

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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TEREASA RAFDAL,

Claimant,

vs.

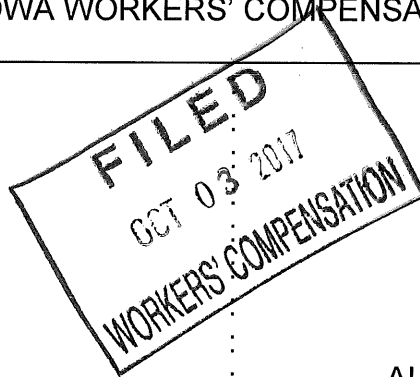
HILLYARD, INC.,

Employer,

and

GRANITE STATE INSURANCE  
COMPANY,

Insurance Carrier,  
Defendants.



File No. 5063740

ALTERNATE MEDICAL  
CARE DECISION

HEAD NOTE NO: 2701

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STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapters 85 and 17A. The expedited procedures of rule 876 IAC 4.48, the "alternate medical care" rule, are invoked by claimant, Tereasa Rafdal.

This alternate medical care claim came on for hearing on October 3, 2017. The proceedings were recorded digitally and constitute the official record of the hearing. By an order filed by the workers' compensation commissioner, this decision is designated final agency action. Any appeal would be a petition for judicial review under Iowa Code section 17A.19.

The record in this case consists of claimant's Exhibits 1-5, defendants' Exhibit A-B, and the testimony of claimant.

ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of neuropsychological testing in Des Moines.

FINDINGS OF FACTS

Defendants admit liability for an injury occurring on November 3, 2016.

On July 10, 2017 claimant was evaluated by Lori Huffman, MA, CCC-SLP, for cognitive disorder with a post-concussive syndrome. Claimant was recommended to have speech therapy to improve cognitive skills. (Exhibit A, pages 1-2)

Claimant testified she was evaluated by Paul Babikian, M.D. in December of 2016. Dr. Babikian is a neurologist. Claimant said Dr. Babikian referred her to Ms. Huffman for speech and cognitive therapy. Claimant said she has not seen Dr. Babikian since December of 2016.

In an August 18, 2017 letter, Ms. Huffman, indicated claimant had been seen for cognitive therapy following a concussion since January 6, 2017. Ms. Huffman requested claimant undergo neuropsychological testing to determine the extent of injury and prognosis for recovery. Claimant was to undergo testing with Daniel Tranel, Ph.D. at the University of Iowa Hospitals and Clinics (UIHC) on September 29, 2017. Ms. Huffman requested testing in Des Moines, Iowa, as a car ride to Iowa City could aggravate claimant's symptoms. Ms. Huffman noted:

The medical record also states the patient suffers from significant photosensitivity since her injury. She remains easily bothered and distracted by external commotion and noise in therapy sessions. A car ride to Iowa City would produce external commotion, movement, and noise. Stress can also exacerbate these symptoms following a brain injury. Undergoing neuropsychological testing is a stressful event to most patients in itself. A car ride/overnight trip to an unfamiliar place will likely produce an increase in undesirable symptoms such as headache, dizziness, possible nausea, and lack of focus-symptoms which have been documented and noted in our therapy sessions. It would likely give a better indication of the patient's true abilities if she were able to participate in testing locally as she would not have added stress of an overnight hotel stay...

(Ex. 2, p. 4)

On August 23, 2017 claimant's counsel requested claimant be allowed to have neuropsychological testing in Des Moines, Iowa. (Ex. 4, p. 6)

In an August 23, 2017 email, defendants' counsel asked if claimant would be attending testing with Dr. Tranel in Iowa City. (Ex. B, p. 6)

In an August 29, 2017 email, defendants again asked if claimant was attending testing with Dr. Tranel in Iowa City. The letter also suggested Ms. Huffman's letter was an improper intrusion with defendants' right to direct and control medical care. (Ex. B, p. 7)

On September 1, 2017, claimant was evaluated by Meghan Kinnetz, MSN, ARNP for follow-up for headaches and memory issues. Claimant had problems with

cognitive ability, headaches and photophobia. Claimant could not process information well. Claimant wore sunglasses all the time to deal with issues involving sensitivity to light. Claimant was assessed as having post-concussive vertigo, headaches, memory loss and photophobia. Ms. Kinnetz indicated that if testing could be done locally, this would be in claimant's best interests. (Ex. 1)

