

FINAL AWARD ALLOWING COMPENSATION
(Modifying Award and Decision of Administrative Law Judge)

Injury No.: 07-072722

Employee: Shirley Woodruff
Employer: Health Management Associates, Inc. (Settled)
Insurer: Liberty Mutual Ins. Co. (Settled)
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

This workers' compensation case is submitted to the Labor and Industrial Relations Commission for review as provided by § 287.480 RSMo. Pursuant to § 286.090 RSMo, we issue this final award and decision modifying the April 17, 2012, award and decision of the administrative law judge. We adopt the findings, conclusions, decision, and award of the administrative law judge to the extent that they are not inconsistent with the findings, conclusions, decision, and modifications set forth below.

The parties stipulate that we modify the administrative law judge's award by the inclusion of the following language:

Employee's husband, Mike Woodruff, is entitled to receive Employee's Permanent Total Disability benefits in the event he remains married to Employee and Employee predeceases him while they remain married. His entitlement to Permanent Total Disability benefits shall cease upon his death or remarriage.

We accept the stipulation and we modify the award accordingly.

We approve and affirm the administrative law judge's allowance of attorney's fee as being fair and reasonable.

Any past due compensation shall bear interest as provided by law.

The award and decision of Administrative Law Judge Maureen Tilley, issued April 17, 2012, is attached and incorporated by this reference except to the extent modified herein.

Given at Jefferson City, State of Missouri, this 9th day of November 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

V A C A N T
Chairman

James Avery, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

ISSUED BY DIVISION OF WORKERS' COMPENSATION

FINAL AWARD

Employee: Shirley Woodruff Injury No: 07-072722
Employer: Health Management Associates, Inc. (Settled)
Insurer: Liberty Mutual Insurance Company (Settled)
Additional Party: Treasurer of the State of Missouri, Custodian of Second Injury Fund
Hearing Date: January 30, 2012 Checked by mt/kb

SUMMARY OF FINDINGS

1. Are any benefits awarded herein? Yes.
2. Was the injury compensable under Chapter 287? Yes.
3. Was there an accident under the law? Yes.
4. Date of accident? July 11, 2007.
5. State location where accident occurred: Butler County, Missouri.
6. Was above employee in employ of above employer at time of alleged accident? Yes.
7. Did employer receive proper notice? Yes.
8. Did accident arise out of and in the course of the employment? Yes.
9. Was claim for compensation filed within time required by Law? Yes.
10. Was employer insured by above insurer? Yes.
11. Describe work employee was doing and how accident happened: Employee was attempting to stand from a deep squat in a cramped location and in an awkward position when she fell backwards and struck a chair. The fall caused her injuries.
12. Did accident cause death? No.
13. Part(s) of body injured by accident: Back and body as a whole.

SUMMARY OF EVIDENCE, FINDINGS OF FACT AND RULINGS OF LAW

The hearing in this matter was conducted on January 30, 2012 before Administrative Law Judge Maureen Tilley. The Employee, Shirley Woodruff appeared in person and by her attorney Ronald L. Little. The Second Injury Fund was represented by Assistant Attorney General Jonathan Lintner.

The accident, which is the subject of this claim for compensation, occurred in Butler County, Missouri and the hearing was conducted in Poplar Bluff, Butler County, Missouri. The Administrative Law Judge took judicial notice of all the records contained within the files of the Division of Workers' Compensation.

At the time of the hearing, the parties agreed on certain undisputed facts and identified the issues that were in dispute. These undisputed facts and issues together with a Summary of the Evidence and Findings of Fact and Rulings of Law are set forth below.

UNDISPUTED FACTS/STIPULATIONS:

1. **Covered Employer:** Employer was operating under and subject to the provisions of the Missouri Workers Compensation Act and liability was fully insured by Liberty Mutual Insurance Company.
2. **Covered Employee:** On or about July 11, 2007, Shirley Woodruff was an Employee of Health Management Associates, Inc. d/b/a Poplar Bluff Regional Medical Center and was working under the Workers' Compensation Act.
3. **Notice:** Employer had notice of Employee's accident.
4. **Statute of Limitations:** Employee's claim was filed within the time allowed by law.
5. **Average Weekly Wage and Rate:** Employee's average weekly wage was \$647.20 resulting in a weekly compensation rate for TTD/PTD and Death of \$431.47 and a weekly compensation rate for PPD of \$389.04.
6. **Medical Causation:** Employee's injury was medically causally related to the work accident of July 11, 2007.
7. **Medical Aid furnished by Employer/Insurer:** None. (See stipulation for compromise settlement).
8. **Temporary Disability paid by Employer/Insurer:** \$3,039.38 for 7 weeks.

9. **Maximum Medical Improvement:** The parties agree that Employee attained maximum medical improvement on June 11, 2008.

ISSUES:

1. **Accident:** The parties agree that Employee suffered an accident at work on July 11, 2007 in that she fell. The only controversy is whether or not the accident was “idopathic”.
2. **Second Injury Fund Liability:** Nature and extent of Second Injury Fund liability - ppd vs. ptd
3. **Dependency under Schoemehl:** Dependency of Mike Woodruff as spouse of Employee and his entitlement to the continuation of ptd benefits upon the death of Employee.

EXHIBITS:

Employee’s Exhibits: The following exhibits on behalf of Employee were admitted into evidence at trial. The objections contained within the deposition transcripts were reserved by the Second Injury Fund and were taken by the Administrative Law Judge with the case. All objections have been overruled.

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|-------------|--|
| Exhibit A - | 3/29/10 Dr. Wayne Stillings Deposition and Exhibits |
| Exhibit B - | 4/1/10 and 4/19/10 Dr. Raymond Cohen Deposition and Exhibits |
| Exhibit C - | 3/22/10 Mr. James England Deposition and Exhibits |
| Exhibit D - | Kneibert Clinic 1/8/85 to 1/12/12 Medical Records |
| Exhibit E - | Cape Neurological Surgeons 5/10/99 to 6/11/08 Medical Records |
| Exhibit F - | St. Francis Medical Center 6/1/99 to 11/29/07 Medical Records |
| Exhibit G - | Poplar Bluff Regional Medical Center 8/31/04 to 8/2/07 Medical Records |
| Exhibit H - | Poplar Bluff Neurology 1/25/07 Medical Records |
| Exhibit I - | Division of Workers’ Compensation Records |
| Exhibit J - | Attorney Contracts |

Second Injury Fund Exhibits: The Second Injury Fund did not offer any exhibits at trial.

