 11 DIME Fees

- Fees continue to be based on the date of injury and/or the number of body regions to be examined, but new additional costs may apply
- Less than two years and/or less than three body regions = \$1,000.00
- Two or more years, but less than five years after DOI and/or three or four body regions= \$1,400.00
- Five or more years after DOI and/or five or more body regions= \$2,000.00
- Exception
 - Standard DIME fees do not apply if the parties have agreed on a DIME physician per Rule 11-4(A)(2)(a)(i)
 - But fee agreements for such DIMEs must take into account base DIME fee that would apply and a record review fee and must be agreed upon by all three parties (Claimant, Respondents, and DIME physician)

Changes to Rule 11 Fees

- Now there is a set number of pages allowed for medical records packet submitted for the DIME
 - For \$1,000.00 DIMEs (less than 2 years and/or less than three body regions) the maximum page count is **500**
 - For \$1,400.00 DIMEs (two or more years but less than 5 years after DOI and/or three to four body regions) the maximum page count is **750**
 - For \$2,000.00 DIMEs (five or more years after DOI and/or five or more regions) the maximum page count is **1,000**
- If a medical record packet submitted exceeds the above allotted pages, a fee of \$1 for each page over the limit will be assessed
 - Any additional fees are to be paid by the requesting party 14 days prior to DIME with the medical record packet submission

Confirmation and Invoice Form Changes

- There is now a new page that has been added to the Confirmation and Invoice form per the DWC
 - Emailed to all parties after striking process is completed
 - Receipt of this new page will confirm that your DIME is subject to the new rule
- This includes record review and pricing information with examples of how to calculate fees, submitting supplemental records pursuant to order, and confirms additional fees due
- To be completed by Respondents
 - Requesting party is still responsible for payment to DIME (absent indigent determination)



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Additional Fees for DIME Packet Record Review

TO BE COMPLETED BY RESPONDENTS
INCLUDE WITH THE FINAL MEDICAL PACKET AND SEND TO ALL PARTIES INCLUDING THE DIME UNIT

Claimant Name: _____ WC#: _____

Date of DIME Appointment: ____/____/____

Medical Packet Total Page Count: _____

Medical Packet and Additional Record Review Fees: \$ _____
(Due no later than fourteen (14) days prior to the scheduled DIME appointment)

Pursuant to Rule 11-5 effective 03/02/2023 if the medical record total page count exceeds the max page counts below, additional fees for record review will apply. The additional fees are calculated at the rate of **\$1 for each page** that exceeds the max page allowed for each DIME tier. See example chart below:

DIME Fee	Max Pages Allowed	Medical Packet Total Page Count	Additional Fees Due
\$1000	500	505	\$5
\$1400	750	780	\$30
\$2000	1000	1200	\$200

Number of Pages Exceeding Max Pages Allowed: ____ Additional Fees Due: \$ _____

Paying Party: ☐ Respondent ☐ Claimant

If supplemental records are required per order and the records exceed the max page count, the fee structure above applies.

Supplemental Records Additional Fees Due: \$ _____

Failure to timely and properly submit records may result in termination or rescheduling of the DIME by the Director, at the cost to the defaulting party. The DIME physician has discretion to impose \$250.00 non-compliant records fee on the defaulting party.

The DIME fees do not apply if the parties have agreed on the DIME physician and fee pursuant to section 11-4(A)(2)(a)(i).

Follow up DIMEs

- Processes have changed with follow up DIME with recent Rule 11 changes
- Previously there was WC178 follow up DIME form Respondents were always responsible for filing
- Now, either party can file that follow up DIME form
 - To be filed when additional recommended treatment has been completed
 - Filing party must notify DIME unit and opposing party of date and time of the follow up DIME
 - **Additional records fees apply to follow-up exams** per Rule 11-7 (if same DIME physician) submitted per Rule 11-4(B)
 - Follow up DIMEs that are scheduled with a new DIME doctor still require resubmission of entire medical records packet.
- Additional charges will apply for records review fees in excess of original 500, 750, or 1000 page limits previously reviewed
 - EX: \$1,000.00 DIME with 500 pages initially submitted, 3 months later follow up DIME with fee of \$350 is scheduled
 - If an additional 100 pages of records are submitted for the follow up DIME (600 total), \$100 in additional fees would apply as a record review fee

Rule 11-4(B) Changes Regarding Medical Records Packets

- All pages must now be bates stamped (Rule 11-4(B)(1))
- Indexing format is changed
 - Each of the following inpatient medical records must correspond to an individual entry / bates number that indicates its relationship to other bates numbered documents
 - Admission notes
 - Discharge summaries
 - Operative reports
 - Diagnostic tests (other than blood tests)
 - All other inpatient medical records from the same inpatient stay shall correspond to a single entry on the index
- No duplicative records
 - Just relevant records per changes announced in HB23-1076
- There is now a **\$250 noncompliance fee** with regard to failure to follow these Rule 11-4(B) changes
 - To be paid by the defaulting party
- If parties need to send the DIME physician additional records following submission of initial packet, now required to obtain PALJ Order demonstrating good cause prior to additional submission
- Communications with DIME physician now allowable to address payment for additional records to be reviewed

DIME Panel Changes

- Physicians may be replaced by the Division for subsequent DIME applications due to new circumstances following the initial three physician panel being issued
 - This includes- requested body parts or issues, or availability of the physician(s)

Indigent Standards

- Previously in Rule 18
- Per Rule 11-12(F)- Insurer shall advance the cost of the DIME, includes rescheduling, termination, or late records fees on behalf of the indigent claimant
 - Can be offset against permanent indemnity benefits following a final order or approved settlement
- Rule 11-3(A)
 - For a Claimant to be found indigent for Rule 11-12 purposes:
 - (1) income at or below eligibility guidelines or (2) “extraordinary circumstances” exist
 - To review income eligibility guidelines, based on family size, see Rule 11-13(B)

