ALASKA WORKERS' COMPENSATION BOARD

P.O. Box 115512 **Juneau, Alaska 99811-5512**

JAMES A. KLEBESADEL, Employee, Claimant, and BARRY MATTHISEN, D.C., Provider, Claimant, v. STATE OF ALASKA, Self-insured Employer, Defendant.	FINAL DECISION AND ORDER AWCB Case No. 201218840 AWCB Decision No. 16-0062 Filed with AWCB Anchorage, Alaska on July 27, 2016

Barry Matthisen, D.C.'s (Dr. Matthisen) January 19, 2015 claim and James A. Klebesadel's (Employee) March 27, 2015 and May 12, 2015 claims were heard on June 21, 2016, in Anchorage, Alaska, a date selected on March 15, 2016. Dr. Matthisen appeared on his own behalf and testified. Attorney Krista Maciolek appeared and represented Employee, who appeared and testified. Assistant Attorney General Daniel Cadra appeared and represented the State of Alaska (Employer). There were no other witnesses. At hearing, Employee clarified his claim and stated the permanent partial impairment (PPI) issue had been resolved because Employer had paid a 12 percent rating, and he was no longer seeking an order stating Employer made an unfair or frivolous controversion. Remaining issues include past and ongoing chiropractic care, related transportation expenses, attorney's fees and costs. The record closed when the panel deliberated on July 25, 2016.

ISSUES

Dr. Matthisen contends Employee has two separate spine-related injuries arising from his September 13, 2012 work injury with Employer. He contends chiropractic treatment was effective in addressing Employee's lumbar spine issues initially, and continues to be effective in treating his sacroiliac (SI) joint dysfunction. Dr. Matthisen contends his treatments have been reasonable and necessary to address Employee's work injury with Employer. He contends he provided written treatments plans to Employee and Employer when treatments exceeded frequency standards. Dr. Matthisen seeks an order requiring Employer to pay his past bills and to pay for future chiropractic care for Employee's work injury with Employer.

Employee contends he is entitled to past and continuing chiropractic care. He contends Dr. Matthisen's care has been reasonable and necessary and is the most effective and least invasive treatment to address his work injury with Employer. He seeks an order requiring Employer to pay Dr. Matthisen's past bill and for continuing chiropractic care and transportation expenses.

Employer contends continued chiropractic treatment is neither reasonable nor necessary for Employee's work injury. It contends Dr. Matthisen has treated Employee for nearly four years using the same modalities and treatment frequencies with no objective improvement. Employer contends it has not completely controverted Employee's right to medical care, but only controverted chiropractic care as it has proven objectively ineffective. It further contends only Dr. Matthisen supports ongoing chiropractic treatment, contrary to opinions from several other physicians, including an employer medical evaluator (EME) and a second independent medical evaluator (SIME). As no other physician corroborates Dr. Matthisen's opinion, Employer contends his and Employee's request for past and continuing chiropractic care should be denied.

1) Are past and ongoing chiropractic treatments and related transportation costs compensable?

Dr. Matthisen made no claim for attorney's fees or costs related to his claim to have his medical bills incurred in this case paid by Employer. He expressed no position on Employee's claim for attorney's fees and costs.

Employee contends he is entitled to an attorney's fee and cost award. He contends his attorney successfully obtained benefits from Employer and, if he obtains an order requiring Employer to pay Dr. Matthisen's bill or to provide additional chiropractic care, he should be awarded attorney's fees and costs related to those successful issues.

Employer contends Employee is not entitled to an attorney's fees or costs award. In the event such an award is made, Employer contends Employee should be limited to only statutory minimum attorney's fees.

2) Is Employee entitled to attorney's fees and costs?

FINDINGS OF FACT

The following facts and factual conclusions are found by a preponderance of the evidence:

1) Employee treated with Dr. Matthisen or his predecessor Trish Hardy, DC, at Alaska Back Care Center off and on for decades prior to his work injury with Employer. Employee's pre-injury treatments were generally limited to his cervical and thoracic spine, but on occasion his lumbar spine was also addressed. (Alaska Back Care Center chart notes, 1993 through 2011).

2) On April 22, April 25, and April 29, 2011, Employee saw Dr. Matthisen and said his low back had gone out while he was changing a tire. Dr. Matthisen, who had recently been adjusting Employee's cervical and thoracic spine, also adjusted his lumbar spine and right SI joint. (Matthisen chart note, April 22, 2011).

3) On March 9, 2012, Dr. Matthisen manipulated only Employee's cervical and thoracic spine. (Matthisen chart note, March 9, 2012).

4) On September 13, 2012, Employee while at work fell backwards and landed on his back and buttocks while demonstrating how to pull a metal rod out of soil for a materials density and compaction evaluation. (Report of Occupational Injury or Illness, December 18, 2012).

5) On September 26, 2012, Dr. Matthisen examined and treated Employee who complained his low back pain had "flared up." The hand-written note makes reference to a "work inj." some indecipherable weeks prior. This was Dr. Matthisen's first treatment date for Employee's work injury with Employer. Dr. Matthisen manipulated Employee's cervical, thoracic and lumbar spine along with his SI joint. (Matthisen chart note, September 26, 2012).

6) On October 2, October 5, October 10, October 16, October 29, October 31, November 14, and November 26, 2012, Dr. Matthisen manipulated Employee in a similar fashion. (Matthisen chart notes, October 2 through November 26, 2012; Detailed Ledger Report, January 19, 2015).

7) On November 28, November 30, December 3, December 7, December 10, December 12, December 17, December 21, December 26, December 28, 2012 and on January 4, January 7, January 9, January 14, January 18 and January 21, 2013, Dr. Matthisen treated Employee in a similar fashion on each visit. Dr. Matthisen's chart notes are all difficult to read but these notes generally appear to say Employee was slowly and gradually "getting better" or "improving." (Matthisen chart notes, October 2, 2012 through January 18, 2013).

8) Effective December 28, 2012, Dr. Matthisen exceeded the frequency standards because he saw Employee twice in the same week. Dr. Matthisen exceeded the frequency standards every "month" thereafter. (Experience, judgment, observations and inferences from the above).

9) On January 21, 2013, Dr. Matthisen first completed a physician's report for Employee's injury stating his initial treatment occurred September 26, 2012. Dr. Matthisen opined Employee's condition was work related and referred him to an orthopedic surgeon as Employee was not medically stable. Dr. Matthisen said Employee would probably not be precluded from returning to his job, and it was undetermined whether he would have permanent partial impairment (PPI) from his injury. Dr. Matthisen released Employee to regular work and referred the reader to his "narrative report." (Physician's Report, January 21, 2013).

10) All division "Physician's Report" Forms 07-6102 state in block 33: "If the number of treatments will exceed Board's frequency standards, state the objectives, modalities, frequency of treatment, and reasons for frequency of treatments. Continue treatment plan on reverse if necessary. GIVE EMPLOYEE AND EMPLOYER/INSURER A COPY OF THIS REPORT." The form also has a box for "Treatment Plan" a provider can check at the top. (Physician's Report, Form 07-6102).

11) The January 21, 2013 physician's report was not created or given to Employer and Employee within 14 days after treatments began on September 26, 2012, and was written after Dr. Matthisen had already exceeded frequency standards. It does not contain objectives, modalities, treatment frequency or reasons for the treatment frequency and is not a conforming treatment plan. (*Id.*; experience, judgment observations).

12) On January 21, 2013, Dr. Matthisen also provided a narrative report as follows:

> History:
>
> Mr. Klebsadel is an established patient who entered my office on 9-26-12 complaining of right low back pain and spasms. He was apparently pulling up on an object which unexpectedly released, causing him to fall on his rear/back, causing immediate low back pain.
>
> He waited a week to see if his symptoms would abate which they didn't. He began to get increased spasms and pain traveling up the spine. He did not have any lower extremity complaints and his LE reflexes were +2. He presented with decreased thoracolumbar flexion and extension causing a mild/moderate increase in low back pain. SLR was negative and sciatica stretch was negative. Ely's caused increased low back pain. Spasms were present in the thoracolumbar paraspinals and joint fixation/restriction bilaterally in the SI joints, worse on the right, L5/S1, T8-10, T2-6, and C5-7.
>
> He was diagnosed with lumbosacral sprain/strain with mechanical back pain and spasms. I recommended therapy initially day to day and saw him for a couple visits, and then recommended therapy about twice a week. We have been seeing him for a few months now and he has made good improvement and able to continue working/performing ADLs. His right low back pain lingers though and occasionally flares up, requiring additional therapy to abate. We are using traction, manipulation, and myofascial therapy to address his injuries and we have made good progress to date. I think a MRI is worthwhile to see if we are not missing anything, and he was referred to an orthopedist for evaluation. Further report will follow after his evaluation/MRI and we will update therapy recommendations. (Matthisen report, January 21, 2013).

13) The January 21, 2013 letter, above, is a treatment history but does not include a plan stating Dr. Matthisen's future objectives, modalities, treatment frequency or reasons for treatment frequency. (*Id*.; experience, judgment and observations).

14) On January 21, January 25, January 28, February 1 and February 4, 2013, Dr. Matthisen treated Employee with what appears to be the same treatments as provided previously. (Matthisen chart notes, January 21 through February 4, 2013).

15) On January 23, 2013, Employee, on referral from Dr. Matthisen, saw Upshur Spencer, M.D., at Anchorage Fracture & Orthopedic Clinic. On a "current history" form, Employee explained his work injury and said his symptoms included mid-buttock pain on the right side with occasional stabbing pain in his hip, which has made his hip "give out," and occasional tingling and numbness down his right leg. Employee treated with a chiropractor and "pt. states it has not helped very much." (Current History form, January 23, 2013).