SUMMARY OF EVIDENCE

The Employee, Shirley Woodruff, testified live at the trial. Ms. Woodruff is 53 years old. She was born May 8, 1958, stands 5' 2" and weighs 150 pounds. She married Mike Woodruff in 1984 and they have two independent, adult children: Candace, age 27 and Joey, age 25. Mr. & Mrs. Woodruff were married at the time of her work accident and have been continuously married since.

Education/Skills:

Ms. Woodruff grew up in Poplar Bluff, Butler County, Missouri and graduated from Poplar Bluff High School in 1976. She obtained an associate's degree in general studies from Three Rivers Community College and a bachelor's degree from Arkansas State University in Jonesboro majoring in psychology.

In approximately 2002, the limited use of a computer was incorporated into her work at the hospital. From that exposure she has some basic computer skills.

Her level of education is not an impediment to her ability to work.

Work at Hospital:

Ms. Woodruff worked at the Poplar Bluff Regional Medical Center (for Health Management Associates, Inc., Employer herein) from October 1991 through July 11, 2007, the date of her work injury. During that time she was the activities director for the mental health unit of the hospital. As a member of the mental health unit staff, she attended daily staff meetings, performed daily cognitive assessments of the patients and kept track of patient rates of recidivism. During her 15+ years at the hospital, her duties were essentially the same - working with chronically ill mental health patients in acute situations requiring hospitalization. Many of the patients had borderline personality disorders. She identified suicide attempts and self-mutilation as examples of acute behavior issues requiring intervention and hospitalization.

While she was working for the hospital she attended annual accreditation conferences at the Tan-Tar-A Resort in Osage Beach, Missouri. She started attending these conferences in approximately 2000. Ms. Woodruff would leave the day before the conference to give her ample travel time. It typically took her longer than most to make the trip because of her need to stop periodically to stretch her back and legs.

At the time of her July 2007 work accident a man named Jack was her supervisor. He performed the annual personnel reviews. She did not recall ever receiving a bad review but did remember getting "in trouble" on a couple of occasions: once when a patient hit her and another when a patient was quick to light a cigarette.

Ms. Woodruff explained that upon her return to work following her second back surgery in 1999, she was no longer allowed to participate in the "doctor strong" calls. She explained that a "doctor strong" call is the code to alert the staff of a violent patient to be subdued and a call for all able-bodied employees to assist. Ms. Woodruff said she did not respond to the call but was in the hallway when a naked lady came running in her direction. She started talking to the lady and coaxed her into a room where the conversation continued. When Ms. Woodruff got up to leave, the lady didn't want her to go, got mad and ended up striking Ms. Woodruff.

The other time she got in trouble resulted from a patient smoke break. At that time, a member of the staff was required to take the patients across the street and off hospital property to

smoke. She got fussed at because one of the patients lit a cigarette before they were off hospital property.

Accident/Injury of July 11, 2007:

Ms. Woodruff had an accident at work on July 11, 2007 resulting in injury to her low back and body as a whole. She had conducted a group activity session with unit patients. At the end of that session she was gathering up project supplies and loading them onto the bottom shelf of a rolling cart. Ms. Woodruff regularly used this rolling cart to transport activity supplies to and from her office for each group session. She was squatted down in a tight space and in an awkward position, reaching back and forth taking the parts and supplies from the patients and loading them on the lower shelf of the cart. After being down in that deep squat for some 3-5 minutes, she moved to stand but instead fell backwards and struck a chair that was behind her and positioned firmly against the other chairs in the very small room.

When she fell she felt something pop and had a sudden onset of excruciating pain in her low back. A couple of the patients helped her up and then helped get her and the cart to the block door of the unit. There was a wheelchair just outside the block door so she shoved the cart out the door and got in the wheelchair. She hollered for Cindy, the nurse manager on the floor. She told Cindy of her accident and injury at the end of the group session and reported her severe pain. The pain was so bad Ms. Woodruff was crying and unable to continue working that day. She couldn't even finish her notes on the group session. She called her husband to come get her. Mike came and took her out to their car in the wheelchair. Her son Joey met them at their house. Mike and Joey carried her into the house and put her to bed.

Injury-related Treatment:

The next morning Mike took her to see Dr. Hickey at Kneibert Clinic. He had to carry her to the car because just taking a step would bring tears to her eyes. When they arrived at the clinic, he retrieved a wheelchair from inside and wheeled her from the car into the clinic. Ms. Woodruff told Dr. Hickey about the accident and injury. Dr. Hickey prescribed medication, told her to keep using a wheelchair and set her up with Dr. Soeter. Since she did not have a wheelchair of her own, she borrowed the one from Kneibert Clinic.

She saw Dr. Soeter a few days later and was given an injection. Dr. Soeter recommended a neurosurgical evaluation and arranged an appointment for Ms. Woodruff to see Dr. Park in Cape Girardeau. Before seeing Dr. Park, she had follow-up appointments with both Dr. Soeter and Dr. Hickey and an MRI was performed on July 27, 2007 at the hospital.

From the time of the work accident until Dr. Park performed surgery, her pain was unbearable. Ms. Woodruff could not get around without the use of a wheelchair. She returned the borrowed wheelchair to the clinic and secured a wheelchair for home. She used the wheelchair exclusively before surgery and some afterwards. She also used a lift chair she already owned. At night she would sleep in the lift chair so that her husband could get some sleep.

Ms. Woodruff was first seen by Dr. Park within 30 days of this work injury but did not undergo surgery until the end of November 2007. Dr. Park did her third back surgery. He fused L3-4 and L5-S1 and stabilized her spine with a cage. He did not do anything at L4-5, the previous surgical level. She was told the prior fusion at that level was solid. Before the work accident of July 11, 2007, Ms. Woodruff never had any problems with L3-4 or L5-S1. The surgery of Dr. Park in November of 2007 helped to improve her symptoms. Almost immediately after the surgery the pain was better. It did not go away but it became bearable. She no longer wanted to cry all the time. Dr. Park's surgery also restored her ability to walk and that was significant.