HB23-1076 and it's impact on DIME process

- Section 6 revised C.R.S. §8-43-207.5 and vested prehearing ALJs with authority to issue interlocutory orders resolving disputes regarding:
 - The content and format of DIME medical records packets to be submitted to physician selected per C.R.S. §8-42-107.2
 - Including whether records are relevant and/or duplicative
 - Indigent status
 - Allocation of DIME examiners costs
 - In excess of base costs

2022-2023 ICAO DIME OPINIONS

Joe M. Espinosa & Brady Ambron



Introduction

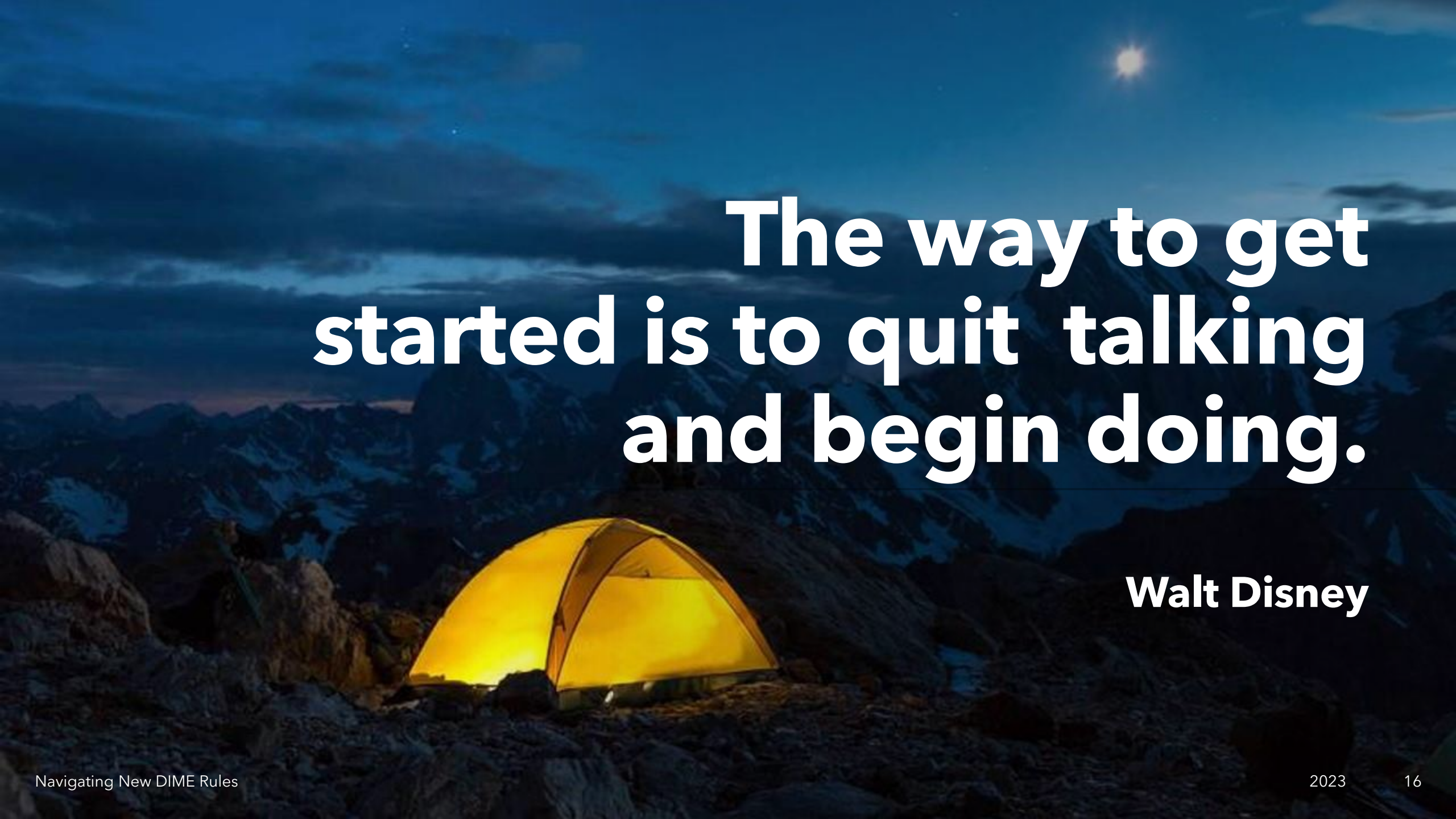
DIME opinions that are beyond the general scope of clear and convincing arguments.

CONFLICT OF INTEREST

- Claimant suffered an admitted injury to his back on 12/9/2018. Claimant's ATP, Dr. Anderson-Oeser, placed Claimant at MMI and assigned 42% WP impairment.
- Respondents requested a DIME. Dr. Mathwich was selected for the DIME.
- After being selected for the DIME, Dr. Mathwich sent an email to parties where he stated:
- *"I was informed [Claimant] has been seen in my practice by Dr. Anderson-Oeser and Dr. Contageorge. I was not aware as I have never seen [Claimant] nor discussed him with Dr. Anderson-Oeser or Dr. Contageorge. Please let me know if you feel this is a conflict"*
- The parties discussed the possible conflict and agreed to waive it (confirming letters).