16) On January 23, 2013, Employee told Dr. Spencer his work injury initially caused low back pain, which gradually got better after about a week. "Following that, he started seeing a chiropractor. Since then, he has had significant startup pain." Employee's chiropractic and massage treatments were making "slow progress" and he wanted "to have a surgical opinion at this point." Employee explained he had right-sided low back and buttock pain primarily with pain radiating into his right hip making it feel like the hip was about to "give out." Employee experienced occasional tingling and numbness radiating down his right leg. Dr. Spencer diagnosed: (1) L5-S1 degenerative spondylolisthesis, grade I approaching grade II; (2) adult degenerative scoliosis related to diagnosis (1); and (3) early mild hip arthrosis, right greater than left. Dr. Spencer's impression was Employee had "lumbago" with right L5-S1 radiculopathy status post work-related fall on September 13, 2012. In Dr. Spencer's view, the work injury probably aggravated the exiting and traversing nerve roots, which explained Employee's pain. "Startup pain," can be related to a degenerative process. Dr. Spencer recommended continued conservative treatment including oral anti-inflammatory medicines as tolerated, hot and cold therapy, formal physical therapy and a lumbar stabilization program. If those modalities failed, an epidural steroid injection may be useful. Given Employee had clinical symptoms for over four months, Dr. Spencer recommended a lumbar spine magnetic resonance imaging (MRI) scan. Dr. Spencer does not mention additional chiropractic care. (Spencer report, January 23, 2013).

17) On January 25, 2013, Employee underwent a lumbar spine MRI. The radiologist's impression was: (1) sclerotic right L5 spondylolisthesis with associated grade I anteriorlisthesis at L5-S1; (2) mild right neural foraminal narrowing at L5-S1 with abutment of the exiting right L5 nerve root and mild right lateral recess narrowing; and (3) minimal right foraminal narrowing at L4-5. (MRI report, January 25, 2013).

18) On February 8, February 11, February 15, March 8, and March 11, 2013, Dr. Matthisen treated Employee for his work injury. Though the hand-written chart notes are difficult to read, the treatments appear similar to Dr. Matthisen's prior treatments. (Matthisen chart notes, February 8 through March 11, 2013).

19) On February 13, 2013, Employee saw Dr. Spencer who reviewed the MRI. Employee seemed like he was "slowly getting better." Employee thought "the chiropractic care and massage" were "really helping," though he was also taking Ibuprofen 600 milligrams daily. Dr. Spencer found Employee's physical examination, "Essentially unchanged since I saw him on

January 23, 2013." Dr. Spencer concluded Employee was "slowly getting better" and could continue "the conservative treatment." Dr. Spencer prescribed an L5-S1 epidural steroid injection, but did not mention additional chiropractic care. (Spencer report, February 13, 2013).

20) On March 18, March 26, April 1, April 5, and April 10, 2013, Dr. Matthisen treated Employee. The hand-written chart notes are again difficult to read but appear to show Employee's pain "comes and goes." Dr. Matthisen was not adjusting Employee's lumbar spine during these visits. Employee was getting set up for an epidural steroid injection in the near future. (Matthisen chart notes, March 18 through April 10, 2013).

21) On March 21, 2013, Employee underwent a lumbar epidural steroid injection at University Imaging Center. (University Imaging Center Report, March 21, 2013).

22) On April 26, May 3, May 10, May 17, and May 24, 2013, Dr. Matthisen treated Employee primarily in his right SI joint. Dr. Matthisen also treated Employee's cervical and thoracic spine and SI joint, but during this time did not treat Employee's lumbar spine. (Matthisen chart notes, April 26 through May 24, 2013).

23) On May 28, 2013, Employee reported his epidural steroid injection had helped. He still had pain in the right upper buttock and the injection's effects were slowly decreasing. His hip and leg pain present before the injection were "pretty much gone now." His chiropractic and massage therapy seemed "to be helping." Employee was taking 600 to 800 milligrams Ibuprofen in the morning and 400 to 600 milligrams in the evening. Dr. Spencer's impression was: (1) lumbago with partial improvement in L5-S1 radiculopathy status post a work-related injury fall in September 2012; (2) grade I approaching grade II isthmic spondylolisthesis at L5-S1 with sclerotic L5 spondylolysis; and (3) abutment of the exiting right L5 nerve root secondary to lateral recess narrowing, moderate right facet arthrosis and spondylolysis. Employee was "pretty happy with how things were going" but needed a work note. Dr. Spencer restricted him from lifting over 45 pounds or repetitive lifting over 25 pounds with no excessive bending or twisting. He recommended Employee use a standing workstation and return in three months. (Spencer report, May 28, 2013).

24) On May 30, June 7, June 10, June 24 and July 1, 2013, Dr. Matthisen treated Employee's thoracic spine and right SI joint. (Matthisen chart notes, May 30 through July 1, 2013).

25) On July 8, July 17, July 24, July 26, July 29, July 31, 2013, August 1, August 2, August 5, and August 7, 2013, Dr. Matthisen treated Employee's neck, thoracic spine and right SI joint.

His notes indicate Employee had inquired about another lumbar injection. Employee's work was "busy" and he had to come in because his right SI joint "flared up." The hand-written chart notes are again difficult to decipher. (Matthisen chart notes, July 8 through August 7, 2013).

26) On August 9, August 12, August 14, and August 19, 2013, Dr. Matthisen performed similar treatments on Employee's cervical and thoracic spine and right SI joint. The notes indicate Employee was "hanging in there" and continued to work. (Matthisen chart notes, August 9 through August 19, 2013).

27) On August 23, 2013, Dr. Spencer evaluated Employee for another epidural steroid injection. Employee's previous injection had been helpful but was wearing off. Employer had provided a standup workstation for him, which helped. Driving was difficult and caused an antalgic gait and pain that lasted about 30 minutes after Employee exited his vehicle. Employee continued to take nonsteroidal anti-inflammatory medication, which also helped. Dr. Spencer discussed "all treatment options" appropriate for Employee, but chiropractic care was not expressly mentioned. Dr. Spencer discussed another epidural steroid injection and possible surgery as other options. Ultimately, Dr. Spencer recommended, and referred Employee for, another epidural steroid injection. (Spencer report, August 23, 2013).

28) On August 26, and August 30, 2013, Dr. Matthisen treated Employee's cervical and thoracic spine and his right SI joint. Employee's SI joint had "locked up" again as he had been doing considerable driving. (Matthisen chart notes, August 26 through August 30, 2013).

29) On September 4, September 9, September 11, September 13, September 18, September 20, September 23, September 25, October 2, October 7, October 11, October 14, October 16, October 21, October 25, October 30, November 13, and November 22, 2013, Dr. Matthisen treated Employee's cervical and thoracic spine and SI joint with treatments as before. (Matthisen chart notes, September 4, 2013 through November 22, 2013).

30) On November 14, 2013, Employee underwent another lumbar epidural steroid injection. (University Imaging Center report, November 14, 2013).

31) On November 27 and December 9, 2013, Dr. Matthisen treated Employee's spine and SI joint as previously. (Matthisen chart notes, November 27, 2013 through December 9, 2013).

32) On January 3, January 15, January 23, January 29, February 12, February 26, March 14, March 19, March 27, April 2, April 9, April 16, May 2, May 9, May 16, May 23, June 6, June 18, June 27, July 9, August 13, August 25, September 8, and September 19, 2014, Dr. Matthisen

treated Employee's neck and thoracic spine and his SI joint, with treatments similar to those previously used. (Matthisen chart notes, September 4, 2013 through September 19, 2014).

33) On January 29, 2014, Dr. Matthisen filed a claim seeking payment for his medical treatments provided in this case. Specifically, Dr. Matthisen claimed Employer refused to pay code "97010 (hydrocolator heat packs)." According to the claim, Dr. Matthisen attached a "ledger of non-payment" to his claim and sought $912 in medical expenses. (Workers' Compensation Claim, January 28, 2014).

34) On February 14, 2014, Employer paid Dr. Matthisen's $912 chiropractic bill. (Answer, February 24, 2014).

35) On March 24, 2014, Employer and Dr. Matthisen stipulated to dismiss Dr. Matthisen's January 28, 2014 claim as moot. (Stipulation to Dismiss, January 28, 2014).

36) On April 16, May 2, May 9 and May 16, May 23, and June 6, 2014, Dr. Matthisen treated Employee's cervical and thoracic spine and his right SI joint as before. The hand-written notes mentioned Employee was still trying to schedule an epidural steroid injection. (Matthisen chart notes, April 16, 2014 through May 16, 2014).

37) On June 13, 2014, Dr. Spencer examined Employee who said he felt better overall following his November 2013 epidural steroid injection. Employee described persistent right buttock pain, right low back pain with radiation into the posterior thigh and occasionally in the posterior calf, but no foot pain. Dr. Spencer again discussed options with Employee, including L5-S1 anterior dissection and spinal fusion, versus L5-S1 posterior spinal fusion, versus "TLIF." Dr. Spencer opined most patients with "these deformity type procedures" usually improve symptomatically over time. He remained happy to see Employee in the future should he decide to go forward with surgical intervention. (Spencer report, June 13, 2014).

38) On July 9, July 18, July 30, August 13, August 25, September 8, September 19, October 3, October 22, November 5, November 26, December 10, 2014 and January 5, January 9, and January 14, 2015, Dr. Matthisen treated Employee's spine and SI joint as he had before, using the same modalities. (Matthisen chart notes, July 9, 2014 through January 14, 2015).

