

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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DOROTHY ICKES,

**FILED**

Claimant,

FEB 28 2019

vs.

**WORKERS COMPENSATION**

GREAT RIVER MEDICAL CENTER  
and/or GREAT RIVER HEALTH  
SYSTEM,

Employer,

and

SENTRY INSURANCE,

Insurance Carrier,  
Defendants.

File No. 5063028

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

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Claimant Dorothy Ickes filed a petition in arbitration on January 6, 2017, against the defendants, Great River Medical Center, and/or Great River Health System ("Great River"), and Sentry Insurance ("Sentry"), alleging she sustained a work injury slipping on a wet floor causing a right rotator cuff tear, subacromial impingement, labral tear, and biceps tendinitis. Great River and Sentry filed an answer on January 27, 2017, admitting Ickes sustained a work injury. An arbitration hearing was scheduled for October 9, 2018. Ickes filed a motion for continuance on September 17, 2018. Deputy Workers' Compensation Commissioner Michelle McGovern granted the motion. The matter has not been rescheduled for hearing.

On February 15, 2019, Ickes filed an application for alternate medical care, stating she is dissatisfied with the care she has received because Great River

employs both the Claimant and the two Orthopedic Surgeons that have unsuccessfully attempted to repair claimant's work injury. Employer has a pecuniary interest in sending Claimant to its own surgeons. After two unsuccessful surgeries, the Employer, Great River Medical Center, now proposes to have claimant undergo a third surgery, again by its own Employee surgeon, Dr. Jameson, who conducted one of the two prior unsuccessful surgeries. Claimant, understandably, wishes to be treated by a doctor that is independent of the Employer, Great River Medical

Center, and asks that she be permitted to treat with Dr. Hendricks, 903 Oak Street, Burlington, Iowa.

Great River and Sentry filed an answer on February 27, 2019.

A hearing on the application for alternate medical care was held on February 28, 2019, by telephone conference call. Attorney Darwin Bunger represented Ickes. Attorney Nicholas Cooling represented Great River and Sentry. Exhibits 1 through 5 and A through D were admitted into the record. The proceeding was recorded by digital recorder and the digital recording is the official record of the proceeding. No witnesses appeared at hearing. The attorneys provided argument only, which is not evidence.

The undersigned has been delegated with the authority to issue final agency action in this matter. Appeal of this decision, if any, is to the district court pursuant to Iowa Code section 17A.19.

### FINDINGS OF FACT

Ickes sustained an injury while working for Great River on May 21, 2016. (Exhibits 4; 5, page 1) Ickes was diagnosed with a rotator cuff tear. (Ex. 5, p. 1) Atiba Jackson, M.D., an orthopedic surgeon, performed a rotator cuff repair, labral debridement, biceps tenotomy, subacromial bursectomy, CA ligament takedown, debridement, and acromioplasty on Ickes. (Ex. 5, p. 1) Ickes continued to complain of pain and discomfort. (Ex. 5, p. 1) Theron Jameson, D.O., also an orthopedic surgeon, performed a distal clavicle resection on Ickes. (Ex. 5, p. 1)

Ickes continued to complain of pain and discomfort following the distal clavicle resection. (Ex. 5, p. 1) Great River and Sentry referred Ickes to James Nepola, M.D., at the University of Iowa Hospitals and Clinics ("UIHC"). (Ex. 5, p. 1) Dr. Nepola did not recommend additional surgery for Ickes, and referred Ickes back to Dr. Jameson. (Exs. 2, p. 1; 5, p. 1) Dr. Jameson found Ickes was at maximum medical improvement, and imposed permanent restrictions of no pushing, pulling, or lifting over ten pounds with the right upper extremity. (Ex. 1, p. 2)

