

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

STEFANO ENRICO VALENTINO,  Claimant,  vs.  WELLS ENTERPRISES, INC.,  Employer,  SEDGWICK,  Insurance Carrier,  Defendants.	File No. 22700508.01    ALTERNATE CARE DECISION    Headnote: 2701
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**STATEMENT OF THE CASE**

On May 26, 2022, Stefano Enrico Valentino filed an application for alternate care under Iowa Code section 85.27 and agency rule 876 IAC 4.48. The defendants, employer Wells Enterprises, Inc., and insurance carrier Sedgwick, answered. The defendants accept liability for Valentino's left arm injury and dispute his application for alternate care.

The undersigned presided over an alternate care hearing held by telephone and recorded on June 10, 2022. That recording constitutes the official record of the proceeding under agency rule 876 IAC 4.48(12).<sup>1</sup> Valentino represented himself and participated personally. The defendants participated through attorney Steven T. Durick. The record consists of:

- Claimant's Exhibit 1;<sup>2</sup> and
- Defendants' Exhibits A and B.

<sup>1</sup> The phone call dropped during the hearing, disconnecting the presiding deputy from the call, so the audio recording in this case consists of two parts.

<sup>2</sup> Exhibit 1 is an audio recording Valentino made as a voice memorandum to himself after an appointment with Dr. Douglas Martin, an authorized care provider for his work injury. Valentino did not submit the recording as a proposed exhibit before the hearing as directed in the agency order setting this case for hearing and agency rule 876 IAC 4.48(9). However, the defendants did not object to him playing the audio recording at hearing after laying foundation for its genesis. The undersigned ordered him to submit a copy of the audio recording as Exhibit 1 to the agency and defense counsel after the hearing. Instructions for doing so are included under the "Order" heading below.

## **ISSUE**

The issue under consideration is whether Valentino is entitled to alternate care in the form of care with orthopedist Dr. Matthew Silisio, M.D.

## **FINDINGS OF FACT**

Valentino sustained an injury while working for Wells Enterprises to his left arm. The defendants arranged care under Iowa Code section 85.27 with Dr. Douglas Martin. The care included physical therapy to be followed by a work-hardening program during which he would gradually ease into the full workload he had before the injury. (Testimony; Ex. B)

Valentino continued to experience pain in his elbow. Dr. Martin told him that his expectation to recover to a point where he had no pain in his elbow was unrealistic. Valentino requested a referral to an orthopedic specialist. Dr. Martin responded by stating that if he referred Valentino to an orthopedic specialist in the Siouxland area, the provider would laugh at him because of his unreasonable expectations for a pain-free outcome. Dr. Martin refused to provide a referral to an orthopedist. (Testimony)

Dr. Martin's statements are presented for the truth of the matter asserted—that any orthopedic specialist in the greater Siouxland area would laugh at Valentino's desire to be pain free and find his expectation of such ridiculous—and are therefore hearsay. Hearsay evidence is admissible in administrative proceedings such as this one with its status as hearsay going to the weight the fact-finder gives it. Here, Dr. Martin's statements about how all orthopedic specialists in the Siouxland area would react to Valentino's expectation to be pain free is given little weight and is not persuasive. There is an insufficient basis in the evidence from which to conclude all orthopedic specialists in the greater Siouxland area would laugh at Valentino's expectation to be pain free after care because they find the expectation ridiculous.

Valentino contacted Sedgwick, seeking a referral to an orthopedic specialist after Dr. Martin refused to provide one. Then he applied to the agency for alternate care. At hearing, he explained that he wants alternate care with an orthopedic specialist outside the Siouxland area because of Dr. Martin's statement regarding the response providers in the area would give him. He specifically wants care with Dr. Silisio, an orthopedic specialist who practices in Omaha, Nebraska.

The defendants do not object to Valentino's request for care with an orthopedic specialist. They scheduled an appointment with Dr. Ryan Meis, an orthopedic surgeon based out of Dakota Dunes, South Dakota, with The Center for Neurosciences, Orthopaedics & Spine (CNOS), to take place at Bollin Chiropractic & Acupuncture Clinic in LeMars, Iowa. That appointment is set for June 22, 2022.

### CONCLUSIONS OF LAW

“Iowa Code section 85.27(4) affords an employer who does not contest the compensability of a workplace injury a qualified statutory right to control the medical care provided to an injured employee.” Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 769 (Iowa 2016) (citing R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 195, 197 (Iowa 2003)). “In enacting the right-to-choose provision in section 85.27(4), our legislature sought to balance the interests of injured employees against the competing interests of their employers.” Id. at 770–71. “Reduced to its essentials, section 85.27 requires an insurer to furnish reasonable medical services and supplies *and* reasonable and necessary appliances to treat an injured employee.” Stone Container Corp. v. Castle, 657 N.W.2d 485, 490 (Iowa 2003). Such employer-provided care “must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee.” Iowa Code § 85.27(4).

An injured employee dissatisfied with the employer-furnished care (or lack thereof) may share the employee’s discontent with the employer and if the parties cannot reach an agreement on alternate care, the agency “may, upon application and reasonable proofs of the necessity therefor, allow and order other care.” Id. “Determining what care is reasonable under the statute is a question of fact.” Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995); Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 436 (Iowa 1997). As the party seeking relief in the form of alternate care, the employee bears the burden of proving that the authorized care is unreasonable. Id. at 124; Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); Reynolds, 562 N.W.2d at 436. Because “the employer’s obligation under the statute turns on the question of reasonable necessity, not desirability,” an injured employee’s dissatisfaction with employer-provided care, standing alone, is not enough to find such care unreasonable. Id.

The evidence shows the conservative care provided and overseen by Dr. Martin reached a plateau. Valentino has ongoing pain. After he informed the defendants he wanted to see an orthopedic specialist because of his ongoing symptoms, they arranged care for him with an orthopedic specialist, Dr. Meis. There is an insufficient basis in the evidence from which to conclude Dr. Meis will find Valentino’s hope to be pain free ridiculous or laugh at him for it. The care with Dr. Meis, as arranged by the defendants, is therefore reasonable.

For these reasons, Valentino has failed to meet his burden of proof on entitlement to alternate care. The weight of the evidence shows the care the defendants have arranged with Dr. Meis is reasonable under the circumstances. Valentino’s application for alternate care is therefore denied.

### ORDER

Under the above findings of facts and conclusions of law, it is ordered:

- 1) Valentino’s application for alternate care is DENIED.

2) Valentino shall mail a copy of the audio recording admitted into evidence as Exhibit 1 to both of the following:

- a) Steven Durick  
Peddicord Wharton, LLP  
6800 Lake Drive, Suite 125  
West Des Moines, IA 50266
- b) Iowa Division of Workers' Compensation  
ATTN: Deputy Humphrey  
150 Des Moines Street  
Des Moines, IA 50309

On February 16, 2015, the Iowa workers' compensation commissioner issued an order delegating authority to deputy workers' compensation commissioners, such as the undersigned, to issue final agency decisions on applications for alternate care. Consequently, there is no appeal of this decision to the commissioner, only judicial review in a district court under the Iowa Administrative Procedure Act, Iowa Code chapter 17A.

Signed and filed this 10th day of June, 2022.

A handwritten signature in black ink, appearing to read "Ben Humphrey", is written over a horizontal line.

BEN HUMPHREY  
Deputy Workers' Compensation Commissioner

The parties have been served, as follows:

Stefano Valentino (via WCES)

Steven Durick (via WCES)