39) On July 25, 2014, Charles Craven, M.D., saw Employee for an EME. Dr. Craven diagnosed a lumbar sprain/contusion-type injury substantially caused by the September 13, 2012 work injury; lumbar spondylosis and L5-S1 degenerative spondylolisthesis grade I, pre-existing the work injury, but temporarily aggravated by it through irritation of the right L5 nerve, which

had resolved. In his opinion, conservative management including medication and epidural steroid injections were "successful in resolving this aggravation." Dr. Craven stated Employee's ongoing lower back pain related to pre-existing spondylolisthesis based upon numerous chiropractic visits pre-dating the injury. These earlier reports also addressed lower back symptoms. In his view, the work injury with the substantial cause of Employee's need for medical care through August 23, 2013, when Employee saw Dr. Spencer. Thereafter, the degenerative process in Employee's lumbar spine became the substantial cause. Dr. Craven said no further medical care was necessary for the work injury, and chiropractic, while reasonable, was not necessary. (Craven report, July 25, 2014).

40) In his deposition testimony, Dr. Craven reiterated his written opinions. (Craven deposition, June 7, 2016, at 35). He reviewed a meta-study compiling chiropractic literature into one large study. This showed chiropractic care was as effective as physical therapy "in the long-term." (*Id*. at 39). However, unlike physical therapy, there are no guidelines for limiting chiropractic treatment to these affected body parts. (*Id*.). In Dr. Craven's view, Employee's chiropractic care did not meet the definition for "palliative treatment." Employer asked Dr. Craven to refer Employee to Dr. Rivera, a chiropractic expert, which he did. (*Id*. at 45).

41) On cross-examination, Dr. Craven agreed genetics could account for spondylolisthesis, though not in Employee's case, due to his age and isthmic nature of his listhesis. (*Id*. at 60). Dr. Craven did not think Employee experienced an acute fracture when he fell on the job. If he had, he would not have waited two weeks to see a physician and four months until x-rays were taken. (*Id*. at 66). In Dr. Craven's opinion, the identification of a nondisplaced stress fracture on an MRI taken four months after a relatively low-energy injury is not consistent with an acute stress fracture. (*Id*. at 67). Lumbar surgery, especially fusion, would generally not be recommended in an individual with Employee's symptoms and findings, mainly because he has no significant radicular symptoms into his lower extremities. (*Id*. at 72). Dr. Craven was not familiar with two studies referenced by Employee's attorney. (*Id* at 74).

42) On August 6, 2014, Employer denied all benefits related to Employee's lumbar spondylosis and degenerative spondylolisthesis, based on Dr. Craven's EME opinions. Employer further denied "ongoing chiropractic and massage therapy" as not necessary for Employee's condition, effective August 23, 2013. There is no evidence this denial notice was filed before March 3, 2015, given the division's date stamp appearing on its face. However, in

August 2014, Dr. Matthisen received this notice given his response on or about August 13, 2014. (Controversion Notice, August 6, 2014; observations and inferences drawn from the evidence).

43) On or about August 13, 2014, Dr. Matthisen gave a causation opinion following the August 6, 2014 controversion notice. (Physician's Report, undated).

44) On October 22, 2014, Dr. Matthisen entered his appearance as a non-attorney representative for Employee. (Notice of Appearance, October 22, 2014).

45) On October 22, November 5, November 26, December 10, 2014 and, January 5, January 9, January 15, February 2, and February 23, 2015, Employee told Dr. Matthisen he had been doing well for the prior two to three weeks but had recently "locked up" again. Dr. Matthisen treated his cervical and thoracic spine and his right SI joint with the same modalities as before. (Matthisen chart notes, October 22, 2014 through February 23, 2015).

46) On January 12, 2015, Dr. Matthisen responded to Dr. Craven's EME report. Dr. Matthisen conceded Employee had pre-existing degenerative changes in his lumbar spine but opined this condition was aggravated and "permanently worsened" by his work injury. In his view, before the work injury Employee had minor sprains from which he recovered very quickly with minimal chiropractic care. Following his injury, Employee's low back pain and radiating right leg pain had never resolved. Dr. Matthisen made an "argument" for continued causation arising from the work injury and the need for additional care. This letter does not contain a treatment plan. (Matthisen letter, January 12, 2015; experience, judgment and observations).

47) On January 21, 2015, Dr. Matthisen filed a claim requesting $2,529.54 for his treatments to Employee, and interest. (Workers' Compensation Claim, January 19, 2015).

48) On January 21, 2015, Dr. Matthisen filed a 17 page itemized statement showing service dates, billings, payments and a $2,529.54 balance due for services rendered to Employee. (Alaska Back Care Center Detailed Ledger Report, January 19, 2015).

49) On February 5, 2015, Employer denied Dr. Matthisen's $2,529.54 claim, based upon Dr. Craven's EME opinions. (Answer to Workers 'Compensation Claim, February 5, 2015).

50) On March 3, 2015, Employer controverted all benefits related to pre-existing lumbar spondylosis and degenerative spondylolisthesis. (Controversion Notice, August 6, 2014).

51) On March 10, March 23, April 3, April 17, and April 29, 2015, Dr. Matthisen treated Employee as usual. (Matthisen chart notes, March 10, 2015 through April 29, 2015).

52) On April 1, 2015, Employee filed a claim seeking payment for Dr. Matthisen's $2,529.54 chiropractic bill and $121.21 in transportation costs to Employee. Employee also requested an unfair or frivolous controversion finding. (Workers' Compensation Claim, March 27, 2015).

53) On April 2, 2015, Employer answered Employee's March 27, 2015 claim and denied Employee was entitled to $2,529.54 in medical costs, $121.21 in transportation costs and an order finding Employer had made an unfair or frivolous controversion. Employer based its denials on Dr. Craven's EME report. (Answer to Workers 'Compensation Claim, April 2, 2015).

54) On April 2, 2015, the parties attended a prehearing conference at which they stipulated to join Employee's and Dr. Matthisen's claims. (Prehearing Conference Summary, April 2, 2015).

55) On April 27, 2015, attorney Maciolek entered her appearance as Employee's attorney. (Entry of Appearance, April 23, 2015).

56) There is no evidence Dr. Matthisen ever withdrew as Employee's non-attorney representative. (ICERS database accessed July 21, 2016).

57) On May 13, June 1, June 15, June 29, July 20, August 8, August 17, August 31, September 14, September 28, October 12, October 26, November 6, November 18, and December 7, and December 21, 2015, Dr. Matthisen continued to treat Employee's spine and SI joint as before. (Matthisen chart notes, May 13, 2015 through December 21, 2015).

58) On May 14, 2015, Employee through counsel filed an amended claim seeking PPI, unspecified medical and transportation costs, an unfair or frivolous controversion finding, attorney's fees and costs. (Workers' Compensation Claim, May 12, 2015).

59) On May 22, 2015, Employer filed an amended answer to Employee's May 2015 claim. Employer denied Employee was entitled to benefits previously claimed and denied he was entitled to newly claimed PPI, attorney's fees and costs. (Answer to Amended Workers' Compensation Claim, May 22, 2015).

60) On November 6, 2015, Dr. Matthisen stated his "frequency of treatment" (once every two to three weeks) and "objectives" (enable Employee to work). The report implies Employee has regular "flare-ups" every two to three weeks, but does not state a reason for the flare-ups or "reasons for frequency of treatments," and does not state Dr. Matthisen's "modalities" or refer to chart notes. It is not a conforming treatment plan. (Physician's Report, November 6, 2015; experience, judgment and observations).

61) On November 11, 2015, Edward Tapper, M.D., evaluated Employee for a second independent medical evaluation (SIME). Dr. Tapper stated he "mostly" agreed with Dr. Craven's assessment, though he disagreed on some points. Dr. Tapper noted Employee's pre-injury chiropractic care was primarily limited to his neck and Employee was not receiving low back treatment to a significant degree or taking medication before his work injury with Employer. In Dr. Tapper's view, there is no way to know "with certainty," whether a hard fall on his buttocks in September 2012, was not the substantial cause of Employee's spondylolisthesis, even though he had pre-existing spondylolysis without the slippage, which made this condition become spondylolisthesis. Dr. Tapper disagreed the nerve root irritation had resolved by August 23, 2013, but agreed Employee's chiropractic treatment had been "unnecessary and over done." Employee was still symptomatic and needed periodic epidural steroid injections and perhaps surgery. Chiropractic care was not appropriate, would not assist him and would not make Employee more functional. Dr. Spencer's treatments, however, probably would. Dr. Tapper provided a 12 percent permanent partial interment rating, which included spondylolisthesis under table 17-4, AMA *Guidelines*, *Sixth Edition*. (Tapper report, November 11, 2015).

62) On December 2, 2015, Dr. Matthisen stated his "frequency of treatment" (once every two to three weeks) and his "objectives" (reduce Employee's symptoms and enable him to work). The report does not state Dr. Matthisen's "modalities" or his "reasons for frequency of treatments" and is not a conforming treatment plan. (Physician's Report, December 2, 2015; experience, judgment and observations).

63) On December 17, 2015, Dr. Matthisen stated his "objectives" (reduce spine pain so Employee can work) but does not state Dr. Matthisen's "modalities," "frequency of treatments" or "reasons for frequency of treatments." It is not a conforming treatment plan. (Physician's Report, December 17, 2015; experience, judgment and observations).

