

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JODI LEE,

Claimant,

vs.

JOHN DEERE DUBUQUE WORKS,

Self-Insured Employer,  
Defendant.

File No. 19006744.01

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

## STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapters 85 and 17A. By filing an original notice and petition for alternate medical care, claimant, Jodi Lee invoked the expedited procedure of rule 876 IAC 4.48.

After proper notice by the agency to the named parties, the alternate medical care claim came on for telephonic hearing on June 29, 2023. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Claimant appeared personally and through her attorney, Zeke McCartney. Defendant failed to appear, file an answer, or otherwise notify this agency of its intention and desire to participate in these proceedings. Claimant's counsel confirmed proper service upon the employer as well as having provided a courtesy copy of this petition via e-mail to the third-party administrator. Given the foregoing, the undersigned declared the employer to be in default and proceeded with the alternate medical care proceeding without the employer's participation.

Pursuant to the Commissioner's February 16, 2015 Order, the undersigned has been delegated authority to issue a final agency decision in this alternate medical care proceeding. Therefore, this ruling is designated final agency action. Any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code section 17A.

The evidentiary record consists of Claimant's Exhibit 1, consisting of three pages. Ms. Lee testified on her own behalf. No other witnesses testified at the hearing, and the evidentiary record closed at the conclusion of the hearing.

## ISSUE

The issue presented for resolution is whether the claimant is entitled to an alternate medical care order requiring defendants to authorize a pain specialist to treat her work injury.

## FINDINGS OF FACT

The undersigned having considered all the evidence in the record finds:

Jodi Lee, claimant, testified credibly at hearing. Her testimony is not rebutted in this record and is accepted.

Ms. Lee sustained a work-related right arm injury on June 7, 2023. As a result of that injury, the employer authorized medical care for claimant's right arm through the University of Iowa. Joseph A. Buckwalter, M.D. provided care for claimant, including two surgical procedures on her right elbow and as well as a radial nerve release in her right forearm. (Claimant's testimony)

On October 18, 2023, Dr. Buckwalter released claimant from his care but indicated that she may need future pain management. (Claimant's testimony; Cl. Ex. 1, page 2) Ms. Lee testified she is in constant pain at this point and that her pain increases at times. She desires further care and specifically a pain management evaluation.

At this point in time, defendant is not offering additional care. The employer has not provided Ms. Lee any explanation of why it will not authorize additional care at this time. Ms. Lee has called the University of Iowa Hospitals and Clinics to seek pain management evaluation. The University of Iowa told her it is awaiting authorization from the employer for the requested care. (Claimant's testimony)

In light of the employer's failure to authorize additional care, Ms. Lee gave notice through counsel of her dissatisfaction on June 5, 2023. (Cl. Ex. 1, p. 1) No further care has been authorized by defendant. I find that the defendant's failure to authorize care for claimant's ongoing symptoms is unreasonable. Claimant has identified additional care that is reasonable and more extensive than the lack of care currently being offered. Claimant has also identified care that was recommended by an authorized physician but not yet authorized by defendant. Defendant has not offered prompt medical care or care that is reasonably suited to treat claimant's injury.

## REASONING AND CONCLUSIONS OF LAW

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 16, 1975).

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See Iowa R. App. P 14(f)(5); Bell Bros. Heating v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). Determining what care is reasonable under the statute is a question of fact. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). The employer's obligation turns on the question of reasonable necessity, not desirability. Id.; Harned v. Farmland Foods, Inc., 331 N.W.2d 98 (Iowa 1983).

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he 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 Co., 528 N.W.2d 122 (Iowa 1995).

When a designated physician refers a patient to another physician, that physician acts as the defendant employer's agent. Permission for the referral from defendant is not necessary. Kittrell v. Allen Memorial Hospital, Thirty-fourth Biennial Report of the Industrial Commissioner, 164 (Arb. November 1, 1979) (aff'd by industrial commissioner). See also Limoges v. Meier Auto Salvage, 1 Iowa Industrial Commissioner Reports 207 (1981).

In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997), the supreme court held that "when evidence is presented to the commissioner that the employer-authorized medical care has not been effective and that such care is 'inferior or less extensive' than other available care requested by the employee, . . . the commissioner is justified by section 85.27 to order the alternate care."

In this case, defendant is not currently offering or authorizing any medical care for claimant's injury. Claimant continues to experience symptoms, has requested further care, and expressed her dissatisfaction with the lack of care being offered. Defendant has not responded to this request or authorized additional care. Therefore, I found that the employer is not offering prompt care or care reasonably suited to treat the

claimant's injury. I also found that the care requested by claimant was recommended by an authorized physician. Finally, I found that claimant has identified and requested reasonable medical care that is more extensive than the lack of care currently being offered by the employer.

Applying the law noted above, I conclude that claimant has proven the lack of care offered by the employer is unreasonable. Claimant prevails in this alternate medical care proceeding for each of these four reasons noted above. Therefore, I conclude the petition for alternate medical care should be granted.


ORDER

THEREFORE, IT IS ORDERED:

The claimant's petition for alternate medical care is granted.

Defendant shall immediately authorize an evaluation with a pain management specialist and shall accept the first available appointment date reasonably consistent with claimant's schedule and appropriate notice to the claimant.

Signed and filed this 29th day of June, 2023.

  
WILLIAM H. GRELL  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Zeke McCartney (via WCES)

John Deere Dubuque Works  
PO Box 538  
Dubuque, IA

Regular & Certified Mail