Dr. Park released Ms. Woodruff on June 11, 2008. She recalled he was almost apologetic to her on that visit. She said he put his arm around her shoulders and told her there wasn't anything else he could do for her.

Current Symptoms/Problems:

The pain in her back is about the same now as it was when she was released by Dr. Park in June of 2008. Ms. Woodruff described her current level of pain as: "pretty severe" and "debilitating." On a pain scale from 1 to 10, she rated her pain at about an 8. Her pain is such that she can no longer function like she wants. She physically cannot do the things she did before because of her pain.

Sitting/Standing/Walking: Sitting for very long is a problem. She has to stand up every now and then. She is up and down all the time because of the pain. When she tries to sit for a time she will put a pillow behind her to prop up her back. If she is away from the house she will use her purse in place of a pillow - she doesn't carry a pillow with her everywhere she goes. Also, she has short legs and if her feet don't touch the floor when she is sitting, her back pain is increased. She uses a small foot stool to keep her feet and legs from dangling when she is sitting. She can only stand about 5 minutes at a time and cannot walk more than about 25-30 feet at a time.

Reclining/Lying down: Ms. Woodruff needs to recline several times every day. She estimated that out of every 8 hours she is reclining or lying down at least half of the time. She never really knows when during the day she is going to need to recline. It's not the same time every day. She usually lies down in her bed at least once in the morning and once in the afternoon. At times she will not be able to keep her leg still because of pain in her back as it runs down and into her leg. She can't bend, stoop or squat without a major increase in pain.

Steps/Stairs: Since her fall at work on July 11, 2007, she has real difficulty with steps. As a result her husband has had to build a ramp over the front porch steps and install a walk-in shower.

Pain level: There are days she hardly gets out of the recliner. When her pain is at its worst she is useless. She tries to be as still as she can; to not move a muscle if she doesn't have to. She has her worst pain 2 or 3 times each week. She has prescriptions for Lorcet (for pain)

and Flexeril (for muscle spasm). In addition to her prescription medications, Ms. Woodruff takes ibuprofen like candy. On good days she takes about six, 200mg tablets 4-5 times a day. On bad days she takes about eight, 200mg pills 5-6 times a day. She has been cautioned not to take this much ibuprofen but she doesn't like to ask for refills on her pain medications.

Foot drop: She now has what the doctors call a foot drop. To her they are referring to her tendency to drag her left foot and stub her toe. She didn't have a problem stubbing her toe before her fall at work in July of 2007. The foot drop started after that fall.

She hasn't been able to go back to work since her 2007 accident. She has not been able to work even one day since her accident.

Depression:

Ms. Woodruff testified of her feelings of hopelessness following the July 2007 work accident and injury. She said that she became very aware of her feelings of depression soon after Dr. Park released her and told her she was as good as she was going to get. She had worked her whole life and now she could not work and her pain was not going to get any better. She was devastated.

She feels that her depression is a direct result of her pain. The pain prevents her from falling to sleep and then wakes her with any little movement. When she gets to sleep she doesn't stay that way for any length of time. A good night's sleep for her now is about 4 hours and that is not enough. The result is that Ms. Woodruff is always tired and irritable and just adds to her depression. She feels that her family would be better off without her. The pain and depression seem to feed on each other - more/worse pain results in more/greater depression and more/greater depression results in more/worse pain.

She has thoughts of suicide maybe once a week. Typically that thought comes in the middle of the night when she can't sleep because her pain is so intense that she just can't stand it. She took an overdose of insulin in an attempt at suicide on a single occasion. It didn't work.

Dr. Stillings was the first mental health professional Ms. Woodruff had ever seen regarding her difficulties with depression or anxiety.

Pre-existing Disability:

General Health Conditions: Ms. Woodruff has some health conditions that she either takes medication for or for which she has been treated in the past. She currently has or has had problems with her heart, kidneys, blood pressure, diabetes, peripheral artery disease, reflux and blood clots. Although losing a kidney, throwing a clot, uncontrolled hypertension and excessive sugar levels are serious health concerns, they do not limit her activity or level of function. None of these medical issues are factors in why Ms. Woodruff is currently unable to work.

Dyslexia: Dr. Stillings diagnosed Ms. Woodruff as dyslexic in 2009 (Exhibit A). Before the 2007 work injury, Ms. Woodruff had never been diagnosed as dyslexic but as long as she can remember she had problems with the ordering of numbers and letters - even before she started school.

She has difficulty working with figures because of her tendency to transpose numbers. Ms. Woodruff said this difficulty is particularly problematic when it comes to her personal checking account. Her inability to post the amounts of checks properly often results in an overdraft of her account. Her dyslexia also manifests itself in the numbers used in dates. She has learned that she is more likely to get the date right if she writes out the name of the month rather than trying to designate the month by numeral.

While she was working at the hospital, her daughter established a system whereby Ms. Woodruff could track patient recidivism using the Microsoft Excel program. Even utilizing that system, the accuracy of the information she put in the system needed to be checked because of her dyslexia. Her daughter, Candace, was a volunteer at the hospital and would check her work. Ms. Woodruff explained that the spell checker on the computer wouldn't catch the transposed numbers - but her daughter would.

Accuracy with writing and typing are also challenging for Ms. Woodruff. It is not the act of writing or typing that is challenging - it is getting the characters in proper order. Her dyslexia has proved to challenge her success with learning for her entire life.

Old Back Injury: Ms. Woodruff first injured her back in the mid 90's. She had two back surgeries prior to the surgery in November 2007 necessitated by the fall at the hospital in July 2007. Both of her prior back surgeries were performed to address an injury at the L4-5 level.

Dr. Miller did her first back surgery, a discectomy, at Baptist Hospital in Memphis. That surgery did not help and in fact she felt much worse after surgery. Dr. Park did the second surgery, a fusion. After those two surgeries, she continued to have some pain and problems with her back and numbness on the outside of her left leg from what the doctor described as permanent nerve damage. The numbness was pretty annoying. She described it as kind of like bees stinging her foot. After these surgeries, she was able to return to work with permanent restrictions of no lifting over 35 pounds and with directions to avoid bending or stooping.