64) On January 4, January 22, February 10, February 24, March 9, March 25, April 8, April 22, and May 6, 2016, Dr. Matthisen continued to treat Employee using the same modalities to the same body parts. (Matthisen chart notes, January 4, 2016 through May 6, 2016).

65) On January 5, 2016, Dr. Matthisen stated his "frequency of treatment" (once every two to three weeks), "objectives" ("the same goals" presumably meaning to keep Employee working) and, at least one "modality" (spinal manipulation). The report does not specifically state

Dr. Matthisen's "reasons for frequency of treatments," as a regular two-to-three-week "flare-up" does not constitute a "reason" for exceeding frequency standards. It is not a conforming treatment plan. (Physician's Report, January 5, 2016; experience, judgment and observations).

66) On January 15, 2016, Employer again controverted chiropractic treatments after November 11, 2015 (Dr. Tapper's SIME report date), and a PPI rating above 12 percent. (Controversion Notice, January 13, 2016).

67) On February 16, 2016, Dr. Matthisen stated his "frequency of treatment" (once every two to three weeks) and "objectives" (reduce Employee's pain symptoms). This difficult to read report did not state Dr. Matthisen's "modalities" or his "reasons for frequency of treatments." It is not a conforming treatment plan. (Physician's Report, February 16, 2016; experience, judgment and observations).

68) On February 16, 2016, Dr. Matthisen's letter also responded to Dr. Tapper's report as an "addendum" to his February 16, 2016 physician's report, and took issue with Dr. Tapper's suggestion Employee no longer needed chiropractic care. Dr. Matthisen stated Employee injured his right SI joint when he fell at work and Dr. Matthisen's treatment had been primarily directed to the SI joint. Dr. Matthisen noted chiropractic care had been shown to be the most effective treatment for mechanical back pain, and cited studies as support. He recommended continued chiropractic care for Employee about twice a month to address his work injury with Employer. To the extent Dr. Matthisen intended this letter to constitute a "treatment plan," he stated his "frequency of treatments" (about twice a month), "objectives" (to provide broad and significant long-term benefit), and general "modalities" ("spinal manipulation/chiropractic care"). Assuming "flare-ups" from a "chronic right SI joint dysfunction" constitutes "reasons for frequency of treatments," this letter could constitute a valid treatment plan. (Matthisen letter, February 16, 2016; experience, judgment and observations).

69) On February 25, 2016, Employer filed an amended answer to Dr. Matthisen's and Employee's claims. Employer admitted it paid Employee 12 percent PPI based upon Dr. Tapper's SIME opinions. Employer denied Employee or Dr. Matthisen were entitled to medical costs for chiropractic care incurred after January 13, 2016, when Employer controverted such care based upon Dr. Tapper's opinions. Employer further denied Employee or Dr. Matthisen were entitled to costs related to continuing and multiple treatments exceeding the treatment frequency standards established in 8 AAC 45.082(f). Employer's answer did not specifically

address the required treatment plan discussed in 8 AAC 45.082(g). (Amended Answer to Workers' Compensation Claim, February 25, 2016).

70) On March 1, 2016, Dr. Matthisen stated his "frequency of treatment" (once every two to three weeks) and arguably his "reasons for frequency of treatments" (how long Employee can go before his pain returns). The report does not state Dr. Matthisen's "modalities" or his "objectives" and is not a conforming treatment plan. (Physician's Report, March 1, 2016; experience, judgment and observations).

71) On March 15, 2016, the parties attended a prehearing conference at which Employee's and Dr. Matthisen's claims for $2,529.54 were identified as hearing issues. Employee identified $121.21 in transportation costs, PPI, a finding Employer made an unfair or frivolous controversion, attorney's fees and costs as additional issues for hearing. Employer denied liability for any chiropractic treatment after November 11, 2015. The parties agreed to a June 21, 2016 hearing. (Prehearing Conference Summary, March 15, 2016).

72) On April 5, 2016, Dr. Matthisen stated his "frequency of treatment" (once every two to three weeks) but did not expressly state his "modalities," "objectives" or his "reasons for frequency of treatments." This is not a conforming treatment plan. (Physician's Report, April 5, 2016; experience, judgment and observations).

73) On May 2, 2016, Dr. Matthisen's "modalities" are not expressly stated but could be gleaned from his attached chart notes. He stated his "objectives" (to reduce his symptoms and allow him to work) but did not state his "frequency of treatment" or "reasons for frequency of treatments." This is not a conforming treatment plan. (Physician's Report, May 2, 2016; experience, judgment and observations).

74) On June 1, 2016, Richard Rivera, DC, performed a record-review EME. He diagnosed a lumbar sprain and contusion substantially caused by and related to Employee's September 13, 2012 work injury; lumbar spondylosis; multilevel degenerative joint disc disease L5-S1; degenerative spondylolisthesis grade and I, pre-existing the industrial injury; and symptoms and findings warranting chiropractic treatment at L5 and at the right SI joint, predating September 13, 2012, consistent with a pre-existing mechanical back condition. Dr. Rivera opined Employee's present chiropractic treatment regimen was neither reasonable nor necessary. Rather, in his view, the treatment was consistent with chiropractic treatment being rendered prior to the work injury. He found no evidence suggesting chiropractic treatment caused any objective

improvement. Dr. Rivera did not think palliative chiropractic care was medically reasonable or necessary to relieve chronic, debilitating pain. In his view, there was no evidence demonstrating chiropractic care delayed or reduced degenerative disc disease progression, slowed lumbar spondylolisthesis or delayed surgical intervention. Dr. Rivera concluded Employee needed no further chiropractic treatment for his work injury. (Rivera report, June 1, 2016).

75) In his deposition, Dr. Rivera reiterated his written opinions. He noted Employee's 143 chiropractic treatments had been excessive. Dr. Rivera stated "there are absolutely no . . . published guidelines or chiropractic treatment parameters which support this type of care." (Rivera deposition, June 9, 2016, at 36). Dr. Rivera would have referred Employee to an orthopedic specialist for the epidural steroid injections "much earlier." (*Id*. at 37-38). Dr. Rivera agreed there were many different causes for spondylolisthesis, including genetics, but genetics were not a factor in Employee's case. (*Id*. at 45). Dr. Rivera was not familiar with several chiropractic studies referenced by Employee's attorney. (*Id*. at 47-48).

76) At hearing on June 21, 2016, Employee credibly explained how chiropractic care had benefited him since his work injury with Employer. In his view, chiropractic care enabled Employee to continue working and avoid narcotic medication, excessive epidural steroid injections and surgical intervention. Working longer than two weeks required Employee to increase his Ibuprofen and he was concerned about its side effects. Employee wanted to avoid back surgery. Employee described a "new normal" for him since his work injury in which he is significantly limited in his functional abilities. Dr. Matthisen's chiropractic care helped when Employee felt "locked up," and relieved his pain. On cross-examination, Employee admitted he can perform all his job duties, but "it hurts" and he must take breaks. To date, Employee has not lost a day from work following his injury with Employer, except for when he obtained epidural steroid injections. Employee believes his back is incrementally improving, slowly. Employee admitted he does not exercise much but walks his dogs. His primary care physician has suggested exercising and core strengthening. Employee could not recall if Dr. Matthisen made similar recommendations. He had no out-of-pocket chiropractic expenses. Employee likened his incremental improvement to a stock chart, where the graph is "trending upward." (Record).

77) At hearing on June 21, 2016, Dr. Matthisen testified in conformance with his written reports. He has practiced chiropractic medicine for 25 years. Dr. Matthisen has significant experience in workers' compensation cases, having performed EMEs in years past. He said

Employee fell on his wallet, which caused his right SI joint to rotate and prevented rapid healing. Dr. Matthisen noted Employee suffered two injuries when he fell: (1) an L4-5 injury including spondylolisthesis and bulging discs and annular tears; and (2) a right SI joint injury including ligament damage. He said chiropractic treatment was and is reasonable because it addresses ligament and joint problems at L4-5, treats facet joints, and mobilizes mechanical back pain. Chiropractic treatment was necessary to treat the SI joint, which he said is only about an inch or so away from the spine, and the two must work together. Noting Employee has an undisputed 12 percent PPI rating, Dr. Matthisen said nothing would improve Employee's condition, but chiropractic treatments alleviate his symptoms. In his view, chiropractic treatment is better for Employee than oral medication and epidural steroid injections, with all their deleterious effects. As to why he did not prescribe "core exercises" for Employee, Dr. Matthisen noted Employee has a ligament injury, not a muscle injury. In Dr. Matthisen's opinion, his treatments resulted in objective improvement because Employee could walk better and could go almost two weeks without his SI joint "locking up on him." Dr. Matthisen credibly explained how, in his opinion, his chiropractic treatments benefited Employee, enabled him to continue working and delayed the need for more invasive treatments such as surgery. In his opinion, chiropractic treatment for Employee is both reasonable and necessary. (Matthisen).

