

MICHAEL D. KIDD
(Appellee)

v.

AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA
(Appellant)

and

CANNON COCHRAN MANAGEMENT SERVS.
(Insurer)

Conference held: September 2, 2026
Decided: September 29, 2026

Panel: Administrative Law Judges Rooks, Stovall, and Hirtle
By: Administrative Law Judge Rooks

[¶1] The Automobile Club of Southern California, d/b/a AAA of Northern New England (“Triple A”), appeals from an Administrative Law Judge (*Sands, ALJ*) decision granting Michael Kidd’s Petition for Review in part. Triple A contends the ALJ erred by imputing a part-time post-injury earning capacity to Mr. Kidd of \$450.00 per week. Triple A further asserts that the medical and labor market evidence compels a finding that Mr. Kidd is able to work full-time with an imputed earning capacity of \$685.60. We disagree with these contentions and affirm the decision.

I. BACKGROUND

[¶2] Michael Kidd is a 59-year-old resident of the Lewiston-Auburn area. He worked for Triple A as a battery technician. His job duties involved providing

roadside assistance to motorists. On February 2, 2024, he sustained an injury to his left knee while out on a call. After initial treatment and an MRI that showed an abnormality of the medial meniscus, Mr. Kidd was referred to an orthopedist, Dr. John Padavano, who diagnosed a meniscal tear. Dr. Padavano referred Mr. Kidd to Dr. F. Lincoln Avery for a surgical consultation. Dr. Avery opined that Mr. Kidd might not have a meniscal tear and recommended conservative treatment.

[¶3] Mr. Kidd was also seen by Dr. Peter Esponette pursuant to 39-A M.R.S. § 207. Dr. Esponette recommended a further orthopedic consultation to explore whether surgery would be beneficial notwithstanding certain preexisting comorbidities. Mr. Kidd went on to see Dr. Stephen Katz, who diagnosed a probable meniscal tear and recommended a diagnostic arthroscopy. Dr. Katz noted that Mr. Kidd's ongoing work capacity was limited to "desk work."

[¶4] Shortly after seeing Dr. Katz, Mr. Kidd suffered an acute ischemic stroke. He was initially hospitalized and then spent time in a rehabilitation facility.

[¶5] Triple A voluntarily paid Mr. Kidd full incapacity benefits until July 11, 2025, when it reduced the benefits by means of a twenty-one day discontinuance under 39-A M.R.S. § 205(9). Mr. Kidd then filed a Petition for Review, seeking a ruling that he is entitled to ongoing total or 100% partial incapacity benefits.

[¶6] Mr. Kidd underwent a functional capacity examination (FCE) in October of 2025, which showed that he was unable to work in any full-time capacity. Dr.

Esponnette noted some problems with the FCE but agreed that Mr. Kidd had poor prospects for employment. Dr. Esponnette recommended restrictions on lifting, climbing, and carrying, but did not recommend any restrictions in terms of hours per day or week that Mr. Kidd could work.

[¶7] A hearing was held on January 22, 2026. Triple A introduced a labor market survey which states that a stable labor market exists for Mr. Kidd to earn \$17.14 per hour. Positions listed in the labor market survey were for part-time and full-time work. Mr. Kidd did not provide evidence of a work search.

[¶8] When determining Mr. Kidd's entitlement to benefits, the ALJ properly applied 39-A M.R.S. § 201(5), whereby she separated out the effects of the stroke because those effects are a subsequent nonwork-related injury or disease not causally related to the work injury. The ALJ found that the additional limitations noted in the FCE over and above those previously noted by the doctors "represent the portion of the disability attributable to the nonwork-related stroke." She proceeded to assess Mr. Kidd's earning incapacity resulting from the knee injury alone and, considering multiple factors along with the current minimum wage, found that Mr. Kidd is entitled to ongoing partial incapacity benefits based on imputed earnings of \$450.00 per week. Triple A filed a Motion for Findings of Fact and Conclusions of Law, which the ALJ denied. Triple A appeals.

II. DISCUSSION

[¶9] Triple A contends the ALJ erred when finding that Mr. Kidd is able to work approximately thirty hours per week at a minimum wage job. Triple A asserts that the labor market survey and the medical evidence compel a finding that despite the knee injury, Mr. Kidd is able to work full time at a sedentary job earning more than minimum wage.

[¶10] Post-injury earning capacity is based on both “(1) the employee’s physical capacity to earn wages and (2) the availability of work within the employee’s physical limitations.” *Dumond v. Aroostook Van Lines*, 670 A.2d 939, 8941 (Me. 1996). ALJs are not required to follow any mathematical formula when evaluating an employee’s earning capacity. *See, e.g., Thew v. Saunders of Locke Mills, LLC*, Me. W.C.B. No. 13-4, ¶¶ 9-11 (App. Div. 2013). Rather, ALJs may consider a number of relevant factors to arrive at a figure that accurately reflects the employee’s ability to earn wages, including age, educational background, intelligence, work experience, and vocational training, among others. *See Morse v. Fleet Fin. Group*, 2001 ME 142, ¶ 9, 782 A.2d 769; *Martin v. George C. Hall & Sons, Inc.*, Me. W.C.B. No. 21-27, ¶ 9 (App. Div. en banc 2021).

[¶11] Here, the ALJ considered Dr. Esponnette’s opinion, based on the knee injury alone, that Mr. Kidd was capable of working full-time with restrictions, and that Dr. Katz rendered a similar work capacity opinion weeks before the stroke.

However, the ALJ was not bound to adopt these opinions. She also noted that Mr. Kidd's tenth grade education, work experience, and skill level limited him from some of the jobs identified in the labor market survey, and that the entry level jobs he was likely qualified for such as working as a cashier, parking lot attendant, or store greeter, were often of limited availability and part-time in nature.

[¶12] The ALJ properly took factors including Mr. Kidd's age, educational background, intelligence, work experience, geographic region, work restrictions, and the suitability of the positions identified in the labor market survey into account. The ALJ neither misapplied nor misconceived the law when determining Mr. Kidd's ongoing earning capacity, and the record does not compel contrary factual findings. Accordingly, we discern no reversible error in the decision to impute a part-time, minimum wage-earning capacity to Mr. Kidd. *See, e.g., Moon v. N. Light E. Me. Med. Ctr.*, Me. W.C.B. No. 25-02, ¶¶ 11-12 (App. Div. 2025); *Davis v. Mayo Reg'l Hosp.*, Me. W.C.B. No 24-16, ¶ 3 (App. Div. 2024).

The entry is:

The administrative law judge's decision is affirmed.

Any party in interest may request an appeal to the Maine Law Court by filing a copy of this decision with the clerk of the Law Court within twenty days of receipt of this decision and by filing a petition seeking appellate review within twenty days thereafter. 39-A M.R.S.A § 322.

Pursuant to board Rule, chapter 12, § 19, all evidence and transcripts in this matter may be destroyed by the board 60 days after the expiration of the time for appeal set forth in 39-A M.R.S.A § 322 unless (1) the board receives written notification that one or both parties wish to have their exhibits returned to them, or (2) a petition for appellate review is filed with the law court. Evidence and transcripts in cases that are appealed to the law court may be destroyed 60 days after the law court denies appellate review or issues an opinion.

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