She continued to have some left leg problems and pain in her back leading up to the 2007 work accident/injury. Because of her pain and problems she had difficulty fulfilling her job duties. Some days her back would be painful and she wouldn't feel like doing anything strenuous. On days when her pain was too bad the group activity she gave the patients would be something sedentary like coloring. On days she was feeling pretty good she would pull out the wood projects which involved much more physical activity. At times her mother would come with her to the hospital and help her unload her cart and put the craft supplies away. On the rare occasion, Ms. Woodruff's supervisors would provide her with assistance.

Before the July 2007 work accident, Ms. Woodruff fell on a few times due to the problems and numbness in her left leg. Those incidents of falling were similar, in that she would be walking along and without warning her left leg would just be gone. It would turn to spaghetti and she would fall face first into whatever was in her way. She started using a cane for stability when her leg was feeling weak.

In May of 2007 before her work accident/injury of July 11, 2007, she was given some injections by Dr. Soeter. Those injections helped tremendously. After the injections and leading up to her July 2007 injury, she still had the typical back pain she had endured for years. However, she remained able to function at work with her lifting limitations and by avoiding bending and stooping. The pain and lifting restrictions affected how she performed her job duties but did not prevent her from being successful. With the fall at work on July 11, 2007, everything changed.

Typical Day:

On a typical day, Ms. Woodruff gets up about 7 a.m. and will take a shower if she feels like it. Her grandchildren usually come to her home in the mornings. Natalie is 5 and Jacob is 2. They are both well behaved, have good dispositions and know that Grandma has limitations. Natalie is recovering from leukemia and doing well. She is quite independent and creative. Natalie likes to use the toaster and will eagerly make them all some breakfast. They have learned to accommodate their grandmother's restrictions. In fact, Natalie made up a game they can play when Grandma has to lie down or spend some time in the recliner. Fortunately, they are readily occupied with the Nick Jr. channel. When the grandchildren are there, Mike makes certain to pop in 3 or 4 times throughout the day to see if the kids need anything Grandma can't help them with. He also comes home for an hour and takes care of lunch. At the end of his workday he comes home and takes over completely. By that time, Ms. Woodruff said she is exhausted and done for the day. She said she likes to believe she takes care of the grandchildren but when it comes right down to it - the kids being there is all for her. They are the positive part of her day.

Activities (now & then):

There has been a significant change in the type and frequency of activities that Ms. Woodruff can do since the July 11, 2007 work accident and injury. Shopping, driving or traveling in a motor vehicle and church attendance are a few activities she still does but with limited success. She is no longer able to clean her house, go flea marketing, motorcycle ride, camp or entertain family and friends.

Shopping: Mike does most of the shopping now. If she is having a good day she may go with him. If she has to go, she will shop at Kroger because she knows exactly where everything is and can avoid walking every aisle. If she has to go to Wal-Mart she will use one of their electric carts.

Driving/Traveling: It is difficult and painful just getting in and out of a car and sitting in a vehicle to travel for any length of time increases her pain. She can still operate a vehicle but

pressing and holding on the gas and brake pedals causes pain. If the travel is such that she can use the cruise control she estimated being able to drive for about 30 minutes. However, if she has to drive in stop and go traffic, she may only make it about 5 miles or so.

Church: Ms. Woodruff used to attend church services twice on Sunday and again on Wednesday evening every week. The only way she can attend now when she does is by having a pillow at her back and a stool for her feet. If she makes it to church a couple times a month these days she is having a particularly good month.

Housekeeping: Until December of last year Ms. Woodruff's niece would come in once or twice a week to clean for her. Her niece has now moved to Texas leaving all the house cleaning on Mike. Ms. Woodruff did her own cleaning before the July 2007 accident and Mike only had two household chores: trash and dishes.

Flea Market: Before the 2007 accident, she regularly went flea marketing - almost every Saturday. She is unable to do the flea market thing now.

Gardening/Camping: She and Mike have always enjoyed outdoor activities. She is no longer able to participate in outdoor activities because of her pain. She tried to weed the flower bed but couldn't do it so gardening is out. They went camping once after her 2007 surgery. She spent her time reclining in a lawn chair on the river bank. She tried once to get in the river with Mike and the kids but her legs were not strong enough. Their plan was to camp for three days but they went home on the second day. She has not attempted to camp again.

Motorcycles: They (she and Mike) started riding motorcycles sometime in the 1970's and indulged themselves with that pleasure every chance they could. In the years leading up to her work accident in July of 2007 they would take a ride every weekend the weather and their schedules permitted for several hours at a time. That was their together time. They would ride to Wappapello Lake or Clearwater Lake and make a big circle before returning home. She recalled her last motorcycle ride was in the spring of 2007 before her accident. Her last ride was just a few miles because when they got out on the road they realized the gas gage was not working. She has not been on a motorcycle since her 2007 work accident.

Hostess: Ms. Woodruff used to host holiday dinners for her friends and extended family of 20+ people. She would cook for days in preparation and made sure everyone had their very own favorite dessert. She has not been able to entertain like that since her 2007 work accident. Since the accident she is not consistently able to cook for herself and her husband.

Cruise: In February of 2009, to celebrate their 25th wedding anniversary, she and Mike took a cruise from Fort Lauderdale, Florida to the Bahamas. On the drive to Fort Lauderdale they had to stop so many times because of her back pain, it took them three days to get there. It was the same on the return trip home. They didn't do much on the ship. They stayed in their room, went out to eat and went to one show. She was in pain the entire trip. Had she known then what she knows now of how physically miserable she would be, she would not have elected to take the cruise.

Ms. Woodruff acknowledged that her attorney is married to her daughter-in-law's mother, Pam, and that he and Pam were also grandparents to Natalie and Jacob (children of Joey & Brittany). She explained that Pam has been her friend and part of her extended family for probably 15 years - since their children had started dating in high school. For many years she and Pam attended the school activities of Joey and Brittany together and also got together to celebrate holidays and birthdays. As for the various school activities, they would frequently ride to the events together to show their support of their children. She said that Pam was a frequent and welcomed guest in her home.

Testimony of Pam Little:

Pamela Ann Little testified of her relationship with Employee Shirley Woodruff and her personal knowledge of Shirley Woodruff's physical condition before and after the July 2007 work accident/injury.