78) On cross-examination and panel questioning, Dr. Matthisen admitted he had a financial interest in this case as he claimed over $3,000 in chiropractic bills for treating Employee. Dr. Matthisen's primary focus in this case was to treat Employee's right SI joint. He initially treated Employee's lumbar spine joints, but when he did not respond, Dr. Matthisen stopped manipulating them. While he considered it, Dr. Matthisen did not attempt a chiropractic "trial withdrawal" because Employee's situation is "dynamic," and if he stops treating the SI joint, it may "really get out of whack." Dr. Matthisen cited several studies, which he said supported his views about chiropractic treatment, including one from the University of California at Los Angeles. Employee's degenerative process is continuing and Dr. Matthisen is unsure when he might be medically stable. In Dr. Matthisen's view, studies demonstrate chiropractic care will retard lumbar degeneration. As for how long chiropractic care may continue, Dr. Matthisen said when Employee's symptoms no longer get reduced, the chiropractic care is no longer indicated. He adjusts Employee's cervical and thoracic spine because the lumbar spine affects those regions, but it does not necessarily work the other way around. Dr. Matthisen disagrees with

Drs. Craven's, Tapper's and Rivera's views concerning past and ongoing chiropractic treatment to address Employee's work injury. The first two are not chiropractors, and Dr. Matthisen simply disagrees with Dr. Rivera's opinions and references to studies. Dr. Matthisen was not sure during which time period his outstanding bills were incurred but noted the "ledger is available." He sent his reports to "the workers' compensation insurance company" and thinks he has not been paid since November 2015. Upon further reflection, Dr. Matthisen confirmed there were no unpaid chiropractic bills before November 11, 2015, and his claim was, therefore, from November 12, 2015, forward. While he "filed" his medical records and associated bills, Dr. Matthisen understood he did not need to file his itemized bills with the board. Dr. Matthisen insisted he filed appropriate treatment plans. (*Id.*).

79) Employer continued to pay chiropractic bills to Dr. Matthisen's office throughout 2014, 2015 and into May 2016. (Employer's Documentary Evidence List, June 1, 2016).

80) Based upon his chart notes and itemized billing statement, Dr. Matthisen's treatments to Employee for the first 12 "months" post-injury are summarized as follows. (Matthisen chart notes, September 26, 2012 through August 26, 2013; Detailed Ledger Report, January 19, 2015):

Table I

Treatment Day	Treatment Date	Treatment Week
Beginning of 1st "month"	September 26, 2012	"three treatments per week"
Wednesday	September 26, 2012	1st week
Tuesday	October 2, 2012	1st week
Friday	October 5, 2012	2nd week
Wednesday	October 10, 2012	2nd week
Tuesday	October 16, 2012	3rd week
Monday	October 22, 2012	3rd week
In the 1st "month," Dr. Matthisen did not exceed the frequency standards.		
Beginning of 2nd "month"	October 24, 2012	"two treatments per week"
Monday	October 29, 2012	1st week
Wednesday	October 31, 2012	1st week
Wednesday	November 14, 2012	3rd week
In the 2nd "month," Dr. Matthisen did not exceed the frequency standards.		
Beginning of 3rd "month"	November 21, 2012	"two treatments per week"
Monday	November 26, 2012	1st week
Wednesday	November 28, 2012	1st week
Friday	November 30, 2012	2nd week
Monday	December 3, 2012	2nd week
Friday	December 7, 2012	3rd week
Monday	December 10, 2012	3rd week
Wednesday	December 12, 2012	4th week

Monday	December 17, 2012	4th week
In the 3rd treatment "month," Dr. Matthisen did not exceed the frequency standards.		
Beginning of 4th "month"	December 19, 2012	"one treatment per week"
Friday	December 21, 2012	1st week
Wednesday	December 26, 2012	2nd week
Friday	December 28, 2012	2nd week
Friday	January 4, 2013	3rd week
Monday	January 7, 2013	3rd week
Wednesday	January 9, 2013	4th week
Monday	January 14, 2013	4th week
In the 4th treatment "month," on December 28, 2012, Dr. Matthisen exceeded the frequency standards.		
Beginning of 5th "month"	January 16, 2013	"one treatment per week"
Friday	January 18, 2013	1st week
Monday	January 21, 2013	1st week
Friday	January 25, 2013	2nd week
Monday	January 28, 2013	2nd week
Friday;	February 1, 2013	3rd week
Monday	February 4, 2013	3rd week
Friday	February 8, 2013	4th week
Monday	February 11, 2013	4th week
In the 5th treatment "month," Dr. Matthisen exceeded the frequency standards each week.		
Beginning of 6th "month"	February 13, 2013	"one treatment per month"
Friday	February 15, 2013	1st week
Friday	March 8, 2013	4th week
Monday	March 11, 2013	4th week
In the 6th treatment "month," Dr. Matthisen exceeded the frequency standards.		
Beginning of 7th "month"	March 13, 2013	"one treatment per month"
Monday	March 18, 2013	1st week
Tuesday	March 26, 2013	2nd week
Monday	April 1, 2013	3rd week
Friday	April 5, 2013	4th week
In the 7th treatment "month," Dr. Matthisen exceeded the frequency standards.		
Beginning of 8th "month"	April 10, 2013	"one treatment per month"
Wednesday	April 10, 2013	1st week
Wednesday	April 17, 2013	2nd week
Friday	April 19, 2013	2nd week
Friday	April 26, 2013	3rd week
Friday	May 3, 2013	4th week
In the 8th treatment "month," Dr. Matthisen exceeded the frequency standards.		
Beginning of 9th "month"	May 8, 2013	"one treatment per month"
Friday	May 10, 2013	1st week
Friday	May 17, 2013	2nd week
Friday	May 24, 2013	3rd week
Thursday	May 30, 2013	4th week
In the 9th treatment "month," Dr. Matthisen exceeded the frequency standards.		

Beginning of 10th "month"	June 5, 2013	"one treatment per month"
Friday	June 7, 2013	1st week
Monday	June 10, 2013	1st week
Tuesday	June 18, 2013	2nd week
Monday	June 24, 2013	3rd week
Monday	July 1, 2013	4th week
In the 10th treatment "month," Dr. Matthisen exceeded the frequency standards.		
Beginning of 11th "month"	July 3, 2013	"one treatment per month"
Monday	July 8, 2013	1st week
Wednesday	July 17, 2013	2nd week
Wednesday	July 24, 2013	3rd week
Friday	July 26, 2013	4th week
Monday	July 29, 2013	4th week
In the 11th treatment "month," Dr. Matthisen exceeded the frequency standards.		
Beginning of 12th "month"	July 31, 2013	"one treatment per month"
Wednesday	July 31, 2013	1st week
Thursday	August 1, 2013	1st week
Friday	August 2, 2013	1st week
Monday	August 5, 2013	1st week
Wednesday	August 7, 2013	2nd week
Friday	August 9, 2013	2nd week
Monday	August 12, 2013	2nd week
Wednesday	August 14, 2013	3rd week
Monday	August 19, 2013	3rd week
Monday	August 26, 2013	4th week
In the 12th treatment "month," Dr. Matthisen exceeded the frequency standards.		
End of 12th "month"	August 28, 2013	

81) Based primarily upon Dr. Matthisen's itemized ledger, between September 26, 2012 and January 14, 2015, he treated Employee nine times with manipulation from September 26, 2012 through November 26, 2012, totaling $616; 23 times with manipulation and "therapeutic activ" from November 28, 2012 through February 11, 2013, totaling $2,654; and 84 times with manipulation, "therapeutic activ," "hot or cold fome," and "mechanical tract" from February 15, 2013 through January 14, 2015, totaling $17,764. Through January 14, 2015, Dr. Matthisen had billed and was paid approximately $21,034 for chiropractic treatments to Employee. The ledger does not disclose who paid Dr. Matthisen's bills. (Detailed Ledger Report, January 19, 2015).

82) Dr. Matthisen's medical treatment as summarized in Table I constituted continuing and multiple treatments of a similar nature. Fourteen days from December 28, 2012, the first day on which Dr. Matthisen exceeded the treatment frequency standards, was January 11, 2013. There is no evidence Dr. Matthisen provided a written treatment plan to Employee and Employer by

January 11, 2013. If Dr. Matthisen's contemporaneous hand-written chart notes were intended to contain written treatment plans, the records are not readable and are not adequate to constitute a treatment plan. Dr. Matthisen's January 23, 2013 physicians report and associated narrative, while historical, do not contain a future treatment plan including "objectives, modalities, treatment frequency and reasons for treatment frequency." Beginning December 28, 2012, Dr. Matthisen exceeded the frequency standards every month during which he treated Employee. (Table I; experience, judgment and observations).

83) In conjunction with or in addition to treatment Dr. Matthisen provided as set forth in Table I, between February 1, 2013 and September 2, 2015, Dr. Matthisen prepared 47 "Physician's Reports." Only four physician's reports during this time included a conforming "treatment plan," including Dr. Matthisen's "objectives, modalities, frequency of treatments, and reasons for the frequency of treatments." The remainder lacked one or more required statements. Beginning November 6, 2015 through May 2, 2016, Dr. Matthisen prepared nine more "Physician's Reports." Only the February 16, 2016 letter offered as an addendum to Dr. Matthisen's February 16, 2016 physician's report arguably contains a conforming treatment plan. (Physician's Reports, November 6, 2015 through May 2, 2016; experience, judgment and observations).

84) There is no evidence Dr. Matthisen provided treatment plans to Employee. (Observations).

85) Neither Employee nor Dr. Matthisen filed a hearing brief. No itemized statement from Dr. Matthisen covering periods after January 14, 2105, is found in the agency record, and there is no documentary support for Dr. Matthisen's claimed $3,315.30 chiropractic bill. (Observations).

86) Attorney Maciolek did not file an itemized attorney's fee and cost affidavit. (ICERS database accessed July 21, 2016).

PRINCIPLES OF LAW

The board may base its decision not only on direct testimony and other tangible evidence, but also on the board's "experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn from all of the above." *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 533-34 (Alaska 1987). In *Barlow v. Thompson*, 221 P.3d 998 (Alaska 2009), a party objected to the court citing a statute not mentioned by the other party. The Alaska Supreme Court said a court has a right to cite a statute in its decision and base its decision on the law, even though it was not raised at argument, so long as all parties had a right to brief the issue.

