

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ANA BERTHA URIBE,

Claimant,

vs.

ADVANCE SERVICES, INC.,

Employer,

and

ACE PROPERTY & CASUALTY CO.,

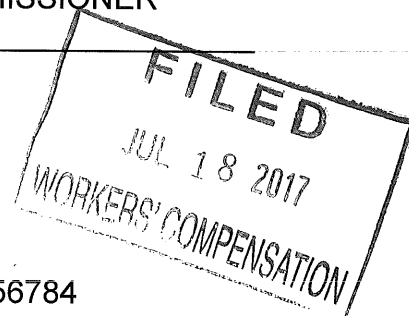
Insurance Carrier,  
Defendants.

File No. 5056784

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. The expedited procedure of rule 876 IAC 4.48 is invoked by claimant, Ana Bertha Uribe. Claimant appeared personally and through her attorney, Dennis Mahr. Defendants appeared through their attorney, Timothy Wegman.

The alternate medical care claim came on for hearing on July 18, 2017. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's 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 and any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code section 17A.

The parties stipulated to most of the facts in this case. The record consists of these stipulations as well as claimant's exhibits 1 through 6, which were received without objection. The defendants do not dispute liability for claimant's October 24, 2014, work injury.

ISSUE

The issue presented for resolution is whether the claimant is entitled to pain management treatment from John C. Cook, M.D.

## FINDINGS OF FACT

The claimant sustained an injury to her low back on October 24, 2014, while working for the employer in this case. The defendants directed her care and she was treated by a highly-qualified neurosurgeon, Grant H. Shumaker, M.D. Dr. Shumaker eventually performed an L4 laminectomy and far lateral discectomy at L4-5 on December 21, 2015. (Claimant's Exhibit 1) She continued to follow up with Dr. Shumaker, who released her on August 25, 2016. It was noted at that visit that she continued to experience pain "despite adequate decompression and postoperative MR Imaging." (Cl. Ex. 2) He provided significant medical restrictions and stated she could follow up on an as needed basis. In October 2016, Dr. Shumaker stated specifically he had "nothing else to offer this patient and will need to continue with family doctor." (Cl. Ex. 6) Claimant has followed up with her family physician, receiving pain medications.

In May 2017, Sunil Bansal, M.D., an evaluating physician chosen by claimant, recommended pain management treatment. "Ms. Uribe would benefit from additional medications, epidural injections, or other treatment as recommended from a pain specialist." (Cl. Ex. 3) Based upon this, claimant, through counsel, requested a referral to John Cook, M.D., a prominent pain management specialist in the Siouxland area. The defendants offered to return claimant to Dr. Shumaker for evaluation, since it had been several months or nearly a year since she had been seen.

## 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. Iowa Code Section 85.27 (2013).

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See 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. Id. 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).

An employer's statutory right is to select the providers of care and the employer may consider cost and other pertinent factors when exercising its choice. Long, at 124. An employer (typically) is not a licensed health care provider and does not possess medical expertise. Accordingly, an employer does not have the right to control the methods the providers choose to evaluate, diagnose and treat the injured employee. An employer is not entitled to control a licensed health care provider's exercise of professional judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988). An employer's failure to follow recommendations of an authorized physician in matters of treatment is commonly a failure to provide reasonable treatment. Boggs v. Cargill, Inc., File No. 1050396 (Alt. Care January 31, 1994).

Based upon the record before me, it is evident the claimant needs pain management treatment. I reject the defendants' assertion that a return to Dr. Shumaker is reasonable under these circumstances. The defendants are responsible for pain management treatment at this time. The defendants may also seek to return claimant to Dr. Shumaker for a visit in their discretion, however, Dr. Shumaker has specifically stated he has nothing further to offer her. Moreover, by advising her to follow up with her family doctor, he was advising her to see someone else for her ongoing complaints of pain. Claimant's pain management treatment should not be delayed while the defendants arrange a return appointment to Dr. Shumaker, should they choose to do so.

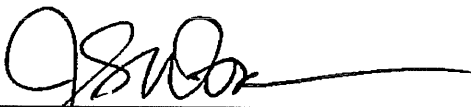
While I agree the claimant is entitled to pain management treatment under this record, I reject the claimant's assertion that a referral to Dr. Cook is the only appropriate treatment. The defendants have done nothing to lose their right to direct the medical care and may select an appropriate pain management physician so long as the choice is reasonable and otherwise comports with Iowa law.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is GRANTED. The defendants shall immediately arrange an appointment with a pain management specialist.

Signed and filed this 18<sup>th</sup> day of July, 2017.

  
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JOSEPH L. WALSH  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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