Pam acknowledged that she is married to Ms. Woodruff's attorney, Ron Little and that they have been married for almost four years. Pam identified Brittany as her daughter and the daughter-in-law to Ms. Woodruff as Brittany is married to Ms. Woodruff's son, Joey. Brittany was in attendance at the trial and works in the law office of Ms. Woodruff's attorney. Pam said that she works in the emergency room at the Poplar Bluff Regional Medical Center. Pam had just completed nursing school and was scheduled to take the nursing board examination the following Saturday.

Pam testified that she is well acquainted with Ms. Woodruff and that they have known each other for more than 12 years. Pam said that she and Ms. Woodruff have done many things together through the years beginning when their children were dating in high school. At that time they would attend band concerts and ball games together sometimes multiple times in the same week. They (Pam and Ms. Woodruff) have been a part of each other's lives for many years. They have done many things together including camping and celebrating holidays, birthdays and anniversaries.

Because of nursing school, Pam explained that during the last couple of years they have not seen each other as much. Before Pam started nursing school, they would see each other regularly at least 2 or 3 times a week. Sometimes Pam would pick up the grandchildren and visit for a few minutes and at other times they would visit for a few hours.

She knew Ms. Woodruff before her work accident and injury of July 11, 2007. Before that injury, Shirley had some back pain and some other medical issues but she could pretty much do whatever she wanted. If she wanted to go for a walk, go camping, ride the motorcycle, or shop she would walk, camp, ride or shop. She was a very happy lady who really appeared to enjoy life.

After the July 2007 accident, she observed a great change in her friend Shirley Woodruff. She couldn't do anything. She hurt all the time and has become a very unhappy person. She just isn't "Shirley" anymore.

Evaluations and Opinions Offered by Employee:

Ms. Woodruff acknowledged being evaluated by Dr. Stillings, Dr. Cohen and Mr. England. She said that when they did their evaluations they asked her many questions and she answered their questions honestly. Prior to trial, Ms. Woodruff said she reviewed the reports of Dr. Stillings, Dr. Cohen and Mr. England and each of them properly reported her answers and symptoms in their reports.

The details of the findings and opinions of the experts are set forth in the rulings below.

FINDINGS OF FACT AND RULINGS OF LAW:

ISSUE 1: Accident: whether the accident was from an idiopathic cause.

The parties agree that Employee suffered an accident at work on July 11, 2007 in that she fell. The only controversy is whether or not the accident was “idiopathic”. An injury resulting from an idiopathic cause is not compensable. Section 287.020.3(3) RSMo.

The Second Injury Fund has inserted into this claim the suggestion that Ms. Woodruff’s accident was idiopathic. The Second Injury Fund offers no evidence to support such theory. For such a finding, the Administrative Law Judge would have to find that Ms. Woodruff’s fall was from some cause personal to her such as a physical defect or disease - a condition peculiar to her. “Evidentiary support is required to successfully claim an event is entirely idiopathic.” *Taylor v. Contract Freighters, Inc.* 315 S.W. 3d 379, 381 (Mo. App. S.D. 2010).

Ms. Woodruff testified of having spent a lot of time over the years thinking about what made her fall that day. As she recalls, she was having a pretty good day. She knows her leg wasn’t bothering her and that it didn’t give way. She was not dizzy and did not lose consciousness. Her blood pressure and sugar levels were also fine. She is certain that she wasn’t having any significant problems because she would not have put the wood project on the cart to do that day if she wasn’t having a good day.

Ms. Woodruff fell backwards when she went to stand after being down in a deep squat for an extended period, in a tight space and in an awkward position. At work she was required to squat, a minimum of four times each day:

- 1) She would squat in her office to load the cart with supplies;
- 2) After rolling the cart to the group room, she would squat to unload the supplies from the cart;
- 3) At the end of the group session she would squat to re-load the supplies onto the cart; and
- 4) When she returned the rolling cart to her office she would squat again to unload the supplies.

Since she did not use the same supplies every day, this load/unload procedure was an everyday thing.

Ms. Woodruff's fall was due to the conditions of her employment as the activities director of the mental health unit of the hospital. She had conducted her group session in a small room within the hospital facility provided to Employee for that use and purpose. At the end of the session it was a requirement of her job duties to collect from the patients all of the supplies used during the session to make certain none of the patients had taken something that could cause harm to themselves or others. As a part of this necessary supply collection process, Ms. Woodruff was utilizing the rolling cart she regularly used for this exact purpose when she squatted down in the tight space and in the awkward position in order to place the supplies on the lower shelf of the cart.

Employee's injury came from a hazard or risk related to her employment. The evidence in this case regarding Ms. Woodruff's fall makes it clear that had she not had to squat for an extended period to re-load her work cart in that tight space and in that awkward position, she would not have fallen back on that chair thereby causing her injury. There is nothing about her fall that was peculiar to her except that she was the one who fell. Ms. Woodruff's accident was caused by conditions of her employment. There is no evidence in this case to support a finding that her accident resulted from an idiopathic cause.

I find that Employee sustained an accident arising out of and in the course of her employment with Health Management Associates, Inc. and was not the result of an idiopathic condition.

ISSUE 2: Second Injury Fund Liability: PTD vs. PPD.

The only claim to be resolved as a result of this evidentiary hearing is Ms. Woodruff's claim for permanent disability compensation from the Treasurer of the State of Missouri as Custodian of the Second Injury Fund. Employee alleges that she is permanently and totally disabled due to a combination of her primary 2007 back injury and her pre-existing disability.

Is Employee permanently and totally disabled?

Section 287.020.7 RSMo. provides that "[t]he term 'total disability' as used in this chapter shall mean inability to return to any employment and not merely mean inability to return to the employment in which the employee was engaged at the time of the accident." The phrase "inability to return to any employment" has been interpreted as the inability of the Employee to perform the usual duties of the employment under consideration in the manner that such duties are customarily performed by the average person engaged in such employment. *Kowalski v. M-G Metals and Sales, Inc.*, 631 S.W.2d 919, 922 (Mo. App. S.D. 1992). The test for permanent total disability is whether, given the Employee's situation and condition, she is competent to compete in the open labor market. *Reiner v. Treasurer of the State of Missouri*, 837 S.W.2d 363, 367 (Mo. App. E.D. 1992). Total disability means the "inability to return to any reasonable or normal employment." An injured Employee is not required, however, to be completely inactive or inert

in order to be totally disabled. *Brown v. Treasurer of State of Missouri*, 795 S.W.2d 479, 483 (Mo. App. E.D. 1990).