> **AS 23.30.095. Medical treatments, services, and examinations.**
> . . . .
>
> (c) When a claim is made for a course of treatment requiring continuing and multiple treatments of a similar nature, in addition to the notice, the physician or health care provider shall furnish a written treatment plan if the course of treatment will require more frequent outpatient visits than the standard treatment frequency for the nature and degree of the injury and the type of treatments. The treatment plan shall be furnished to the employee and the employer within 14 days after treatment begins. The treatment plan must include objectives, modalities, frequency of treatments, and reasons for the frequency of treatments. If the treatment plan is not furnished as required under this subsection, neither the employer nor the employee may be required to pay for treatments that exceed the frequency standard. The board shall adopt regulations establishing standards for frequency of treatment. . . .
>
> **AS 23.30.097. Fees for medical treatment and services**. . . .
> . . . .
>
> (f) An employee may not be required to pay a fee or charge for medical treatment or service provided under this chapter. . . .
>
> **AS 23.30.120. Presumptions** (a) In a proceeding for the enforcement of a claim for compensation under this chapter it is presumed, in the absence of substantial evidence to the contrary, that
>
> (1) the claim comes within the provisions of this chapter. . . .

Under AS 23.30.120(a)(1), benefits sought by an injured worker are presumed to be compensable. *Meek v. Unocal Corp*., 914 P.2d 1276, 1279 (Alaska 1996). The presumption of compensability is applicable to any claim for compensation under the workers' compensation statute. (*Id*.; emphasis omitted). Continuing medical care is covered by the presumption. *Municipality of Anchorage v. Carter*, 818 P.2d 661, 664-65 (Alaska 1991). The presumption application involves a three-step analysis. To attach the presumption of compensability, an employee must first establish a "preliminary link" between his injury and the employment. *Tolbert v. Alascom, Inc.*, 973 P.2d 603, 610 (Alaska 1999). An employer must rebut the raised presumption with "substantial evidence." *Huit v. Ashwater Burns, Inc*., 372 P.3d 904 (Alaska 2016). Because the employer's evidence is not weighed against the employee's evidence, credibility is not examined at the second stage. *Veco, Inc. v. Wolfer*, 693 P.2d 865, 869-70 (Alaska 1985).

If the employer's evidence is sufficient to rebut the presumption, it drops out and the employee must prove his case by a preponderance of the evidence. *Runstrom v. Alaska Native Medical Center*, AWCAC Decision No. 150 at 8 (March 25, 2011) (reversed on other grounds, *Huit v. Ashwater Burns, Inc*., 372 P.3d 904 (Alaska 2016)). This means the employee must "induce a belief" in the fact-finders' minds that the facts being asserted are probably true. *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964). In the third step, evidence is weighed, inferences are drawn and credibility is considered. The presumption does not apply without a factual dispute. *Burke v. Houston NANA, LLC*, 222 P.3d 851 (Alaska 2010). In *Lindhag v. State, Dept. of Natural Resources*, 123 P.3d 948 (Alaska 2005), the Alaska Supreme Court said a claim can fail for "failure of proof."

> **AS 23.30.122. Credibility of witnesses**. The board has the sole power to determine the credibility of a witness. A finding by the board concerning the weight to be accorded a witness's testimony, including medical testimony and reports, is conclusive even if the evidence is conflicting or susceptible to contrary conclusions. The findings of the board are subject to the same standard of review as a jury's finding in a civil action.

The board's finding of credibility "is binding for any review of the Board's factual findings." *Smith v. CSK Auto, Inc.*, 204 P.3d 1001, 1008 (Alaska 2009).

> **AS 23.30.145. Attorney Fees**. (a) Fees for legal services rendered in respect to a claim are not valid unless approved by the board, and the fees may not be less than 25 percent on the first $1,000 of compensation or part of the first $1,000 of compensation, and 10 percent of all sums in excess of $1,000 of compensation. When the board advises that a claim has been controverted, in whole or in part, the board may direct that the fees for legal services be paid by the employer or carrier in addition to compensation awarded; the fees may be allowed only on the amount of compensation controverted and awarded. . . . In determining the amount of fees the board shall take into consideration the nature, length, and complexity of the services performed, transportation charges, and the benefits resulting from the services to the compensation beneficiaries. . . .

In *Childs v. Copper Valley Electric Association*, 860 P.2d 1184 (Alaska 1993), the Alaska Supreme Court said when an employer controverts compensation and an injured worker files a claim to recover these benefits, his lawyer is entitled to attorney's fees when the employer voluntarily pays the previously controverted benefits because the lawyer's efforts induced the payment.

> **8 AAC 45.082. Medical treatment**. . . .
> . . . .
>
> (f) If an injury occurs on or after July 1, 1988, and requires continuing and multiple treatments of a similar nature, the standards for payment for frequency of outpatient treatment for the injury will be as follows. Except as provided in (h) of this section, payment for a course of treatment for the injury may not exceed more than three treatments per week for the first month, two treatments per week for the second and third months, one treatment per week for the fourth and fifth months, and one treatment per month for the sixth through twelfth months. Upon request, and in accordance with AS 23.30.095(c), the board will, in its discretion, approve payment for more frequent treatments.
>
> (g) The board will, in its discretion, require the employer to pay for treatments that exceed the frequency standards in (f) of this section only if the board finds that
>
> (1) the written treatment plan was given to the employer and employee within 14 days after treatments began;
>
> (2) the treatments improved or are likely to improve the employee's conditions; and
>
> (3) a preponderance of the medical evidence supports a conclusion that the board's frequency standards are unreasonable considering the nature of the employee's injury.
>
> (h) An employee or employer may choose to pay for a course of treatments that exceeds the frequency standards in (f) of this section even though payment is not required by the board or by AS 23.30.095.
> . . . .
>
> (*l*) In this section,
>
> (1) "month" means a four-week period, the first of which commences on the first day of treatment; . . .

In *Hale v. Anchorage School District*, 922 P.2d 268 (Alaska 1996), the Alaska Supreme Court explained how the treatment plan regulation works:

> Once it began a course of treatment of daily physical therapy, the fourteen-day notification period of AS 23.30.095(c) commenced. Regardless of when Hale's treating physician determined that Hale would need long-term physical therapy, Physical Therapists was required to submit a conforming treatment plan within fourteen days after October 7, the date it began physical therapy in excess of the standard treatment frequency (footnote omitted). (*Hale* at 270).

The board cannot allow more frequent treatments without the submission of a treatment plan following the procedures set forth in 8 AAC 45.082(g). *Grove v. Alaska Constructors & Erectors*, 948 P.2d 454 (Alaska 1997). A "plan" is a method of "putting into effect an intention or proposal." *Black's Law Dictionary*, Abridged Fifth Edition, p. 599 (1983).

> **8 AAC 45.180. Costs and attorney's fees.** (a) This section does not apply to fees incurred in appellate proceedings.
>
> (b) A fee under AS 23.30.145 (a) will only be awarded to an attorney licensed to practice law in this or another state. An attorney seeking a fee from an employer for services performed on behalf of an applicant must apply to the board for approval of the fee; the attorney may submit an application for adjustment of claim or a petition. An attorney requesting a fee in excess of the statutory minimum in AS 23.30.145(a) must (1) file an affidavit itemizing the hours expended, as well as the extent and character of the work performed, and (2) if a hearing is scheduled, file the affidavit at least three working days before the hearing on the claim for which the services were rendered; at the hearing, the attorney may supplement the affidavit by testifying about the hours expended and the extent and character of the work performed after the affidavit was filed. If the request and affidavit are not in accordance with this subsection, the board will deny the request for a fee in excess of the statutory minimum fee, and will award the minimum statutory fee.
>
> (c) Except as otherwise provided in this subsection, an attorney fee may not be collected from an applicant without board approval. A request for approval of a fee to be paid by an applicant must be supported by an affidavit showing the extent and character of the legal services performed. Board approval of an attorney fee is not required if the fee
>
> (1) is to be paid directly to an attorney under the applicant's union-prepaid legal trust or applicant's insurance plan; or
>
> (2) is a one-time-only charge to that particular applicant by the attorney, the attorney performed legal services without entering an appearance, and the fee does not exceed $300.
>
> (d) The board will award a fee under AS 23.30.145(b) only to an attorney licensed to practice law under the laws of this or another state.
>
> (1) A request for a fee under AS 23.30.145 (b) must be verified by an affidavit itemizing the hours expended as well as the extent and character of the work performed, and, if a hearing is scheduled, must be filed at least three working days before the hearing on the claim for which the services were rendered; at hearing the attorney may supplement the affidavit by testifying about the hours

expended and the extent and character of the work performed after the filing of the affidavit. Failure by the attorney to file the request and affidavit in accordance with this paragraph is considered a waiver of the attorney's right to recover a reasonable fee in excess of the statutory minimum fee under AS 23.30.145(a), if AS 23.30.145(a) is applicable to the claim, unless the board determines that good cause exists to excuse the failure to comply with this section.

(2) In awarding a reasonable fee under AS 23.30.145(b) the board will award a fee reasonably commensurate with the actual work performed and will consider the attorney's affidavit filed under (1) of this subsection, the nature, length, and complexity of the services performed, the benefits resulting to the compensation beneficiaries from the services, and the amount of benefits involved.

(e) Fee contracts are not enforceable unless approved by the board. The board will not approve attorney's fees in advance in excess of the statutory minimum under AS 23.30.145.