PALJ AUTHORITY

- On November 5, 2021, Respondents scheduled the DIME for 11/23/21. Claimant did not object to the setting and inquired about transportation to the DIME.
- At a regularly scheduled maintenance appointment with Dr. Anderson-Oeser on 11/12/21, Claimant mentioned the upcoming DIME to Dr. A-O. Dr. A-O revealed that she had left a prior practice with Dr. Mathwich resulting in most of her patients following her to her new office causing Dr. Mathwich to suffer a substantial loss of money and close his practice.
- On 11/22/21, Claimant's counsel announced that the Claimant would not be attending the DIME based on the information from Dr. A-O and the conflict this information implicated.
- Respondents rescheduled the DIME for 1/6/22 but had to pay \$1400 to Dr. Mathwich because of the untimely cancellation/rescheduling.
- On 12/10/21, a PALJ issued an Order stating that there was no good cause to strike Dr. Mathwich as the DIME. The order compelled Claimant to attend the rescheduled DIME and reimburse respondents \$1400.00.

A glowing yellow tent is pitched on a dark, rocky mountain peak at night. The tent's interior light is visible through the mesh, creating a warm, golden glow. The background features jagged, snow-dusted mountain ridges under a deep blue night sky with a few stars and a bright, hazy moon in the upper right corner.

**The way to get
started is to quit talking
and begin doing.**

Walt Disney

Claimant Applied for Hearing

- Claimant filed an application for hearing seeking review of the PALJ Order and for an Order removing Dr. Mathwich as the DIME physician. Respondents filed a response endorsing the issue of penalties for violation of the PALJ order and suspension of TTD pending attendance at a rescheduled DIME.
-
- At hearing, Dr. Anderson-Oeser testified and explained that she informed the Claimant that she knew Dr. Mathwich, personally, because he was her employer at her prior practice, Ascent Medical. Dr. Anderson-Oeser was not aware that Dr. Mathwich had sold the practice to Physical Medicine of the Rockies and began a new practice, Mathwich & Associates. Dr. A-O acknowledged that she did not have any mutual economic interests with Dr. Mathwich.

ALJ Holding

Based on *Kennedy v. ICAO*, 100 P.3 949 (Colo. App. 2004) which provided that a PALJ had authority to compel claimant attendance at a DIME, the ALJ upheld the PALJ Order compelling attendance at the DIME and Ordered Claimant to reimburse Respondents \$1400. The ALJ rejected Claimant's Argument that the statutory amendments to CRS 8-43.207.5 effective 9/7/21 substantively limit or change the authority of a PALJ to compel attendance at a DIME or order reimbursement of DIME fees. The ALJ denied Respondents request to suspend TTD and Respondents' request for penalties. As to penalties, the ALJ reasoned that Claimant's act of filing an application for hearing and the arguments made at hearing regarding the PALJ order exceeding the PALJ's authority constituted a rational belief of fact or law. The ALJ denied Claimant's request to remove Dr. Mathwich as the DIME physician noting that neither part had requested summary disclosures under WCRP 11-3, the parties had agreed to waive any conflicts of interest, and the relationship between Dr. A-O and Dr. Mathwich did not constitute a conflict under WCRP 11-3 (E) (2).

ICAO HOLDING

Both Parties Appealed

- Respondents appealed the ALJ's denial of penalties
- Claimant appealed ruling that PALJ order was within PALJ jurisdiction and the denial of Claimant's request to remove Dr. Mathwich as the DIME physician on the claim.

PANEL DECISION

The Court agreed that 9/7/21 amendments to the PALJ statute placed limitations on PALJ authority that were not present when the *Kennedy* case was decided. The Court, however, disagreed that changes to the PALJ statute limited the PALJ from compelling attendance at a DIME or ordering reimbursement of DIME fees (established in *Kennedy*). ICAO noted that the amendments to the PALJ statute “expand and clarify” the authority of the PALJ statute to recognize different factual scenarios the PALJ may encounter. With regard to Respondents’ penalty allegations, it is question of fact whether a party had a rational argument of law of fact that excuses a penalty assessment. The ALJ’s finding that Claimant had a rational argument of law or fact that excused a penalty assessment was supported by substantial evidence in the record. As to the conflict-of-interest issue (removing Dr. Mathwich as the DIME), ICAO found that the determination of a conflict is in the nature of an evidentiary ruling and was not, yet, reviewable as it did not award or deny a benefit and was, therefore, not final.

ATP

- Claimant had an admitted work injury on 1/22/22 and treated at CCOM with Dr. Owens as ATP and Kelly MacLaurin as PA-C.
- On 10/14/20 PA-C found MMI. Dr. Centi, director of CCOM co-signed the WC164 form.
- On 10/19/20, Dr. Owen saw Claimant and noted MMI on 10/14/20. Dr. Owens said Claimant would get an impairment rating by different doctor in near future. Dr. Owens then left the practice.
- On 11/27/20, Dr. Centi, who was unable to travel via plane per CCOM rule due to COVID, found Claimant had an impairment rating of zero based upon a record review.
- On 12/7/22, Respondents filed FAL based upon Centi's report.

DIME

- On 1/6/21, Claimant objected to FAL and on 1/13/21 filed a notice and proposal for DIME.
- On 1/25/21, a PHC was held on the issue of striking the DIME as untimely which was granted.
- On 4/15/21 Claimant filed application for hearing on multiple issu.
- On 6/10/21, Dr. Owens completed report that Claimant had 20% whole person rating

HOLDINGS

ALJ HOLDING

- Holding:
- Sole issue before ALJ was whether Dr. Centi's report was invalid.
- ALJ found, while not best practice to complete a rating without examination, Dr. Centi's report was valid.