The key question is whether any Employer in the usual course of business would reasonably be expected to employ the Employee in that person's present condition, reasonably expecting the Employee to perform the work for which she was hired. *Reiner*, 837 S.W.2d at 367; *Thornton v. Haas Baker*, 858 S.W.2d 831, 834 (Mo. App. E.D. 1993); *Garcia v. St. Louis County*, 916 S.W.2d 263, 266 (Mo. App. E.D.1995).

When Ms. Woodruff's circumstances are looked at as a whole, there does not seem to be any credible evidence to argue that she is not permanently and totally disabled.

Dr. Raymond Cohen - Exhibit B:

In this case, Ms. Woodruff's overall medical condition was evaluated by Raymond Cohen, D.O. Dr. Cohen examined and interviewed Ms. Woodruff after having reviewed the records of her medical treatment for the primary back injury and her pre-existing back injury with multiple surgeries. It was Dr. Cohen's medical opinion that:

her pre-existing conditions or disabilities referable to her lumbar spine combine synergistically with the primary work-related injury of 7-1[1]-07 to create a greater overall disability than their simple sum and that due to this combination of disabilities, Ms. Woodruff is permanently and totally disabled and not capable of gainful employment in today's open labor market. Her pre-existing conditions or disabilities were a hindrance or obstacle to her employment or re-employment. (Exhibit B, Report page 11).

The opinions of Dr. Cohen are uncontroverted.

Dr. Wayne Stillings - Exhibit A:

It was Dr. Stillings' opinion that the July 11, 2007 work injury is "the prevailing factor in causing Ms. Woodruff to experience a mood disorder with an associated 20% permanent partial psychiatric disability of the body as a whole and a pain disorder with an associated 15% permanent partial psychiatric disability of the body as a whole." (Exhibit A Report page 10).

Dr. Stillings' opinions stand uncontradicted.

Mr. James M. England - Exhibit C:

Mr. England performed a vocational assessment of Ms. Woodruff and expressed his professional opinions concerning Ms. Woodruff's employability considering her pre-existing disabilities and considering her 2007 back injury and subsequent lumbar fusion.

Mr. England determined that Ms. Woodruff “is a 51 year old woman with a college education who was functioning most recently as an activity director for a medical center. The job required physical ability to restrain people at times. She has had other work experience that was in the lighter range of exertion.” (Exhibit C, Report page 18).

As a part of his vocational assessment, Mr. England interviewed Ms. Woodruff for details of her work history - including any history of difficulties in her past work performance. Mr. England noted that Ms. Woodruff “would appear to have transferable skills usable down to a light level of exertion in some work settings.” (Exhibit C, Report page 18). “If she could function at a light level of exertion consistently [Mr. England] believe[d] she would be able to return to some of her past work or related activities.” (Exhibit C, Report page 18).

Mr. England stated that:

the combination of problems that she had with, I mean, considering the injuries that she had had to her back and the final affect that it seemed to have on her ability to function physically, I mean, the difficulties that she had sitting, standing, having to lie down, the medications she was taking, obviously some of the other problems, the kidney difficulties, medications that she was taking for water retention, things of that nature, looking at how she functions overall, I didn't believe that she would be able to sustain any kind of work activity, and I felt with the presentation she makes, it would be very difficult for her to try to compete with other people and be selected for alternative employment. (Exhibit C, deposition page 17, line 10-22).

Mr. England ultimately stated that “[c]onsidering the combination of restrictions indicated by Dr. Cohen and the difficulties that Ms. Woodruff has described . . . [he] believe[d] she would not be capable of sustaining regular work activity on a full time day to day basis.” (Exhibit C, Report page 19).

Mr. England’s opinion is also uncontroverted.

I find the uncontroverted opinions of Dr. Stillings, Dr. Cohen and Mr. England are credible and support a finding that Ms. Woodruff is permanently and totally disabled.

In addition to the testimony of the experts, the Administrative Law Judge is also permitted to consider the other evidence in this case including the treatment records and the testimony of Employee and any other fact witness. The determination of the degree of disability is not solely a medical question. *Sellers v. Trans World Airlines, Inc.*, 776 S.W. 2d 502, 505 (Mo. App. W.D. 1989). The nature and permanence of the injury is a medical question, however, “the impact of that injury upon the employee's ability to work involves considerations which are not exclusively medical in nature.” *Quinlan v. Incarnate Word Hosp.*, 714 S.W. 2d 237, 238 (Mo. App. E.D. 1986). In *Pavia v. Smitty's Supermarket*, 118 S.W. 3d 228 (Mo. App. S.D. 2003), although there was no expert testimony presented that the employee was permanently and totally

disabled, the Court upheld a determination of permanent total disability based on the entire evidence.

I find that Employee and Pam Little were credible and persuasive witnesses on the issue of permanent total disability.

Ms. Little testified to the drastic change she observed in her friend Shirley Woodruff following the 2007 work accident and injury.

Ms. Woodruff provided detailed testimony concerning her symptoms, pain level and ability to function. She was able to describe the impact her 2007 back injury has had on her daily ability to function and contrast her limitations resulting from the primary injury with the limitations she had as a result of her pre-existing back injury leading up to July 11, 2007. In addition to her testimony, the Employee was observed for an extended period of time both prior to and during the course of the hearing. The Employee exhibited numerous behavior and physical patterns which support a finding of permanent total disability including using a pillow to support her back, shifting around in her chair, frequently changing positions by alternating between standing and sitting, and in supporting her feet on a small footstool. During her testimony she was seen to wince at times and appeared immensely uncomfortable. Based on these observations of the Employee, it is clear that she is suffering from a constant and significant level of pain and discomfort. The testimony and observed behavior of the Employee were important on the issue of permanent total disability.