(f) The board will award an applicant the necessary and reasonable costs relating to the preparation and presentation of the issues upon which the applicant prevailed at the hearing on the claim. The applicant must file a statement listing each cost claimed, and must file an affidavit stating that the costs are correct and that the costs were incurred in connection with the claim. The following costs will, in the board's discretion, be awarded to an applicant:

(1) costs incurred in making a witness available for cross-examination;

(2) court reporter fees and costs of obtaining deposition transcripts;

(3) costs of obtaining medical reports;

(4) costs of taking the deposition of a medical expert, provided all parties to the deposition have the opportunity to obtain and review the medical records before scheduling the deposition;

(5) travel costs incurred by an employee in attending a deposition prompted by a Smallwood objection;

(6) costs for telephonic participation in a hearing;

(7) costs incurred in securing the services and testimony, if necessary, of vocational rehabilitation experts;

(8) costs incurred in obtaining the in-person testimony of physicians at a scheduled hearing;

(9) expert witness fees, if the board finds the expert's testimony to be relevant to the claim;

(10) long-distance telephone calls, if the board finds the call to be relevant to the claim;

(11) the costs of a licensed investigator, if the board finds the investigator's services to be relevant and necessary;

(12) reasonable costs incurred in serving subpoenas issued by the board, if the board finds the subpoenas to be necessary;

(13) reasonable travel costs incurred by an applicant to attend a hearing, if the board finds that the applicant's attendance is necessary;

(14) fees for the services of a paralegal or law clerk, but only if the paralegal or law clerk

(A) is employed by an attorney licensed in this or another state;

(B) performed the work under the supervision of a licensed attorney;

(C) performed work that is not clerical in nature;

(D) files an affidavit itemizing the services performed and the time spent in performing each service; and

(E) does not duplicate work for which an attorney's fee was awarded;

(15) duplication fees at 10 cents per page, unless justification warranting awarding a higher fee is presented;

(16) government sales taxes on legal services;

(17) other costs as determined by the board.

(g) Costs incurred in attending depositions not necessitated by a Smallwood objection may be awarded only where the board finds that attendance at the deposition was reasonable.

(h) Board approval of an attorney fee is not required if the fee is paid by the employer to the employer's attorney.

ANALYSIS

1) Are past and ongoing chiropractic treatments and related transportation costs compensable?

A) Past treatments were either already paid or were not properly documented.

Both Employee and Dr. Matthisen in their pleadings initially claimed $2,529.54 for Dr. Matthisen's unpaid, past chiropractic care. This amount was derived from Dr. Matthisen's January 19, 2015 "Detailed Ledger Report," which itemized his chiropractic treatment from September 26, 2012 through January 14, 2015, totaling $2,529.54. But at hearing, Dr. Matthisen admitted he had no unpaid bills before November 11, 2015, and clarified his claim was for treatments beginning November 12, 2015, and continuing. Employee did not dispute this and conceded he had no out-of-pocket medical expenses. There were no factual disputes raised at hearing concerning the alleged bill; it was simply not filed. So the presumption analysis need not be applied here. *Burke*. Neither Employee nor Dr. Matthisen filed an itemized statement explaining the claimed $3,315.30 in outstanding chiropractic care. At hearing, Dr. Matthisen conceded he was not aware he had to file his bill as evidence. His testimony alone is not adequate to support the claims because the treatment dates and amounts cannot be scrutinized. Therefore, Employee's and Dr. Matthisen's claims for an order requiring Employer to pay an additional $3,315.30 in outstanding chiropractic bills will be denied for failure of proof. *Saxton*; *Lindhag*. Alternatively, even had an itemized statement or individual bills been filed, the claims must be further analyzed under the frequency standards and treatment plan requirements.

B) Dr. Matthisen's care exceeded the treatment frequency standards and he failed to provide conforming treatment plans.

When the legislature amended AS 23.30.095(c), it intended to present a "bright line" limitation on certain medical treatment. Accordingly, the Act and administrative regulations have specific rules pertaining to "continuing and multiple treatments of a similar nature." The law imposes treatment frequency standards and express limitations upon such treatment. It is not always apparent, when a medical provider using "continuing and multiple treatments of a similar nature" first starts treating a patient that such treatments may exceed the frequency standards. *Hale*. In many cases they do not. In cases where the provider has not exceeded the frequency standards, all is well and no treatment plan is required. *Grove*. However, once a medical provider exceeds

the treatment frequency standards, and every time the provider exceeds those standards thereafter, the provider must, within 14 days of the date the treatment frequency standards are exceeded, provide a conforming written treatment plan to the employee and the employer. *Hale*. The written treatment plan must include "objectives, modalities, frequency of treatments, and reasons for the frequency of treatments." AS 23.30.095(c). If a conforming written treatment plan is not furnished, neither Employer nor Employee may be required to pay for excess treatments. *Grove*.

Regulation 8 AAC 45.082(f) sets frequency standards: No more than three treatments per week for the first month; two treatments per week for the second and third months; one treatment per week for the fourth and fifth months; and one treatment per month for the sixth through twelfth months. The regulation suggests in routine cases "continuing and multiple treatments of a similar nature" will cease by the twelfth "month's" end. (*Id*.). "Month" has an unusual though specific definition and is defined as a "four-week period, the first of which commences on the first day of treatment." 8 AAC 45.082(*l*)(1).

Upon request, and in accordance with AS 23.30.095(c), more frequent treatments and treatments exceeding twelve "months" may be approved. However, "continuing and multiple treatments of a similar nature" may only be approved if: (1) the written treatment plan was given to Employer and Employee within 14 days after treatments began; (2) the treatments improved or are likely to improve Employee's condition; and (3) a preponderance of medical evidence supports a conclusion that the frequency standards are unreasonable given Employee's injury. 8 AAC 45.082(g). A written treatment "plan" delineates action for the future; it is more than a history. It is a document "putting into effect an intention or proposal." *Black's Law Dictionary*.

Employee and Dr. Matthisen both request an order requiring Employer to pay Dr. Matthisen's $3,315.30 bill for past chiropractic treatment and to authorize continuing chiropractic care for Employee's work injury. Dr. Matthisen's treatments exceeded the frequency standards beginning December 28, 2012, and every "month" thereafter. His February 1, 2013 report was both untimely and nonconforming because it failed to include "objectives, modalities, frequency of treatments, and reasons for the frequency of treatments." AS 23.30.095(c); 8 AAC 45.082(f),

(g)(1-3); *Hale*; *Grove*. Through October 5, 2015, Dr. Matthisen prepared 47 physician's report, in which he attempted to set forth treatment plans. Only four, July 8, 2013, January 20, 2014, March 4, 2014 and March 18, 2014, contained conforming treatment plans. Nevertheless, it is undisputed Employer chose to pay all Dr. Matthisen's bills through November 11, 2015, which was Employer's prerogative. 8 AAC 45.082(h). By regulation, all of Dr. Matthisen's treatments after the twelfth "month" exceeded treatment frequency standards. 8 AAC 45.082(f).

As for Dr. Matthisen's chiropractic treatments on or after November 12, 2015, and continuing, Employee and Dr. Matthisen both want Dr. Matthisen's outstanding chiropractic bills paid and future chiropractic treatment authorized. While Employer did not brief or argue nonconforming treatment plans as a defense, Employer's liability for past and ongoing chiropractic care was the primary issue at hearing. All three parties had an opportunity to brief this issue, including the necessity for a conforming treatment plan. *Thompson*. Employee and Dr. Matthisen chose not to file a brief. The panel at hearing asked Dr. Matthisen about treatment plans, and he said he had filed treatment plans, without offering additional evidence or testimony on this subject. Therefore, this decision may appropriately cite and rely on AS 23.30.095(c) and 8 AAC 45.082(g) as support for its conclusions. *Thompson*.

Because Dr. Matthisen exceeded the treatment frequency standards beginning December 28, 2012, and since 12 "months" elapsed since his treatments exceeded the frequency limitations, it is undisputed Dr. Matthisen exceeded the frequency standards every "month" during which he treated Employee thereafter. *Rogers & Babler*. Employee or Dr. Matthisen must show Dr. Matthisen prepared conforming treatment plans covering these periods and gave copies to Employee within 14 days, in each month in which he exceeded the treatment frequency. 8 AAC 45.082(g)(1); *Hale*; *Grove*. Since Dr. Matthisen's past bills arose beginning November 12, 2015, he should have prepared a conforming treatment plan before then to qualify as a future "plan." *Black's Law Dictionary*. The November 6, 2015 physician's report is the relevant initial plan for the past bills at issue, and it and subsequent reports dated December 2, 2015, December 17, 2015, January 5, 2016, February 16, 2016, March 1, 2016, April 5, 2016 and May 2, 2016, all contain partial treatment plans. However, none contain all four required "objectives, modalities, frequency of treatments, and reasons for the frequency of treatments." AS 23.30.095(c).

An injured worker, adjuster, employer or fact-finder should not have to search through mostly illegible chart notes or "read between the lines" in physician's reports to ascertain an attending chiropractor's treatment plan for an injured worker. An injured worker has the right to know his chiropractor's plans for future treatment when these exceed frequency standards. Giving the patient a clear, understandable, written treatment plan provides this knowledge. *Rogers & Babler*. There is no evidence Dr. Matthisen ever gave Employee conforming treatment plans within 14 days after the treatments exceeding the frequency standards began. 8 AAC 45.082(g)(1); *Lindhag*. Because Dr. Matthisen failed to comply with the statute and regulation regarding conforming treatment plans, his treatments after November 6, 2015, December 2, 2015, December 17, 2015, and January 5, 2016, March 1, 2016, April 5, 2016 and May 2, 2016 will be denied on this additional ground, and as a "failure of proof." AS 23.30.095(c); *Lindhag*.

