

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TIMOTHY KONO,

Claimant,

vs.

ROYAL PLUMBING, LLC,

Employer,

and

EMPLOYERS MUTUAL CAS. CO.,

Insurance Carrier,  
Defendants.

File No. 1663131.02

ALTERNATE MEDICAL

CARE DECISION

Head Note: 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, Timothy Kono. Claimant appeared through his attorney, R. Saffin Parrish-Sams. Defendants appeared through their attorney, Lori Brandau.

The alternate medical care claim came on for hearing on August 12, 2021. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. 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 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 exhibit 1, page 2; claimant's exhibit 2; claimant's exhibit 3, page 5; claimant's exhibit 4, page 7, 9, and 10; claimant's exhibit 5; and defendants' exhibits A through E.<sup>1</sup> No witnesses were called, but counsel offered oral arguments to support their positions.

<sup>1</sup> At the beginning of hearing, claimant withdrew from evidence 3 pages of exhibits in order to comply with the 10-page limitation: Exhibit 1, page 1; Exhibit 3, page 6; and Exhibit 4, page 8.

## ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of authorization for claimant to receive an emotional support animal, and payment of all associated costs.

## FINDINGS OF FACT

Claimant is 32 years old. He sustained multiple injuries on April 9, 2019, when he was working in a 10 to 11-foot-deep trench that collapsed, essentially burying claimant alive. Claimant sustained multiple physical injuries, including injuries to his hips, legs, knees, ankles, and low back. Claimant also sustained a mental health injury, including post-traumatic stress disorder (PTSD), anxiety, and depression. The condition for which claimant seeks alternate care involves the mental health diagnoses of PTSD, anxiety, and depression. Defendants have admitted liability for these conditions.

Claimant argues, through his attorney, that his PTSD is severe, and at times he has been suicidal. In July of 2020, he had contrived a noose in his home, and was prepared to hang himself. (Exhibit 4, p. 9) There are several events that trigger his PTSD, including darkness, which causes him to sleep with his lights on at night. He also suffers from flashbacks of the event. He is unable to predict when something might trigger his symptoms, which often results in him isolating himself alone in his residence.

For at least the past 2 years, claimant has been receiving mental health treatment at the direction of James L. Gallagher, M.D., F.A.P.A, and receiving therapy with Shannon L. Sandahl, LISW. On April 23, 2021, Dr. Gallagher advised that he would be retiring from practice. (Ex. 4, p. 7) He recommended Laura Cunningham, PA-C, take over claimant's care, under Dr. Gallagher's supervision. Claimant began seeing PA-C Cunningham shortly thereafter.

In notes dated June 8, 2021, PA-C Cunningham noted that claimant continued to struggle with depression, significant PTSD, and anxiety. (Ex. 3, p. 5) His PTSD symptoms "wax and wane pending his social obligations." He reported that being "stuck" in his apartment seemed to be a big stressor as well.

On June 25, 2021, PA-C Cunningham recommended that claimant be provided with an emotional support animal.<sup>2</sup> (Ex. 2, p. 3; Ex. 5, p. 11) Claimant's therapist, Ms. Sandahl, joined in the recommendation in a note dated July 14, 2021. (Ex. 1, p. 2) Ms. Sandahl noted that a dog would help claimant manage his acute PTSD symptoms from the accident, including his symptoms of anxiety, depression, and flashbacks. The dog would help mitigate his disability by helping him regulate his emotions, encouraging him

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<sup>2</sup> The records use the terms "service dog" and "emotional support dog/animal" somewhat interchangeably. As the parties have very helpfully explained, there is a great deal of difference between a trained, ADA-certified service dog and an emotional support dog. At hearing, claimant's counsel clarified that his specific request at this time is for an emotional support dog.

to leave his home, facilitating social interactions, regulating his sleep, interrupting or preventing impulsive behaviors, and providing emotional support. (Ex. 1, p. 2)

On July 20, 2021, claimant's attorney wrote to defense counsel requesting authorization for the emotional support dog. (Ex. 2, pp. 3-4) The petition for alternate care was subsequently filed on July 30, 2021. On August 5, 2021, defense counsel wrote to claimant's attorney to advise that the request was under review, as clarification was needed as to whether the providers recommended a trained service dog versus an emotional support animal. (Ex. A, pp. 1-2) Both PA-C Cunningham and Ms. Sandahl provided clarification that the recommendation is for an emotional support animal. (Ex. B, pp. 3-4; Ex. D, pp. 8-9)

It should be noted that as of July 1, 2021, Dr. Gallagher was no longer able to practice medicine, and was no longer able to continue his supervisory role with PA-C Cunningham. (Ex. B, p. 3) As such, her care is now supervised by Steven Reeves, M.D. The parties noted at hearing that Dr. Reeves is not a psychiatrist, but an internist.