PANEL HOLDINGS

- The Panel noted it was not an interlocutory appeal as the ALJ's refusal to strike the FAL effectively denied benefits.
- Claimant's argument that the timing of the DIME application was irrelevant to the issue of the validity of Dr. Centi's report was rejected.
- Dr. Centi's report is valid. No rule or statute requires an in-person physical examination before determining MMI and rating.
- Dr. Centi as medical director was under the umbrella of corporate medical provider designation of ATP.
- The Panel affirmed ALJ.
- Rule 18-7(F)(4) discusses the billing for MMI/IR and charging for an examination, but does not require an in-person physical examination

ATP

- Dr. Parsons, the ATP, initially diagnosed face contusion and neck and low back strain. Later he referred to Dr. Anderson-Oeser.
- On 8/6/19, 10 months later, Claimant told the ATP that he had headaches, nausea, and vomiting.
- Claimant continued to treat with Dr. Anderson-Oeser and reported tinnitus and hearing loss on 5/12/20 (approximately 1 ½ years after the accident). She referred to him to Dr. Lipkin.
- Dr. Lipkin found had hearing loss, tinnitus, and BPPV; but did not make independent determination whether this conditions were related to the work injury.

DIME

- Dr. Paz, RIME, found Claimant sustained a forehead contusion and did not have lumbar radiculopathy. Also found Claimant lumbar condition was pre-existing and dizziness and other symptoms are not related. Dr. Paz found Claimant at MMI on 11/9/20.
- Dr. Hughes did 24-month DIME and agreed with Dr. Paz as to MMI and no impairment. DIME found no further care needed even though he agreed with BPPV was secondary to work injury. DIME found no TBI.
- Dr. Anderson-Oeser disagreed with DIME and said he did not have all the records (but did not know what he was missing). She said Claimant was not at MMI and had sustained a mild TBI and needed further treatment

HOLDINGS

ALJ HOLDING

- ALJ found Claimant did not overcome the DIME opinions. She found Claimant did not sustain a TBI, at MMI, had no permanent impairment rating, and needed no medical maintenance

PANEL HOLDING

- The Panel noted Claimant submitted oversized brief but agreed to consider it.
- ALJ did not err in finding Claimant did not overcome DIME.
- ALJ was not compelled to find not at MMI because DIME did not have all of Dr. Lipkin's records. The record showed that DIME was missing one of Lipkin's records and that the Claimant failed to provide DIME with the record prior to hearing.
- The Panel rejected the argument that ALJ did not consider Dr. Anderson-Oeser's opinions as to testing, and presumed ALJ just found them unpersuasive.

ATP

- On 7/11/19, Dr. Aschberger (ATP) placed him at MMI. He gave no impairment for cervical spine, but gave 14% lumbar and 5% for testicle/scrotal injury.
- On 7/31/19, Dr. Ghazi did CIME and recommended multiple treatments including medial branch blocks.
- On 8/14/19, Dr. McCranie did Rule 16 and found the medial branch blocks were reasonably necessary and related as medical maintenance. Claimant underwent the medial branch blocks which Dr. Aschberger

DIME

- On 1/9/20, Claimant went to DIME with Dr. Mitchell, who said not at MMI and recommended further treatment. She gave a provisional rating of 39% whole person.
- Claimant obtained some of the treatment and, on 1/28/21, Dr. Aschberger again placed at MMI.
- On 5/12/21, after follow-up DIME, Dr. Mitchell again found not at MMI and recommended further treatment. She assigned 30% whole person rating.
- However, at a deposition on 11/19/21, Dr. Mitchell withdrew some of her treatment recommendations and found at MMI.

HOLDINGS

ALJ

- ALJ found DIME placed at MMI on 5/12/21 with 30% whole person rating.
- ALJ also found the DIME's remaining treatment recommendations were not needed.

PANEL

Claimant filed a motion to reopen the record to allow submission of the DIME summary sheet, but ALJ did not complete a supplemental order and another ALJ (Cannici) denied the motion to reopen

- The Panel affirmed and found no error in not reopening the record.

ATP

- C saw PA Quackenbush who placed Claimant at MMI with no impairment and no maintenance.
- ATP Dr. Reasoner electronically countersigned the report, but did not actually see C on the date of MMI. In other words, ATP Dr. Reasoner adopted PA Quackenbush's findings of MMI and impairment without examining C in person on that day.

FAL RIPENESS

- C filed an AFH for penalties and to determine the FAL void *ab initio* and to impose penalties. C's argument was:
 - Rule 5-5(A) requires that R attach an ATP's report to the FAL. However, R attached a report that was only by the PA-C.
 - Rule 16-3(E)(2) requires the ATP to evaluate C within the first three visits and that the failure to be seen by the ATP renders the final admission void *ab initio*
 - That the FAL contained "false and inaccurate information," thus rendering the FAL void *ab initio*, citing *Vargo*, 626 P.2d 1164 (Colo. 1981). Presumably, C was referring to the ATP's electronic signature.
- C simultaneously pursued a DIME. The DIME agreed that C reached MMI with no impairment

ALJ

- ALJ Perales denied C's request to determine the FAL void and to impose penalties. He found there to be nothing fraudulent or inaccurate about PA Quackenbush's MMI determination.
- The ALJ also denied R's request for attorney fees.

PANEL HOLDING

- ICAO also cited a January 16, 2003 Director's Interpretive Bulletin, which declared that § 12-36-106(5), which allows PAs to work under a physician's direction, also allows a PA to impose medical restrictions and offer an opinion as to the claimant's medical condition.
- ICAO further cited to *MacDougall v. Bridgestone*, W.C. No. 4-908-701-07 (April 12, 2016), for the proposition that an ATP can later adopt a PA's MMI finding by retroactively countersigning the PA's WC164 form.
- Regarding C's Rule 16 argument that the ATP was required to C within the first three visits, ICAO did not see any connection"
 - *We do not view the utilization standards requirement in Rule 16 to preclude a physician from countersigning a PA's MMI determination as was done in this case. . . . there is no such statutory requirement for placing a claimant at MMI or for filing a final admission of liability. In fact, a physical examination is not required by the Act, the Workers' Compensation Rules, or the AMA Guides before making an MMI determination with a zero percent permanent impairment.*

ATP

- Claimant sustained an admitted injury in September 2019 while working as a security guard, at which time he suffered bilateral knee injuries that led to a couple of right knee surgeries.
- He developed digestive issues over the next year, related to a post-surgery infection. There was apparently no dispute that this was claim-related.

