BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BONNIE KNOWLER-HUSBAND, Claimant, vs. FIRST RESOURCES CORP., Employer, and UNITED HEARTLAND, INC., Insurance Carrier, Defendants.	File No. 5065502.02 ALTERNATE MEDICAL CARE DECISION Headnote: 2701

STATEMENT OF THE CASE

On June 23, 2022, the claimant filed a petition for alternate medical care pursuant to Iowa Code 85.27(4) and 876 Iowa Administrative Code 4.48. The defendants filed an answer admitting liability for injuries related to claimant's back.

The undersigned presided over the hearing held via telephone and recorded digitally on July 6, 2022. That recording constitutes the official record of the proceeding pursuant to 876 Iowa Administrative Code 4.48(12). Claimant participated through her attorney, R. Saffin Parrish-Sams. The defendants participated through their attorney, Laura Ostrander.

Prior to the hearing, the claimant submitted 12 pages of exhibits, numbered 1 through 5. The claimant filed a motion to exceed the 10 page limit as noted in 876 Iowa Administrative Code 4.48(9). Pursuant to 876 Iowa Administrative Code 4.48(10), this motion was considered during the hearing. The undersigned ruled that, based upon the language in 876 Iowa Administrative Code 4.48(9), namely the use of the word "shall" in placing limits on the length of written evidence, the claimant would be limited to 10 pages and would need to eliminate two pages of exhibits. The claimant elected to replace one page with one page. Therefore, the evidentiary record consists of Claimant's Exhibits 1 through 5, excluding Claimant's Exhibit 2, page 1, and Claimant's Exhibit 5, page 1. The record also includes Defendants' Exhibits A-D. All of the exhibits were admitted and received into evidence as noted herein.

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, this decision constitutes final agency action, and there is no appeal to the commissioner. Judicial review in a district court pursuant to Iowa Code Chapter 17A is the avenue for an appeal.

ISSUE

The issue under consideration is whether claimant is entitled to alternate medical care in the form of additional radiofrequency ablations as recommended by authorized treating providers.

FINDINGS OF FACT

Claimant, Bonnie Knowler-Husband alleges that she sustained an injury to her back on December 11, 2012, while working for defendant First Resources Corporation, in Sigourney, Keokuk County, Iowa. The defendants admitted liability for the back injury in their answer, and again, verbally, at the outset of the hearing.

The claimant was injured while attempting to prevent a disabled resident from falling. (Claimant's Brief). Since 2015, the claimant has treated at the Iowa Clinic Pain Management Department for chronic left mid-thoracic radicular pain. (Claimant's Brief). This has included medication management, trigger point injections, and radiofrequency ablations ("RFA") every 12 months. (Claimant's Brief). The defendants previously paid for RFA treatment in March of 2015, April of 2016, May of 2017, August of 2018, February of 2020, and March of 2021. (Claimant's Brief). These RFAs provided the claimant with pain relief, which allowed the claimant to continue working. (Claimant's Brief).

On March 4, 2022, the claimant visited with authorized treating provider, Jason Ostrander, A.R.N.P. (Claimant's Exhibit 1:1). Mr. Ostrander noted that Ms. Knowler-Husband displayed tenderness to the thoracic spine and pain with motion. (CE 1:1). Mr. Ostrander noted that the claimant had pain with facet loading on the left. (CE 1:1). Mr. Ostrander diagnosed the claimant with chronic bilateral thoracic back pain, acute mid-back pain, myofascial pain syndrome, thoracic degenerative disc disease, and thoracic radiculopathy. (CE 1:1). Mr. Ostrander continued, "Bonnie is back to full work duty. This is going well and has even picked up more work hours. She does not [*sic*] an increase in her mid thoracic radiculopathy. It radiates to the mid axillary line to the [left]. Will schedule [left] thoracic RFA T7/8/9/10/11." (CE 1:1). Ms. Knowler-Husband was also directed to continue taking gabapentin and tizanidine. (CE 1:1). Finally, Mr. Ostrander placed an order to schedule a thoracic RFA on the left T7/8/9/10/11 with Dr. Patel. (CE 1:1).

Mr. Ostrander replied to a check box letter from United Wisconsin Insurance Company on April 7, 2022. (CE 2:3). Mr. Ostrander circled "yes" in agreeing that the claimant achieved maximum medical improvement for the December 10, 2012, work incident. (CE 2:3). He also circled "yes" in agreeing that the claimant required additional treatment related to the work incident. (CE 2:3). Finally, Mr. Ostrander circled "yes" in agreeing that the claimant's current complaints were the result of natural age progression. (CE 2:3).

Apparently, Mr. Ostrander's responses were unsatisfactory, as the defendant-insurer had him complete another check box letter on April 8, 2022. (Defendants' Exhibit D). The only change in that letter is that Mr. Ostrander now indicated that the claimant required no additional treatment as the result of her December 10, 2012, work injury. (DE D).