Dr. Matthisen's February 16, 2016 "addendum" letter, read as a whole, arguably contains the requisite four statements and constitutes a conforming treatment plan. *Rogers & Babler*. But there is no evidence Dr. Matthisen gave Employee this conforming treatment plan letter within 14 days, if at all. Therefore, Dr. Matthisen's treatments after his February 16, 2016 addendum letter will also be denied on this same ground. AS 23.30.095(c); 8 AAC 45.082(g)(1); *Lindhag*. Since Employee is not entitled to the past chiropractic care he claims, and because he failed to document his medically related transportation costs, his claim for $121.21 in undocumented transportation expenses will also be denied. *Lindhag*.

(C) The medical evidence preponderates against Dr. Matthisen's treatments.

The remaining dispute over continuing chiropractic care raises factual issues to which the presumption of compensability must be applied. AS 23.30.120(a); *Carter*; *Meek*. Without regard to credibility, Employee raises the presumption through his testimony stating chiropractic treatment reduces pain and enables him to keep working, and Dr. Matthisen's opinions stating chiropractic care is reasonable, necessary and appropriate. *Wolfer*; *Tolbert*. Without regard to credibility, Employer rebuts the presumption with Drs. Craven's, Tapper's and Rivera's opinions stating chiropractic care is excessive, overdone and not necessary. *Wolfer*; *Huit*. The presumption having been rebutted, Employee or Dr. Matthisen must prove Dr. Matthisen's recommended chiropractic care, assuming he provides conforming treatment plans in the future,

is likely to improve Employee's condition, and must show a preponderance of medical evidence supports a conclusion that the frequency standards are unreasonable considering Employee's injury. AS 23.30.095(c); 8 AAC 45.082(g); *Runstrom*; *Saxton*.

Initially, Employee told Dr. Spencer the treatments were not helping. Dr. Spencer recommended continuing conservative treatment, but never mentioned continuing chiropractic. By contrast, Drs. Craven, Tapper and Rivera said chiropractic care was overdone and not necessary. Their opinions are given great weight. AS 23.30.122; *Smith*. Only Employee's lay testimony and Dr. Matthisen's opinion counter the four physicians. It is understandable Employee would rather avoid medication, injections and surgery and rely upon chiropractic care. His testimony about the relief he feels from Dr. Matthisen's treatments is entitled to some weight. AS 23.30.122; *Smith*. However, Employee's medical records, to the extent they are legible, show over 140 similar chiropractic treatments with no change in Employee's condition. Further, Dr. Matthisen candidly conceded he had a financial interest in this case since he wants to continue treating Employee. He also is literally Employee's advocate since he filed a notice of appearance as Employee's non-attorney representative and never withdrew his notice, even after Employee retained counsel. For these reasons Dr. Matthisen's testimony is given lesser weight. AS 23.30.122; *Smith*. Given all the evidence, Employee and Dr. Matthisen have failed to prove their claims by a preponderance of the evidence because the evidence shows chiropractic care is not likely to improve Employee's condition, and they failed to show the frequency standards are unreasonable considering Employee's injury. 8 AAC 45.082(g)(2), (3).

Therefore, in addition to failing because neither Employee nor Dr. Matthisen filed an appropriate itemized billing statement, and failing because Dr. Matthisen failed to prepare conforming treatment plans and give copies to Employee, their claims for past and continuing chiropractic treatment will be denied based on a preponderance of the medical evidence. *Saxton*. Notwithstanding this decision, Employee may choose to continue with chiropractic care and pay for it himself. Employer may also choose to pay for additional chiropractic care. However, Employer will not be "required" to pay for additional chiropractic treatments, and Employee cannot be "required" to pay past or future chiropractic bills in relation to this work injury. AS 23.30.095(c); AS 23.30.097(f); 8 AAC 45.082(h).

2) Is Employee entitled to attorney's fees and costs?

Employee's counsel did not file an itemized attorney's fee affidavit. Therefore, any attorney's fees to which she could be entitled would be governed by the statutory minimum fee statute. 8 AAC 45.180(b). Employee did not succeed on his claim for past or continuing chiropractic treatment and he is not entitled to attorney's fees on this issue. AS 23.30.145(a). However, on March 3, 2015, Employer controverted Employee's right to all benefits related to spondylolisthesis. On April 27, 2015, Employee's attorney entered her appearance. On May 4, 2015, his attorney filed an amended claim including PPI as an issue. On May 22, 2015, Employer answered the claim and denied Employee was entitled to PPI benefits. Subsequently, SIME Dr. Tapper evaluated Employee and provided a 12 percent PPI rating. Employer paid this rating in full, totaling $21,240. Dr. Tapper's PPI rating was based upon Employee's spondylolisthesis as rated under the appropriate guides. Therefore, Employee is entitled to statutory minimum attorney's fees on $21,240, totaling $2,274 ($21,240 - $1,000 = $20,240 x 10 percent = $2,024) + ($1,000 x 25 percent = $250) = $2,274). *Childs*. Since Employee filed no cost affidavit, his request for costs will be denied. 8 AAC 45.180(f).

CONCLUSIONS OF LAW

1) Past and ongoing chiropractic treatments and related transportation costs are not compensable.
2) Employee is entitled to attorney's fees, but not costs.

ORDER

1) Dr. Matthisen's January 19, 2015 and Employee's March 27, 2015 claims are denied.
2) Employee's May 12, 2015 claim is granted in part and denied in part.
3) Employee's and Dr. Matthisen's claims for an order requiring Employer to pay for past chiropractic treatments are denied.
4) Employee's and Dr. Matthisen's claims for an order requiring Employer to pay for continuing chiropractic treatments are denied.
5) Employee's claim for attorney's fees and costs on past or future chiropractic treatments is denied.
6) Employee's claim for attorney's fees on PPI benefits is granted.
7) Employer is ordered to pay Employee's attorney $2,274 in statutory minimum attorney's fees.

Dated in Anchorage, Alaska on July 27, 2016.

ALASKA WORKERS' COMPENSATION BOARD

_____/S/_____
William Soule, Designated Chair

_____/S/_____
Linda Hutchings, Member

DONNA PHILLIPS, MEMBER, CONCURRING

The concurring opinion agrees in all respects with the majority's result. Neither Employee nor Dr. Matthisen filed an itemized billing statement showing the alleged balance due. Dr. Matthisen failed to provide conforming treatment plans on each occasion his treatments exceeded the frequency standards, and he failed to provide Employee with treatment plans. Lastly, Employee and Dr. Matthisen failed to prove their claims by a preponderance of the evidence and failed to show the treatment frequency standards are unreasonable in light of Employee's injury. The majority's legal and factual bases for denying these claims are sound. Nevertheless, Employee has managed with chronic pain resulting from his work injury with Employer without resorting to addictive medication. Furthermore, his chiropractic treatments present little if any medical risk. His non-controverted options are medication, additional epidural steroid injections and possibly surgery. These treatments all come with considerable known risks. *Rogers & Babler*. Therefore, as a practical matter, Employer might well be better off voluntarily paying for Employee's relatively minimal chiropractic care rather than resisting it and causing him to incur greater expense with medical care posing significant potential risks.

_____/S/_____
Donna Phillips, Member

If compensation is payable under terms of this decision, it is due on the date of issue. A penalty of 25 percent will accrue if not paid within 14 days of the due date, unless an interlocutory order staying payment is obtained in the Alaska Workers' Compensation Appeals Commission.

If compensation awarded is not paid within 30 days of this decision, the person to whom the awarded compensation is payable may, within one year after the default of payment, request from the board a supplementary order declaring the amount of the default.

APPEAL PROCEDURES

This compensation order is a final decision. It becomes effective when filed in the office of the board unless proceedings to appeal it are instituted. Effective November 7, 2005 proceedings to appeal must be instituted in the Alaska Workers' Compensation Appeals Commission within 30 days of the filing of this decision and be brought by a party in interest against the boards and all other parties to the proceedings before the board. If a request for reconsideration of this final decision is timely filed with the board, any proceedings to appeal must be instituted within 30 days after the reconsideration decision is mailed to the parties or within 30 days after the date the reconsideration request is considered denied due to the absence of any action on the reconsideration request, whichever is earlier. AS 23.30.127.

An appeal may be initiated by filing with the office of the Appeals Commission: 1) a signed notice of appeal specifying the board order appealed from and 2) a statement of the grounds upon which the appeal is taken. A cross-appeal may be initiated by filing with the office of the Appeals Commission a signed notice of cross-appeal within 30 days after the board decision is filed or within 15 days after service of a notice of appeal, whichever is later. The notice of cross-appeal shall specify the board order appealed from and the ground upon which the cross-appeal is taken. AS 23.30.128.

RECONSIDERATION

A party may ask the board to reconsider this decision by filing a petition for reconsideration under AS 44.62.540 and in accord with 8 AAC 45.050. The petition requesting reconsideration must be filed with the board within 15 days after delivery or mailing of this decision.

MODIFICATION

Within one year after the rejection of a claim, or within one year after the last payment of benefits under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, a party may ask the board to modify this decision under AS 23.30.130 by filing a petition in accord with 8 AAC 45.150 and 8 AAC 45.050.

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of James A. Klebesadel, employee / claimant v. State of Alaska, employer; insurer / defendants; Case No. 201218840; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties by First-Class U.S. Mail, postage prepaid, on July 27, 2016.

/s/

Elizabeth Pleitez, Office Assistant