ATP

- Dr. Aschberger ultimately assigned a 14% left lower extremity impairment rating, a 22% right lower extremity impairment rating and a 10% whole person rating for GI issues.
- Respondents filed a FAL, but Claimant requested a Division IME. The DIME Application was not in evidence, but the DIME was apparently requested only on the digestive issues.

DIME

- Respondents filed a FAL, but Claimant requested a Division IME. The DIME Application was not in evidence, but the DIME was apparently requested only on the digestive issues.
- DIME physician Dr. Gellrick notified counsel in an email clarifying that “IR has been given for the knees with Dr. Aschberger. Am I supposed to address just the digestive system or do the knees and the digestive?” Claimant’s attorney responded by saying “just the digestive system.”

DIME

- At the Division IME, Dr. Gellrick noted that there were knee injuries and surgeries. but reiterated that she was “only asked to consider the digestive system” and found that Claimant did not require any further invasive treatment but did need medical management and medication and assigned a 20% whole person impairment rating.

PROCEDURE

- Respondents then filed a FAL *only* for the 20% digestive rating, despite the fact that they had previously admitted to lower extremity ratings, too.

AFH

- Claimant objected to the FAL and filed an Application for Hearing, endorsing penalties for Respondents' failure to admit for the lower extremity impairment as well the DIME rating, as well as attorney fees, PPD benefits, medical benefits and TTD benefits. However, Claimant's counsel clarified that the issue was PPD benefits, and specifically impairment ratings for the lower extremities (I cannot tell if he pushed for penalties at the hearing or withdrew that issue).

ALJ

- The ALJ ruled that Respondents were on notice that Claimant was challenging the impairment rating for the GI issues, and that Claimant did not dispute the lower extremity ratings assigned by the ATP. Respondents knew that Claimant was only challenging the GI rating. Claimant testified that he had bilateral knee issues with restricted ROM.
- Scheduled and non-scheduled ratings are treated differently under the WCA, and if Claimant had wanted to challenge the ratings for scheduled injuries, he could have proceeded directly to hearing and did not have to go through the DIME process.
- The ALJ, therefore, concluded that Claimant was not seeking an examination of his lower extremities and had accepted the initial ratings.

HOLDINGS

- In making this determination, the ALJ found the case of *Baldrey* distinguishable. In that case, Claimant waived his substantive right to an examination of his lower extremities by the DIME physician by not requesting an evaluation to those areas, after the ATP had placed Claimant at MMI with no impairment. Claimant did file for DIME on other issues, but did not endorse the lower extremities or pay the fee for such, and so Claimant had waived his right. Here, however, Claimant had received ratings, and clarified that he only wanted the DIME physician to evaluate the digestive system. Respondents in *Baldrey* never admitted liability, but the Respondents did so here.

PANEL

- Respondents asserted that appellate courts had long held the DIME process contemplated a DIME physician would evaluate all components of the claimant's condition, and so, because Dr. Gellrick did not provide an impairment rating for the lower extremities, this meant that Dr. Gellrick implicitly determined that there was no impairment. However, this was in error.
- Again, scheduled and non-scheduled body parts are treated differently, and so a Division IME was not necessary to address these ratings.
- Significantly, 8-43-203(2)(b)(II)(A), CRS specifically provides that there would be no waiver under the circumstances present here, as it provides that a party must request a hearing within 30 days of a FAL, but may delay requesting such until after the DIME is concluded.

HOLDINGS

- The Application for DIME allowed the parties to check specific regions or parts to be evaluated, with the cost of the DIME to be based, in part, on the number of body regions identified.
- Rule 11-4(C) stated that the parties may agree to limit the issues to be addressed in the DIME in writing and signed by both parties. While the better course here would have been the parties to enter into an agreement to limit the issues addressed by the DIME, since there was no statutory right to a DIME to assign the impairment ratings for the scheduled injuries, 11-4(C) did not require such an agreement.
- The ALJ's determination that Claimant did not waive his right to the lower extremity impairment ratings was not in error

PANEL

- Respondents argued as the DIME is presumed to address all body parts, in not addressing the bilateral knees, the DIME implicitly determined there was no impairment there. There is no statutory right to a DIME when scheduled injuries are involved. Also the DIME form allows the parties to check the body parts involved and the DIME cost is based on the regions checked. See also WCRP 11-4(C) setting out the process to follow when the parties want to limit the issues to be addressed by the DIME.

HOLDINGS

- The ALJ reasonably inferred that Claimant was not challenging the ATP's scheduled impairment ratings for the lower extremities but, instead, was only challenging the non-scheduled ratings for the digestive system, which required a DIME.
- While Respondents argued that it had to comply with WCRP 5-5(F) following the DIME report, to either take a position with a FAL or by requesting a hearing, and could not unilaterally decide which ratings of the ATP and DIME to accept, Rule 5-5(G) specifically provided that Respondents could have filed a modified admission consistent with both the lower extremity scheduled ratings and the non-scheduled digestive ratings.

ATP

- Claimant was injured in January 2018 while working as a special education para-educator, when she was struck in the back of her head by a soccer ball that was either thrown or kicked by a student from less than four feet away. Claimant asserted a lack of memory over the next two hours and experienced neck pain and a headache. She was diagnosed with TBI, concussion, lumbar strain and cervical strain, and initially released to full duty, but was then provided work restrictions, before eventually beginning to treat with Dr. Brodie.
- Dr. Zimmer (IME) found that Claimant did not have any objective evidence of neurologic/brain abnormalities and that the issues were attributable to psychological overlay, although he thought that she would have permanent impairment for the cervical spine and psychological issues.