The Employee's testimony was very credible and entirely consistent with my observations of her during the hearing. All of the foregoing supports a conclusion that the Employee will not be able to compete in the open labor market. With her physical limitations and level of pain, it is extremely unlikely any Employer would reasonably be expected to hire the Employee in her present physical condition.

Based on a review of all the evidence, including the credible testimony of the Employee and Pam Little, together with the supporting and uncontroverted expert opinions of Dr. Stillings, Dr. Cohen and Mr. England and my personal observations during the trial, I find that no Employer in the usual course of business would reasonably be expected to employ the Employee in her present condition and reasonably expect the Employee to perform the work for which she is hired. I find that the Employee is unable to compete in the open labor market and is therefore permanently and totally disabled.

Combination Disability?

If the Second Injury Fund is liable to Ms. Woodruff for permanent total disability benefits, her permanent total disability must result from a combination of her primary 2007 back injury and her pre-existing disabilities.

Ms. Woodruff clearly attributes her inability to work to the overall condition of her lumbar spine including back and leg pain and symptoms resulting from both the primary injury of

2007 and her back condition which pre-existed the primary work accident. The chronic pain and symptoms in her low back and bilateral legs post surgical intervention x3 as a result of a combination of her multiple back injuries are the pain and symptoms which prevent her from being able to work for any length of time or on any consistent basis. Any increase in her activity causes an increase in her symptoms and level of pain. The increased level of pain and more severe symptoms continue long after any activity has ceased.

In addition to Ms. Woodruff's back and leg pain and symptoms, she has additional pre-existing disability as a result of her dyslexia and additional primary injury disability resulting from the mood disorder and pain disorder she has developed as a consequence of the primary 2007 work accident and injury (Exhibit A).

There is substantial, competent medical and vocational evidence to support a finding that Ms. Woodruff's permanent and total disability is attributable to the affect of the 2007 back injury in combination with her pre-existing back disability post surgical intervention x2 from the mid 1990's.

In their written reports Dr. Cohen and Mr. England each attribute Ms. Woodruff's permanent, total disability to the combination of Ms. Woodruff's multiple back injuries and disabilities (Exhibit B Report page 11; Exhibit C Report page 18-19).

I find the uncontroverted combination permanent total disability opinions of Dr. Cohen and Mr. England to be fully credible and supported by the totality of the evidence.

Obstacle or Hindrance?

Under Section 287.220.1 RSMo., Ms. Woodruff's pre-existing disabilities must have constituted a hindrance or obstacle to Ms. Woodruff's employment or re-employment at the time of the July 11, 2007 primary work accident at the Poplar Bluff hospital.

Ms. Woodruff testified at trial regarding her pre-existing lumbar spine and left lower extremity pain and symptoms that she had suffered with for many years before the July 11, 2007 further back injury. She explained that before the 2007 work accident/injury she would determine the type of activity for her group sessions depending on how she was feeling and her level of pain on any given day. If her pain level was great the activity selected would be rather sedentary while her good days allowed for more physical activities in group. In the year or so leading up to the July 2007 work accident, the frequency and severity of her pain and symptoms had escalated and the level of physical activity in group had declined commensurately. Ms. Woodruff's testimony was revealing for the affect her pre-existing lumbar spine and left lower extremity pain and symptoms had on the manner in which she performed her job duties. This testimony is consistent with a finding that her pre-existing lumbar spine and left lower extremity pain and symptoms were serious enough to constitute a hindrance or obstacle to employment or re-employment.

Dr. Cohen found that Ms. Woodruff's pre-existing conditions or disabilities referable to her lumbar spine and left lower extremity were a hindrance or obstacle to her employment or re-employment (Exhibit B, Report page 11).

It was Mr. England's opinion that the lifting and bending restrictions imposed upon Employee by Dr. Park after her second surgery in the 1990's would have been a hindrance to her employment (Exhibit C, deposition page 28 lines 18-21).

Ms. Woodruff's testimony of her lifelong dyslexic difficulties is consistent with a finding that her condition of dyslexia also constituted a hindrance or obstacle to employment or re-employment well before the 2007 work accident/injury.

Dr. Stillings found that Ms. Woodruff had the following pre-existing psychiatric disorders/disabilities:

- a. Dysfunctional family of origin with an associated 5% permanent partial psychiatric disability of the body as a whole,
- b. Abusive mother with an associated 5% permanent partial psychiatric disability of the body as a whole,
- c. Maladaptive personality traits with an associated 5% permanent partial psychiatric disability of the body as a whole,
- d. Dyslexia with an associated 5% permanent partial psychiatric disability of the body as a whole (Exhibit A Report page 10).

Dr. Stillings testified that the foregoing psychiatric disabilities were a hindrance or obstacle to employment or re-employment to the extent that they have reduced her concentration and productivity at work, her pace and persistence in the workplace (Exhibit A Deposition page 10 lines1-18).

Ms. Woodruff clearly had lumbar spine and left lower extremity pain, symptoms and difficulties and psychiatric disorders/disabilities including dyslexia which pre-existed the July 11, 2007 work accident and injury while employed by Health Management Associates, Inc. d/b/a Poplar Bluff Regional Medical Center. Her pre-existing lumbar spine and left lower extremity disabilities and pre-existing dyslexic disorder/disability qualify as being a hindrance or obstacle to employment or re-employment considering their potential to combine with a subsequent work related injury so as to cause a greater degree of disability than would have resulted in the absence of the pre-existing disabilities. *Knisley v. Charleswood Corporation*, 211 S.W. 3d 629, 637 (Mo. App. E.D. 2007)(citing *Wuebbeling v. West County Drywall*, 898 S.W.2d 615, 620 (Mo. App. E.D. 1995)).

Dr. Cohen and Dr. Stillings establish that Ms. Woodruff had actual and measurable physical and psychiatric disability at the time she sustained her subsequent July 11, 2007 work accident and injury. Liability of the Second Injury Fund is triggered by such a finding. *Messex v. Sachs Electric Company*, 989 S.W. 2d 206, 215 (Mo. App. E.D. 1999).