PA-C Cunningham provided a letter dated August 5, 2021, further elaborating on her recommendations. (See Ex. 5) She notes that prior to making the recommendation for an emotional support animal on June 25, 2021, she discussed the recommendation with Dr. Gallagher, who was still supervising her treatment at that time. Dr. Gallagher agreed with the recommendation. (Ex. 5, p. 11) The two agreed an emotional support animal would be of "great benefit" to claimant because it would provide him with "the emotional support that he needs to continue moving forward in his treatment. Emotional support animal would augment his medication therapy as well as his psychotherapy." Further, they agreed it would provide claimant with purpose as he currently feels "stuck." It would give him something to look forward to, something to care for, and also provide companionship. PA-C Cunningham further explained that when an individual does not feel as though they have a purpose, future, or companionship, it can lead to difficulties in treatment. This results from perpetuation of the feelings of hopelessness and helplessness, which is something claimant has consistently reported throughout his treatment. Finally, PA-C Cunningham noted that during the evening and nighttime, claimant suffers a higher frequency of flashbacks, panic attacks, anxiety, and negative thoughts, and an emotional support animal would be particularly helpful during those times to provide emotional support. (Ex. 5, pp. 11-12)

PA-C Cunningham goes on to explain some of the differences between a service animal and an emotional support animal, and specifically why the current request is for an emotional support animal. As it relates to claimant in particular, an emotional support animal is recommended because it would allow him to select the animal to which he feels a bond, as opposed to a service animal that would be chosen for him. (Ex. 5, p. 12) This is important as it would allow claimant to feel some aspect of control, which is important to improving his condition. Second, the emotional support animal would come at a lower cost, and without the significant time delays that would occur if a service animal were assigned. She also points out that claimant has discussed his desire to return to the workforce, and that an emotional support animal will be of great importance

in helping him reach that goal. In the event his condition does improve to the point where he can reenter the workforce, the emotional support animal can then be specially trained to meet the requirements of a service animal. (Ex. 5, p. 12)

PA-C Cunningham also explains in detail that psychiatric conditions such as depression, anxiety, and PTSD do not have a “timeline” to get better. This is especially true in situations such as claimant’s, in which he had physical injuries, emotional injury, and subsequently “moral” injuries. She explains that by “moral” injury, she means that the trauma that occurred has affected who claimant is as a person. Based on her treatment of claimant, she believes the first step in improving his condition at this point is to provide him with a purpose, emotional support, and give him back some ability to make his own choices. These goals can be achieved with an emotional support animal, which will most likely result in stabilization and hopefully improvement in his mental health conditions. (Ex. 5, pp. 12-13)

Defendants had previously sent claimant to see C. Scott Jennisch, M.D., in January of 2021. Due to his schedule, Dr. Jennisch had not been able to provide his report. After receiving the request for the emotional support dog, defendants provided Dr. Jennisch with updated records and asked him to provide his report and offer opinions regarding ongoing treatment. Dr. Jennisch’s report is dated August 6, 2021, and excerpts were provided in evidence. (Ex. C, pp. 5-7; see also Ex. E, p. 10) Dr. Jennisch opined that while claimant is not at maximum medical improvement with respect to his mental health conditions, he does not believe an emotional support animal is the appropriate course of treatment. Rather, he has recommended transitioning claimant’s care to a psychiatric provider “comfortable with adjusting medications and managing side effects, if experienced, in a more aggressive way to improve the likelihood of more effectively reducing psychiatric symptoms.” (Ex. C, p. 5) He also recommends vocational rehabilitation and therapy with a different focus in order to address issues of isolation and self-esteem.

Dr. Jennisch noted his concerns with an emotional support animal, including the potential to exacerbate family tensions, the demands associated with being responsible for an animal, including “the additional financial burden it will place on him even if reimbursement was covered by workers’ compensation and the likelihood it would keep him from engaging in the community through employment and vocational training.” (Ex. C, p. 6) Dr. Jennisch also notes that this treatment recommendation is not considered standard of care, and references an evidence-based website published by Rueters called “Up to Date.” (Ex. C, p. 6) According to Dr. Jennisch, the website urges caution regarding emotional support animals and PTSD, noting that they should be used with caution as the animals “may act to perpetuate hypervigilance by attenuating stressful situations that the individual might otherwise learn to cope with through repeated exposure.” (Ex. C, p. 6)