ATP

- Dr. Brodie later referred Claimant to a psychiatrist and continued modified duty. However, he released Claimant to full duty in July 2019, although he noted that it was to be considered a “trial.”
- Claimant then underwent a fitness for duty test, which she was unable to complete due to dizziness, and which precluded her returning to her pre-injury employment position. She did not go back to work.
- Dr. Brodie evaluated Claimant on multiple occasions over the next eight months and continued to indicate that Claimant was released to full duty with no restrictions. From what I can tell, he never revoked the regular employment release, and, in fact, explicitly continued it.

GROVER CARE

- Dr. Cebrian (IME) found that Claimant's complaints were out-of-proportion to objective medical evidence and that she reached MMI as of November 2019 with a 0%, and also found that she was capable of full duty work.
- Dr. Brodie placed Claimant at MMI in February 2020 with a 20% impairment rating for central nervous system dysfunction, but stated that it was less than 50% probable that she sustained a permanent cervical injury, although the ALJ later commented that there was no evidence that he performed ROM testing.
- Claimant then continued to treat with a couple of doctors, apparently in the chain of referrals or otherwise authorized, with Dr. Hutchins (vision) and Dr. Gray, both of whom noted ongoing limitations and restrictions. It is unclear from the decision if Dr. Brodie also continued to treat, or the degree to which she continued to treat with these other doctors.

DIME

- Claimant eventually underwent a DIME performed by Dr. Reichhardt, who agreed with Dr. Brodie's MMI date, and the 20% impairment for TBI, and who also noted that there was no permanent impairment for TMJ, psychological dysfunction or lumbar spine, as Claimant did not have a specific spine disorder. I assume that these were endorsed on the DIME Application.
- Dr. Reichhardt may not have addressed the cervical spine at all, though. It is not clear if this was endorsed on the DIME Application (as an aside, Respondents' counsel has told me that it was).
- After Respondents filed a FAL admitting for the 20% rating, Claimant obtained an IME with Dr. Parry, who found that Claimant was not at MMI and assigned significant ratings for numerous body parts, including a 15% for the cervical spine, as well as the same 20% rating for TBI.

ALJ

- Claimant sought to overcome the Division IME.
- The ALJ found that Claimant failed to overcome as to MMI. The February 2020 date stands.
- However, the ALJ found that Claimant met her burden to overcome the lack of a cervical rating, noting that Claimant was entitled to the 15% rating based on the opinion of Dr. Parry.

HOLDING

- The ALJ also concluded that Claimant sustained a wage loss due to her work injury and was entitled to TTD benefits from the date Respondents terminated per the full duty release from Dr. Brodie (July 2019) through the MMI date (February 2020)

PANEL

- The ALJ did not abuse his discretion in awarding a 15% cervical rating, and the determination that the contrary (non)opinion was overcome by clear and convincing evidence was supported by substantial evidence.
- The ALJ did not discredit the DIME physician's opinion on impairment just because the DIME did not meet some level of specificity as to the basis of the determination, but the ALJ found that the DIME physician failed to address the cervical spine at all, and this was but one factor for consideration by the ALJ.
- The ALJ otherwise provided detailed findings as to why a rating was applicable.

HOLDING

- The ALJ otherwise provided detailed findings as to why a rating was applicable. The medical records from the beginning of the claim provided objective evidence of an injury with more than two years of symptoms and treatment for the cervical spine, and Dr. Brodie included the cervical spine diagnosis in his regular reports, although he did not provide a reason for failing to perform ROM measurements and for failing to provide a permanent impairment for the cervical spine.
- It was the ALJ's prerogative to find Dr. Parry more credible and persuasive. Substantial evidence supported the determination.

ATP

- Claimant was assigned a 9% cervical PPD rating and a 3% mental.

PROCEDURE

- Respondents sought a DIME that was performed by Dr. Green. The DIME found the cervical issues were pre-existing and so no PPD was warranted. The DIME did not address the mental impairment.

ALJ

- The ALJ ruled the DIME's determination of no cervical impairment had not been overcome by Claimant. Claimant appealed the denial of the 3% mental PPD rating arguing the DIME never addressed that aspect. In seeking the DIME, Respondents only checked region 4 (spine) and not Region 3 (psychological). Respondents argued the DIME implicitly found there was no mental impairment as the DIME is presumed to address all body parts.

APPEAL

- Claimant appealed the denial of the 3% mental PPD rating arguing the DIME never addressed that aspect.

ICAO

- Respondents argued as the DIME is presumed to address all body parts the DIME then implicitly determined there was no mental impairment. Based on the current version of Rule 11-5, the DIME fee is based on the number of regions checked by the requesting party. ICAO AFFIRMED ALJ but, reinstated the 3% mental impairment.

HOLDING

- See also WCRP 11-4(C) setting out the process to follow when the parties want to limit the issues to be addressed by the DIME. “The implication of the 2019 modifications to Rule 11 is that the requesting party’s decision to omit the checking of a body region on the Application for a DIME is a decision to forego a DIME review of an ATP’s impairment rating pertinent to that body part. (Footnote 1 speculates the other party may then request a second DIME?)

ATP

- Claimant was involved in MVA when she was struck from behind on October 3rd, 2018. Claimant is a nurse/supervisor who conducts home health visits. Claimant went to Concentra where she was treated for neck and back pain, it was noted there was thoracic pain. Later on, lumbar pain was diagnosed. Injections and cervical MRI were ordered. Second injection provided a diagnostic response. Spasms were noted six months post-injury. Dr. Sacha assessed a 7% for displaced lumbar dis, and 4% for cervical spine on May 6th, 2019. ATP Corson agreed and assigned MMI on May 6th, 219 for the cervical, lumbar, and thoracic spine.