I find that Ms. Woodruff's dyslexic disorder and low back pain and left lower extremity symptoms and difficulties pre-existed the work accident and further injury to her low back at the Poplar Bluff hospital in July of 2007. I find that Ms. Woodruff's pre-existing disabilities and conditions were actual, measurable and sufficiently serious to constitute a hindrance or obstacle to her employment or to her obtaining re-employment. Based on the totality of evidence, I find that Ms. Woodruff is permanently and totally disabled as a result of her pre-existing physical and psychiatric disabilities when combined with the July 11, 2007 further lumbar spine and body as a whole injury and disability.

Compensation Calculations

Under Section 287.220.1 RSMo., in order to make the computations necessary to determine the liability of the Second Injury Fund for permanent total disability, it is first necessary to make a specific finding regarding the Employee's disability resulting from the last injury, "considered alone and of itself." *Vaught v. Vaught*, 938 S.W. 2d 931, 939 (Mo. App. S.D. 1997). As previously indicated, under Section 287.220.1 RSMo., in situations where the previous disability and the last injury combine to result in permanent and total disability, the Employer/Insurer is only liable for the disability resulting from the last injury considered alone and of itself and the Second Injury Fund is liable for the difference, if any, between the compensation for which the Employer/Insurer is liable and compensation provided under Chapter 287 for permanent total disability. Therefore the Second Injury Fund is responsible for making up the difference between the permanent partial disability payments and permanent total disability payments.

On June 11, 2008 Ms. Woodruff was at maximum medical improvement and released from care by Dr. Park. I find she was in her healing period through June 11, 2008. I find that as of June 12, 2008 no Employer in the usual course of business would reasonably be expected to employ Ms. Woodruff in her physical condition and reasonably expect her to perform the work for which she is hired, and therefore was no longer able to compete in the open labor market and was permanently and totally disabled.

Dr. Cohen's stated opinion regarding Ms. Woodruff's disability resulting from the July 11, 2007 back injury at the hospital is that within a reasonable degree of medical certainty, [Ms. Woodruff] has a 40% whole person disability at the level of the lumbar spine (Exhibit B Report page 10).

Based on the credible testimony of the Employee together with the medical opinion of Dr. Cohen and the other evidence presented, I find that Ms. Woodruff has a 20% permanent partial disability of her low back and body as a whole as a direct result of the July 11, 2007 work accident for 80 weeks at the compensation rate of \$389.04 per week beginning June 12, 2008 and ending on December 23, 2009 (\$31,123.20).

In this case, the compensation rate for permanent partial disability is \$389.04 per week while the compensation rate for permanent total disability is \$431.47 per week resulting in a difference of \$42.43 per week. The Second Injury Fund is liable for the difference between what

the Employer/Insurer owes Employee for permanent partial disability and what she is entitled to receive for permanent total disability under Section 287.220.1 RSMo. The Second Injury Fund is responsible for paying to Employee the difference of \$42.43 per week for the 80 week period beginning June 12, 2008 and ending December 23, 2009 or (\$3,394.40). Commencing on December 24, 2009, the Second Injury Fund is responsible for paying the full permanent total disability benefit to the Employee at the rate of \$431.47 per week. These payments for permanent total disability shall continue for the remainder of the Employee's lifetime or until suspended if the Employee is restored to her regular work or its equivalent as provided in Section 287.200 RSMo.

Since the Employee has been awarded permanent total disability benefits, Section 287.200.2 RSMo. mandates that the Division "shall keep the file open in the case during the lifetime of any injured employee who has received an award of permanent total disability". Based on this section and the provisions of Section 287.140 RSMo., the Division and Commission should maintain an open file in the Employee's case pursuant to Sections 287.140 and 287.200 RSMo.

ISSUE 3: Dependency under Schoemehl: Dependency of Mike Woodruff as spouse of Employee and his entitlement to the continuation of PTD benefits.

Under Missouri Workers' Compensation Law, when an Employee is entitled to compensation and death ensues, compensation ceases when the Employee dies from a cause other than her work injury, "unless there are surviving dependents at the time of death." Section 287.230(2) RSMo. *Schoemehl v. Treasurer of the State of Missouri*, 217 S.W.3d 900, (Mo. 2007). The word 'dependent' is defined to mean a relative by blood or marriage of a deceased Employee, who is actually dependent for support, in whole or in part, upon the Employee's wages at the time of the injury. Section 287.240(4) RSMo. "As such any 'dependent' would have to be born and dependent at the time of the injury." *Schoemehl*, 217 S.W.3d at 902. Therefore, although Employee in this case is still living, it is proper for the Administrative Law Judge determining Employee's entitlement to permanent disability compensation to also determine whether Employee had dependents at the time of the work injury to whom her entitlement to that compensation would survive.

Under *Tilley v. USF Holland Inc.*, 325 S.W.3d 487 (Mo. App. E.D. 2010) the Missouri Eastern District Court of Appeals held that the right of qualified dependents to receive permanent total disability benefits under *Schoemehl v. Treasurer of the State of Missouri*, 217 S. W.3d 900 (Mo. 2007), remains viable and was not affected by the legislation rejecting and abrogating that decision if Employee's claim was filed and pending before June 26, 2008, the effective date for the statutory abrogation of *Schoemehl*. Employee's claim was filed on August 10, 2007 and was thus pending before the Division of Workers' Compensation during the time frame necessary to avoid the statutory abrogation.

On the date of Employee's work accident she was married to Mike Woodruff. Section 287.240 provides that the surviving spouse of a deceased Employee will be ". . . conclusively presumed to be totally dependent for support upon a deceased Employee." Section 287.240(4)

RSMo. Mike Woodruff is now, and was at the time of the work injury of July 11, 2007, a total dependent of Employee Shirley Woodruff. Under *Schoemehl*, Mike Woodruff is entitled to have his dependent status and entitlement to future benefits determined and confirmed.

I find that Mike Woodruff is the only total dependent of Employee Shirley Woodruff. Mike Woodruff is awarded a continuation of the Employee's weekly permanent total disability benefits upon the death of Employee Shirley Woodruff.

ATTORNEY FEES:

Ronald L. Little, attorney at law, is allowed a fee of 25% of all sums awarded under the provisions of this award for necessary legal services rendered to Employee. The amount of these attorney fees shall constitute a lien on the compensation awarded herein.

INTEREST:

Interest on all sums awarded hereunder shall be paid as provided by law.

Made by:

Maureen Tilley
Administrative Law Judge
Division of Workers' Compensation