Dr. Jennisch offered a specific treatment recommendation, involving “six months of additional psychiatric treatment with a transition of care to a psychiatrist, a change in focus of therapy to encourage community engagement, return to work even if on a part-

time basis, and then progress toward termination of therapy given the years of therapy services to date with relatively little meaningful improvement in his functioning or quality of life.” (Ex. C, p. 7) Defendants have advised that they are willing to authorize Dr. Jennisch’s plan of care, and as of August 11, 2021, had begun to make arrangements in accordance with his recommendations. (Ex. E, p. 10)

I find that claimant’s authorized treating medical providers, which include Dr. Gallagher prior to his retirement, PA-C Cunningham, and his therapist Shannon Sandahl, are in a better position to fully assess and understand claimant’s mental health conditions. They have recommended treatment that includes, at this time, an emotional support animal. While Dr. Jennisch has offered an alternative therapy recommendation, I do not find his recommendations to be reasonable in this particular case at this time. As such, claimant is entitled to an emotional support animal as part of his mental health treatment related to his accepted work 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).

Iowa Code section 85.27 provides:

The employer, for all injuries compensable under this chapter or chapter 85A, shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance and hospital services and supplies therefor and shall allow reasonably necessary transportation expenses incurred for such services. The employer shall also furnish reasonable and necessary crutches, artificial members and appliances but shall not be required to furnish more than one set of permanent prosthetic devices.

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); 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). In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997), the court approvingly quoted Bowles v. Los Lunas Schools, 109 N.M. 100, 781 P.2d 1178 (App. 1989):

[T]he words “reasonable” and “adequate” appear to describe the same standard.

[The New Mexico rule] requires the employer to provide a certain standard of care and excuses the employer from any obligation to provide other services only if that standard is met. We construe the terms “reasonable” and “adequate” as describing care that is both appropriate to the injury and sufficient to bring the worker to maximum recovery.

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. See Iowa Code § 85.27(4). Thus, 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); Long, 528 N.W.2d at 124.

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). Defendants are not entitled to interfere with the medical judgment of their own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening Dec., June 17, 1986).

The right to choose the care means the right to choose the provider, not the treatment modalities recommended by the provider. The employer must provide the treatment, testing, imaging or other treatment modalities recommended by its own authorized treating physician, even if another consulting physician disagrees with those recommendations. Haack v. Von Hoffman Graphics, File No. 1268172, p. 9 (App. July 31, 2002) [MRI and x-rays]; Cahill v. S & H Fabricating & Engineering, (Alt Care Dec., File No. 1138063, May 30, 1997) (work hardening program); Hawxby v. Hallett Materials, File No. 1112821, (Alt Care Dec., February 20, 1996); Leitzen v. Collis, Inc. File No. 1084677, (Alt Care Dec., September 9, 1996). The right to choose the care does not authorize the employer to interfere with the medical judgment of its own treating physician. Boggs v Cargill, Inc. File No. 1050396, (Alt Care Dec., January 31, 1994).

Additionally, the commissioner is justified in ordering alternate care when employer-authorized care has not been effective and evidence shows that such care is “inferior or less extensive” than other available care requested by the employee. Long; 528 N.W.2d at 124; Pirelli-Armstrong Tire Co. v. Reynolds; 562 N.W.2d 433, 437 (Iowa 1997).

Ultimately, determining whether care is reasonable under the statute is a question of fact. Long, 528 N.W.2d at 123. In this case, I found that claimant's authorized treating providers, including PA-C Cunningham and Shannon Sandahl, have recommended that claimant be provided with an emotional support animal. PA-C Cunningham's recommendation is supported by Dr. Gallagher, with whom she discussed it at a time when he remained her supervising physician. Dr. Gallagher had been claimant's authorized treating physician for at least two years prior to his retirement. Claimant's mental health providers have worked as a team in order to determine what treatments are in his best interest and will best serve his recovery. Their recommendations are not to be interfered with or second-guessed by the employer.

Defendants argue that they are offering reasonable care, as they are in the process of reestablishing care with a psychiatrist as recommended by Dr. Jennisch. In the meantime, all previously authorized care remains in effect. While I appreciate defendants' willingness to continue to provide mental health care, I do not find it reasonable to disrupt claimant's established care at this juncture. Claimant has previously suffered from suicidal ideation, to the extent he had prepared a noose and was ready to end his life. PA-C Cunningham has noted that his feelings of helplessness and a lack of control over his life exacerbate his PTSD, depression, and anxiety. Disrupting his established care would certainly be detrimental to his feelings of helplessness, which is contrary to what his current providers have recommended. Further, his current providers have not had a chance to review or otherwise consider Dr. Jennisch's recommendations. Under these circumstances, what defendants are offering is not reasonably suited to treat his particular injury at this time.