DIME

- Dr. Shea performed the DIME. Dr. Shea diagnosed lumbar strain/cervical strain and myofascial pain syndrome of the cervical, upper thoracic and sacral region. He assigned a 4% for cervical spine specific disorder and 4% loss of ROM. 5% was assigned for lumbar spine for Table 53 and 6% loss of ROM 18% total whole person, no dispute as to MMI. DIME took place on January 27th, 2020.
- Dr. Lesnak performed IME. He found that there were no clinical findings of cervical or thoracic injury, radiculitis, and no facet joint atrophy. He opined that there was no Table 53 rating for the cervical spine. He determined that there was a 7% rating for the lumbar spine based on Table 53 and ROM. He noted that Dr. Shea did not explain the discrepancies between his ROM and those of Dr. Sacha. He testified that the cervical condition had resolved, and subjective complaints of pain were resolved at MMI. He noted that Shea committed an error when he did not address the inconsistencies in his range of motion.

ALJ

- Dr. Sacha testified at Hearing that there was a complete resolution of the cervical spine and there was no loss of ROM for the cervical spine. Dr. Sacha testified that pursuant to the DOWC level II requirements physicians are required to address inconsistencies between the treating p • ALJ found Respondents had not overcome their burden of overcoming the DIME. ALJ noted that the findings of spasm in the spine was six months post injury. ALJ misquoted Dr. Sacha as assigning a 4% loss of ROM for lumbar spine. Dr. Sacha assigned a 4% Table 53 for the cervical spine. No loss of ROM was assigned by Sacha.

HOLDING

- ALJ noted that the ROM measurements showed loss of ROM in the cervical and lumbar spine per the *AMA Guides* and that the ROM was valid. ALJ found that there was no evidence that Dr. Shea's conclusions were in error. Claimant had a permanent impairment in her cervical and lumbar spine and qualified under the Guides for m impairment.
- The ALJ noted that Dr. Sacha's opinions to the cervical spine were incorrect. He opened that Dr. Lesniak's opinion were a difference of opinion.
- Both Drs. testified that Dr. Shea did not substantiate the inconsistencies in his report

ICAO

- ICAO noted that Respondents requested an outright reversal of the ALJ and not a remand is relief they cannot grant. They no authority to substitute their judgment for that of the ALJ and cannot be fact finders. Based on the system that the General Assembly recognized that the power of selection of physician in the first instance rest with Respondents potential for AYPS to be based in favor of the insured”. the DIME exists to give the challenging party an independent physician.
- Dr. Sacha noted claimant had “good ROM on the day of I.R. but was unaware of any other Rom prior to his rating. He stated that on what to do about discrepancies’ is not mandated, It is not a rule, but I am asked to do it”. On Level II accreditation he testified that “by deflation you are supposed to take the best ROM. “When you are doing a DIME, you are required to comment on discrepancies”. ICAO noted that they were not provided a legal authority holding that a DIME physician’s failure to comment on previous ROM voids a rating.

HOLDING

- Dr. Lesnak does not perform DIMES. Counsel for respondents that Dr. Sacha’s testimony at hearing was that he did not assign a cervical rating. This is a misstatement for the testimony. Counsel then represented that 4% spine rating was really a zero, but ICAO found narrative stated a 11%. Further misrepresentations were made in the brief in support. The worksheets of Dr. Sacha as found by Panel show a 4% cervical spine impairment and 7% lumbar spine for Table 53. However, the narrative showed a 7% lumbar spine (Table 53) and a 4% lumbar loss of ROM. Respondents misperceive the facts and that Dr. Sacha’s testimony supports the worksheet and not the narrative. Dr. Lesnak given misinformation and relied upon it when criticizing the DIME for assigning cervical spine injury when Dr. Sacha did not. ALJ also made same incorrect finding (Harmless error).

PANEL

Neither physician or Respondents provided a citation to this “supposed requirement” under the level II accreditation Course or the *AMA Guides*. “Neither do we find such a requirement in DOWC Desk Aid Impairment Tips. Respondents cited several cases nothing that DIMES had been overcome where expert cited inconsistent ROM and DIME failed to reconcile those findings. (AMA guides require only that ROM be valid on the day of examination, but also measurements exhibit some degree of consistency and reliability when compared to ratings recorded by other physician’s and other times)

HOLDING

- The interpretive Bulletin in 2008 encourage the DINME to communicate with ATP on discrepancies does not resolve issue of failure is binding upon the ALJ. It is well noted interpretive bulletins and rating tips are not binding.
 - Clear and convincing and expert opinion case law reviewed. *The lack of addressing inconsistencies in ROM testing or I.R. among doctors is a factor to the weight and credibility of the DIME report. In our view, failure of a DIME to directly address differing medical findings and opinions is not necessarily a conclusive factor.*”
 - ****Note* ALJ made several errors in his fact finding that were corrected by Panel. Counsel for respondents also misinterpreted facts from Hearing to deposition to Brief and more than likely the Position Statement. No indication DIME physician testified.***

ATP

- Delivery driver had worked for employer for 3 years; he slipped and fell on ice and missed some stairs. TKR was completed on May 12th, 2020. Follow-up was difficult and improper inadequate icing of the leg led to a hospital stay. Blood clot formed and he had a spinal stroke and developed sensory difficulties in his lower extremities.
- MMI by ATP Pula was December 10th, 2020, full duty release assigned, 13 months post injury. 32% lower extremity rating assigned and admitted. P.T. was requested on April 5th, 2021.

