

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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MIRANDA SNYDER,

Claimant,

vs.

WAL-MART, ASSOCIATES, INC.,

Employer,

and

AIU INSURANCE CO.,

Insurance Carrier,  
Defendants.

File No. 23009515.02

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 procedure of rule 876 IAC 4.48 is invoked by claimant, Miranda Snyder. Claimant appeared personally and through attorney, Nick Platt. Defendants did not answer or appear for hearing. Service was made upon the employer pursuant to Iowa Code section 85.27.

The alternate medical care claim came on for hearing on November 9, 2023. The proceedings were digitally recorded on digital software, Quality Management Suite. This 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 record consists of claimant's exhibits 1 and 2, as well as the claimant's live sworn testimony. I find her testimony to be credible.

## ISSUE

The issue presented for resolution is whether the claimant is entitled to a second opinion.

## FINDINGS OF FACT

Miranda Snyder sustained an injury which arose out of and in the course of her employment with Wal-Mart on April 24, 2023. The injury has impacted the function of her left arm, shoulder and neck. The employer has directed her medical care under Iowa Code section 85.27, ultimately sending her to a specialist at Iowa Ortho, Steven Aviles, M.D.

Ms. Snyder testified that Dr. Aviles performed injections and then what she described as an “exploratory surgery” on her left shoulder. Ms. Snyder testified that these treatments did not help any of her symptoms and she continues to suffer from loss of function and pain. She believes there is something still wrong with her left shoulder. She further testified that she did not believe Dr. Aviles performed the surgery correctly. From her testimony, it is apparent that Ms. Snyder does not have confidence in Dr. Aviles. At her last meeting with Dr. Aviles, Ms. Snyder testified that he told her he had nothing more to offer her for treatment and she should request a second opinion. Ms. Snyder testified that she requested a second opinion from her employer, and they have not offered to provide this.

On October 18, 2023, claimant’s attorney contacted the employer and specifically requested a second opinion. (Claimant’s Exhibit 1, page 2) On November 8, 2023, claimant’s attorney emailed a courtesy copy of the petition to Ms. Snyder’s contact at Wal-Mart. (Cl. Ex. 2)

## 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 Dec. January 31, 1994).


Based upon the record before me, I find that Wal-Mart is presently offering Ms. Snyder no medical treatment. I find that this is unreasonable. At her last visit with Dr. Aviles, Ms. Snyder testified that he told her he had no treatment to offer her and suggested she get a second opinion. She requested this on her own and then got an attorney to make the request a few weeks later.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is GRANTED. Defendants shall immediately authorize a second opinion for treatment purposes to determine whether there is any further treatment necessary for the claimant's work injury.

Signed and filed this 9<sup>TH</sup> day of November, 2023.

  
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JOSEPH L. WALSH  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Nick Platt (via WCES)

Wal-Mart Associates, Inc. (via regular and certified mail)  
5101 SE 14<sup>th</sup> St  
Des Moines, IA 50320-1609

AIU Insurance Co. (via regular and certified mail)  
1271 Ave Of Th Amer, Fl 35  
New York, NY 10020-1304

Karen Center (via email [Karen.Center@walmart.com](mailto:Karen.Center@walmart.com))