Additionally, as PA-C Cunningham noted, psychiatric conditions such as depression, anxiety, and PTSD do not have a "timeline" to get better. Dr. Jennisch's timeline of 6 months to reach maximum medical improvement, while certainly well-intentioned, is not reasonable in this particular case. Dr. Jennisch has only examined claimant one time, in January of 2021, and reviewed updated medical records in order to reach his conclusions and offer his recommendations. As noted above, defendants cannot disregard the treatment recommendations of the authorized treating physician, even if a consulting physician disagrees with those recommendations.

I conclude that the medical treatment offered by defendants is not reasonably suited to treat claimant's work injury.

Defendants also argue that an emotional support animal is not covered by Iowa Code section 85.27. Both attorneys and the undersigned were only able to locate one prior decision with respect to this question, Gilbert Webb v. Olivet Baptist Church, File No. 5053248 (Alt. Care. Dec., June 12, 2017). While that case is factually distinguishable, it does provide guidance. First, Webb involved a service dog, as opposed to an emotional support animal. Additionally, the claimant has already obtained the dog, free of charge, and was seeking an order directing defendants to pay for the expenses associated with the animal's care. Finally, the defendants in Webb had not offered any evidence that a service dog was not reasonable, while in the instant case defendants have provided Dr. Jennisch's opinions.

While Webb is factually distinguishable, legally, the application of section 85.27 still applies. The Iowa Supreme Court has interpreted Iowa code 85.27 in a number of cases. The Iowa Supreme Court has interpreted “appliance” to include any device that furnishes an action or affords a function impaired or lost as a result of the employee’s injury, or that treats or remedies a condition resulting from the injury.

In Manpower Temporary Services v. Sioson 529 N.W.2d 259, 263, 264 (Iowa, 1995) the Supreme Court held:

We believe and hold “care” in the procedure paragraph also includes services and supplies, as suggested in the first paragraph of the same statute. There is nothing in the Code to indicate the legislature intended the narrow construction of the term advocated by Manpower. See Mortimer, 502 N.W.2d at 14 (courts must avoid strained, impractical or absurd results in favor of sensible, logical construction; workers’ compensation statutes are to be construed liberally). The term “care” in medical context means “prevention or alleviation of a physical or mental defect or illness.” See, e.g., Browning v. Burt, 66 Ohio St.3d 544, 613 N.E.2d 993, 1003 (1993). The term includes such things as crutches, artificial members, and appliances because these things, just as services by health care professionals, prevent or alleviate physical or mental defects or illnesses.

...

In another context, like other courts, we have agreed with the dictionary definition that describes the term “appliance” as “a means to an end.” Murray v. Royal Indem. Co., 247 Iowa 1299, 1301, 78 N.W.2d 786, 787 (1956). The “end” of the van is merely an extension of Miya’s 300-pound wheelchair. Without a van she is, more than need be, a prisoner of her severe paralysis. The commissioner could thus reasonably view the van as an appliance, a necessary part of Miya’s care.

In this case, the emotional support dog is recommended as a way to augment claimant’s medication therapy, as well as his psychotherapy. It will provide claimant with purpose, as he currently feels “stuck.” It will give him something to look forward to, something to care for, and also provide companionship. It will help with claimant’s feelings of hopelessness and helplessness, and give him some sense of control. It will help provide support during the evening and nighttime, when claimant suffers a higher frequency of flashbacks, panic attacks, anxiety, and negative thoughts. Ultimately, the “end” is to help claimant improve his psychiatric condition to a point where he can reenter the workforce. An emotional support dog, in this case, is a means to that end. As was the case in Webb, regardless of the specific category used under section 85.27(1), an emotional support dog will help restore functions claimant lost as a result of his work-related medical condition.

With respect to cost, neither party introduced evidence as to the specific cost of obtaining and caring for the emotional support animal. However, in requesting an emotional support animal as opposed to an ADA-certified service dog, the medical providers have considered cost, as this option is less expensive and will still provide claimant with the support he needs. I find the costs are reasonable.

Therefore, I conclude that claimant has proven his claim for alternate medical care. Defendants are ordered to authorize and pay for claimant to receive an emotional support animal of his choosing, and for all costs related to the care of the animal.

ORDER

THEREFORE, IT IS ORDERED:

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

Defendants shall immediately authorize and timely pay for claimant to receive an emotional support animal of his choosing, and for all costs related to the care of the animal.

Signed and filed this 13<sup>th</sup> day of August, 2021.

A handwritten signature in black ink, appearing to read 'Jessica L. Cleereman', written over a horizontal line.

JESSICA L. CLEEREMAN  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

R. Saffin Parrish-Sams (via WCES)

Lori Brandau (via WCES)