DIME

- DIME was requested and performed by Dr. Reichardt on July 13th, 2021; Kaiser Dr. opined that the spinal stroke was 1-5% related to injury. Dr. Morgenstern did IME for respondents. He agreed with Dr. Lammers that spinal stroke not related to knee injury. Dr. Lammers had opined that claimant had antiphospholipid antibody syndrome (APS). Dr. Morgenstern opined APS would have led to the spinal stroke regardless of recent surgery. Claimant had an IME from a Dr. Howell orthopedics. Dr. Howell testified claimant need to start P.T 6 weeks post-surgery in that there was high risk for clotting. Second chance for clotting six weeks post-surgery, which is what occurred here.
- Dr. Jones another claimant IME, oncologist and hematologist, opined that claimant was old, obese and had been inactive and using a cane. He opined that the swelling in his leg and delay in physician therapy He opined that all these factors combine with the predisposition for clotting via APS triggered the blood clot.
- Dr. Reichardt opined that spinal stroke was not related to the DOI. He found that hypertension, tobacco use, and preexisting APS and hyperlipidemia led to stroke. Arterial thrombosis is rare at this junction. This did not render any relation between the knee and spinal stroke.
- Dr. Reichardt changed date of MMI to April 5th, 2021, date assigned by other ATP. He lowered the rating to 26%.

ALJ

- ALJ found that DIME was mistaken in finding MMI. Claimant had argued that because causation analysis was incorrect and excluded a body part that had not been at MMI. Respondents argued that ATP had purely placed claimant at MMI.
- ALJ found that claimant was not MMI for spinal stroke, and reinstated TTD with offset for SSDI even though claimant had ALJ stated there was no credible or persuasive evidence that any physician placed him at MMI or returned him to work for the effects of the stroke. Received a release to regular employment.
- The ALJ concluded that the claimant's preexisting conditions including APS, work injury, surgery, past-surgery events combined to the arterial stroke and imprinted to clear and convincing evidence to overcome the DIME. While both Drs. opined claimant had an elevated risk and the condition was troublesome, it was aggravated by the presence of anesthesia, pain, bleeding, fasting, and delay in P.T. and immobility. ALJ found that DIME did not offer a definitive cause of the claimant's stroke.

HOLDING

- The ALJ determined only that "There is no credible or persuasive evidence that any physician has placed him at MMI or returned him to any work for the effects of the stroke." Two treating physicians and the DIME have placed the claimant at MMI. The ALJ takes exception with that determination solely because those physicians did not include an additional diagnosis the ALJ found to be causally related. However, there is no contention by the claimant that there is medical treatment that is "reasonably expected to improve the condition" as it relates to the spinal stroke. The claimant has the burden to overcome the MMI determination of the DIME physician
- Neither Dr. Howell nor Dr. Jones addressed treatment for the spinal stroke. Similarly, neither the claimant nor his wife presented any testimony in that regard. The ALJ found that the claimant did not specifically request payment of medical benefits related to the arterial stroke at the outset of the hearing

APPEAL

ICAO

- ALJ specifically ruled it was error for Dr Reichardt not to offer an opinion and/or analyze whether all the stroke risk factors *acting together. Caused the stroke.* The ALJ compared the conflicting conclusions of the physicians with reports and or testimony on the record. He credited Drs. Howell and Jones over that of Lanners_(PCP), Morgenstern (IME), and Reichardt (DINE). **Two ATPS also opined MMI* While Jones and Howell are both claimant IMES.*

HOLDING

- The aggravation of a Preexisting condition by a work accident requires the aggravation must be considered a part o the injury. To impose liability for medical treatment ALJ must find need for treatment was proximately caused by injury arising out of course and scope of employment. Industrial injury is sufficient if it is a significant causer for need for treatment. *We agree with respondents that Dr. Reichardt had in fact opine that claimant had multiple risk factors for the arterial pathology including APS, HYPERTENSION, TOBACCI USE, HYPERLIPIDEMIA EXPLAINED THE INCIDENT.* However, ALJ is not held to crystalline standard and the basis for the Order are apparent from the remaining findings.
- MMI defined by future need medical care will not significantly improve the condisit9on. The records for this claim over a year prior to the Hearing date. Whether medical treatment is intended to cure or relieve the claimant is significant. There is no bright line determining what will cure or what will relieve

AFFIRMED IN PART

- The claimant maintains that “if a DIME doctor’s causation analysis is wrong in excluding a compensable component of the work injury, his MMI and impairment determinations have necessarily been overcome.” This contention misstates the applicable standard. A missed diagnosis that either is not amenable to treatment, or that has been treated, would not affect the claimant’s status of MMI. Similarly, a disputed diagnosis that does not provide for an additional impairment rating pursuant to the AMA Guides to Permanent Impairment would not be grounds to set aside a DIME physician’s impairment rating. Accordingly, the mistaken exclusion of a compensable component of the work injury is not caused to set aside a DIME’s finding of MMI if that additional component does not allow for additional medical benefits aimed at “medical treatment reasonably expected to improve the condition.
- Spinal stroke is confirmed to be a component the claim. ALJ’s determination of claimant not at MMI remanded to ALJ to address whether further medical treatment is needed to reasonable expect to improve the claimant’s condition stroke. In a footnote the Panel noted the ALJ did not address the Kaiser physical notes which stated that due to the stroke claimant was PTD. PTD determination might be seen as consistent with the concept of MMI. P.T. had been ordered as post-MMI care.

SET ASIDE IN PART

- The finding of causality of the stroke did not necessarily set aside the MMI date. Remand to determine date of MMI the ALJ shall allow for additional evidentiary proceedings to address whether claimant is at MMI for the spinal stroke. or determine the date of MMI if at MMI. At ALJ’S discretion other attendant issues ripe for Hearing may be entertained,
- TTD is set aside as the persistent finding of MMI is applicable.
- ****Note* There was no true determination of whether or not work release was applicable. ALJ only noted that no physician had released claimant back to work from effects of the stroke.***



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Thank you