On May 27, 2022, Mr. Ostrander responded to a check-box type letter from the claimant's counsel. (CE 2:2). Mr. Ostrander indicated that the claimant's thoracic pain remained constant, and that previous RFAs have provided the claimant with relief. (CE 2:2). Mr. Ostrander also agreed that the natural aging process may contribute to her continued pain, but that her work injury remained "a substantial factor in causing her chronic thoracic spine pain and related radicular symptoms." (CE 2:2). Further, Mr. Ostrander agreed that trigger point injections and RFAs "naturally wear off over time and need to be repeated" since the procedures do not "fix" the underlying injury and merely manage pain. (CE 2:2). Mr. Ostrander continued by opining that the claimant will need continued RFAs at regular intervals to manage symptoms from the work injury. (CE 2:2). Mr. Ostrander continued, "[r]egular RFA's have improved her ability to function and remain working at her current employment." (CE 2:2). Mr. Ostrander agreed that Ms. Knowler-Husband's ongoing pain was real, and that she was a credible patient. (CE 2:2). He further agreed that continued pain management, which includes a repeat RFA, was both reasonable and necessary to treat the December 10, 2012, work injury because this helped the claimant continue to function and remain employed. (CE 2:2). Mr. Ostrander wrote, "she has continued to work and expressed working more hours at times. The RFA has allowed her to do so." (CE 2:2).

Ms. Knowler-Husband reported to Arpan Patel, M.D.'s office at the Iowa Clinic on May 31, 2022. (CE 3:1). Dr. Patel opined that the primary component of the claimant's pain was facet mediated left-sided mid back pain. (CE 3:1). The claimant told Dr. Patel that she had 80 percent to 90 percent benefit for about 9 months from the last RFA. (CE 3:1). The pain gradually returned over time in the exact location as its previous location. (CE 3:1). The claimant reported to Dr. Patel that her pain limited her daily mobility, functionality, and overall quality of life. (CE 3:1). Because she had a documented benefit from the previous RFA, Dr. Patel indicated that he would request an additional RFA. (CE 3:1). If the repeat RFA is approved, Dr. Patel would schedule the procedure. (CE 3:1).

On June 10, 2022, Mr. Ostrander sent a hand-written letter to an adjuster for the defendant-insurer. (CE 5:2). He noted that he performed further review of medical records and discussed the matter with the claimant and her lawyer. (CE 5:2). He continued, "I felt it would be best to allow Bonnie to have coverage of a procedure that has worked well for her over the years. Yes, I recognize this goes against what we discussed." (CE 5:2). He concluded, "RFA's improve her ability to function and continue to work, this is her goal." (CE 5:2).

On June 15, 2022, Mr. Ostrander responded to another check-box letter from the defendant-insurer. (DE B). The defendant-insurer indicated in the letter that they would like Joseph Chen, M.D. to provide "an opinion on the need for diagnosis, MMI and whether ongoing care arose out of and in the course and scope of the original alleged

work injury…." (DE B). Mr. Ostrander agreed that this was necessary and agreed that the claimant should be referred to Dr. Chen. (DE B).

Dr. Chen e-mailed the claimant on June 19, 2022, with the subject "[p]ain [c]oaching [a]ppointment." (DE C).

CONCLUSIONS OF LAW

Iowa Code 85.27(4) provides, in relevant part:

> For purposes of this section, the employer is obligated 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.

Iowa Code 85.27(4). See Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

"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." Ramirez, 878 N.W.2d at 770-71 (citing Bell Bros., 779 N.W.2d at 202, 207; IBP, Inc. v. Harker, 633 N.W.2d 322, 326-27 (Iowa 2001)).

The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Iowa Code 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening, October 16, 1975). An employer's right to select the provider of medical treatment to an injured worker does not include the right to determine how an injured worker should be diagnosed, evaluated, treated, or other matters of professional medical judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988). Reasonable care includes care necessary to diagnose the condition, and defendants are not entitled to interfere with the medical judgment of its own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening Decision, June 17, 1986).

The employer must 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)(emphasis in original). Such employer-provided care "must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." Iowa Code section 85.27(4).

By challenging the employer's choice of treatment - and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See e.g. Iowa R. App. P. 14(f)(5); Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). 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 commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order the care." Id. "Determining what care is reasonable under the statute is a question of fact." Long, 528 N.W.2d at 123; Pirelli-Armstrong Tire Co., 562 N.W.2d at 436. 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; Gwinn, 779 N.W.2d at 209; Pirelli-Armstrong Tire Co., 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.

Mr. Ostrander's opinions are, at best, inconsistent. He seems to change his opinion depending on who is asking him to respond to a check-box letter. Dr. Patel provides a well-reasoned record and notes that the claimant would benefit from additional RFA. Additionally, Mr. Ostrander's note that is most convincing is a handwritten note wherein he acknowledges that he is providing an opinion counter to that sought by the defendant-insurer. The employer appears to be attempting to interfere with the recommendations of two authorized treating physicians.

Further, it appears that the defendants' referral of the claimant to Dr. Chen is an effort to obtain a causation opinion, not provide medical care. The defendants did not offer any explanation at the hearing as to whether Dr. Chen would be treating the claimant or simply be providing recommendations.

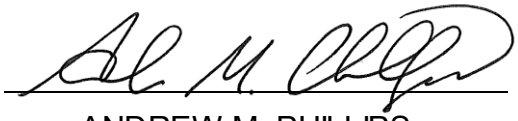
Based upon the evidence in the record, the claimant carried her burden of proof in this matter.

IT IS THEREFORE ORDERED:

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

2. Within ten (10) days of the date of this order, the defendants shall authorize a repeat radiofrequency ablation pursuant to the recommendations of Mr. Ostrander and Dr. Patel.

Signed and filed this ____7th____ day of July, 2022.



ANDREW M. PHILLIPS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Saffin Parrish-Sams (via WCES)

Laura Ostrander (via WCES)