In a September 5, 2017 letter, Ms. Kinnetz indicated that, due to claimant's symptoms, it was recommended testing be done in a manner that did not exacerbate claimant's symptoms. (Ex. 3, p. 5)

In a September 7, 2017 letter, claimant's counsel asked for claimant to have neuropsychological testing in Des Moines. (Ex. 5, p. 7)

In a September 15, 2017 email, defendants' counsel indicated he met with Dr. Babikian. Defense counsel's email notes Dr. Babikian told him there was no medical reason claimant could not attend testing in Iowa City. (Ex. B, p. 9)

In a September 29, 2017 letter, defendants' counsel indicated he spoke with Dr. Babikian who told defense counsel a neuropsychological exam in Iowa City was appropriate. Based on defense counsel's conversation with Dr. Babikian, Ms. Huffman indicated she deferred to Dr. Babikian's medical opinion and had no objection to claimant being evaluated by Dr. Tranel in Iowa City. Ms. Huffman indicated her August 18, 2017 report was an attempt to support claimant's preference to be evaluated in Des Moines, Iowa. (Ex. A, p. 4)

Claimant testified she wanted neuropsychological testing done to help evaluate and treat her injury.

Claimant testified she went to Iowa City twice to be seen by an ophthalmologist, as she was told there was no specialist in Des Moines who could treat her condition. She testified the visits to Iowa City were difficult for her and triggered headaches and other symptoms.

Claimant testified she is unable to drive, and a trip to Iowa City would require a third party driving her to Iowa City. Claimant said a trip to Iowa City would be very stressful for her. She said she has a teenage child and has no one who could care for the child while testing in Iowa City.

#### CONCLUSION OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

Iowa Code section 85.27 provides, in relevant part:

For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to

choose the care. The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he/she has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. Long v. Roberts Dairy Company, 528 N.W.2d 122 (Iowa 1995).

Both defendants and claimant want claimant to undergo neuropsychological testing. Claimant wants the testing to be done in Des Moines, based on concerns that travel to Iowa City will result in nausea, headaches, dizziness, and other stress. Defendants want claimant to have the testing done in Iowa City with Dr. Tranel.

Speech pathologist, Ms. Huffman, initially requested testing be done in Des Moines. This was based on a concern that travel to Iowa City would result in nausea, headaches, dizziness, and other symptoms. Ms. Huffman also suggested that testing in Des Moines may give a better indication of claimant's abilities. (Ex. 2, p. 4)

In a later letter, written by defendants, Ms. Huffman indicated she deferred to Dr. Babikian regarding testing. (Ex. A, p. 4) However, Ms. Huffman's September 29, 2017 letter is based on a conversation defense counsel had with Dr. Babikian. There is no independent opinion of Dr. Babikian in the record regarding testing. The record indicates Dr. Babikian has not seen claimant since December of 2016. In addition, Ms. Huffman did not rescind her opinion, found at Exhibit 2, page 4, that neuropsychological testing in Des Moines would be in claimant's best interests.

Ms. Kinnetz also opined that testing in Des Moines is in claimant's best interests. (Ex. 1, p. 3; Ex. 3, p. 5)

Defendants want to have claimant tested in Iowa City with Dr. Tranel. There is no evidence in the record that testing in Des Moines is inferior to any testing given in Iowa City with Dr. Tranel.

Two experts opine neuropsychological testing in Des Moines is in claimant's best interests. Claimant has legitimate concerns with having testing performed in Des Moines. Given this record, claimant has carried her burden of proof that

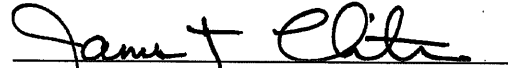
neuropsychological testing in Iowa City is unduly inconvenient for claimant and that testing in Des Moines is in claimant's best interest.

ORDER

Therefore it is ordered:

That claimant has carried her burden of proof she is entitled to the requested alternate medical care. Defendants shall provide neuropsychological testing to claimant in Des Moines, Iowa.

Signed and filed this 3rd day of October, 2017.

  
JAMES F. CHRISTENSON  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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