Dr. Jameson issued a permanent impairment rating. (Ex. C, p. 2) Ickes disagreed with the rating and requested Great River and Sentry pay for an independent medical examination with Michael Hendricks, M.D. (Ex. C, p. 2) Ickes underwent an independent medical examination with Dr. Hendricks and he issued a report on October 3, 2018. (Ex. 5) Dr. Hendricks recommended additional evaluation, including magnetic resonance imaging, electromyography, and a functional capacity evaluation. (Ex. 5, p. 2)

After the hearing was continued, Ickes requested additional medical care from Great River and Sentry. (Ex. 4) Ickes did not want to return to Dr. Jameson. (Ex. 4)

In her application for alternate medical care, Ickes stated she was dissatisfied with Dr. Jameson's care because he worked for Great River and the surgery he performed was not successful. (Ex. 4) Great River and Sentry scheduled an appointment for Ickes with Matthew White, M.D., an orthopedic surgeon in Cedar Rapids, for March 8, 2019, for an evaluation to provide treatment recommendations. (Ex. B)

Ickes sent an e-mail to her attorney stating she hoped she would be paid for gas, she would have to take a day off work to attend the appointment, and driving to Cedar Rapids would be difficult for her shoulder. (Ex. 3) Ickes would like to receive treatment closer to her home in West Burlington. (Ex. 3)

### CONCLUSIONS OF LAW

Under Iowa Code section 85.27 (2016), an employer is required to furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under Iowa Code chapters 85 and 85A. The employer has the right to choose the provider of care, except when the employer has denied liability for the injury. Id.

"The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." Id. § 85.27(4). If the employee is dissatisfied with the care, the employee should communicate the basis for the dissatisfaction to the employer. Id. If the employer and employee cannot agree on alternate care, the commissioner "may, upon application and reasonable proofs of necessity therefore, allow and order other care." Id.

The employee bears the burden of proving the care authorized by the employer is unreasonable. R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 196 (Iowa 2003). "The employer's obligation under the statute turns on the question of reasonable necessity, not desirability." Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995). The care authorized by the employer is unreasonable if it is ineffective, inferior, or less extensive than the care requested by the employee. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997). The determination of whether care is reasonable is a question of fact. Long, 528 N.W.2d at 123.

Great River and Sentry agreed to provide additional treatment to Ickes and arranged an appointment with Dr. White in Cedar Rapids, Iowa, a one-way trip of ninety miles, on March 8, 2019. At hearing Ickes's attorney argued the care authorized is not reasonable given driving distance.

Medical care should be provided within a reasonable distance from the claimant's residence. Trade Professionals, Inc. v. Shriver, 661 N.W.2d 119, 124 (Iowa 2003) (more than 100 miles is an undue inconvenience); Schrock v. Corkery Waste Disposal,

Inc., File No. 1133725 (Alt. Care June 26, 1996) (finding a roundtrip distance of 120 miles excessive); Schulte v. Vocational Services of Area Residential Care, File No. 1134342 (Alt. Care Sept. 6, 1996) (care more than 70 miles away is unreasonable). While a fifty-mile radius is generally considered a reasonable distance to travel for treatment in workers' compensation cases, what is reasonable depends on the circumstances in a particular case. Warner v. City of Hawarden, File No. 5039478 (Arb. June 27, 2013); Bitner v. Cedar Falls Constr. Co., File No. 5013852 (Alt. Care Sept. 24, 2004).

Great River and Sentry have agreed to provide evaluation and treatment in Cedar Rapids, which is more than 90 miles one-way from Ickes's residence. There are instances where traveling such a distance would be reasonable, including, but not limited to an evaluation with a specific specialist, care for complex or uncommon injuries, or the availability of specialized equipment. The record is void of any evidence that the evaluation and treatment offered with Dr. White or the nature of the injury fits into one of these scenarios. Dr. White is an orthopedic surgeon. No evidence was presented concerning any special training he possesses. No evidence was presented at hearing other qualified orthopedic surgeons closer to Ickes's home are not able or willing to provide care to Ickes, other than Dr. Nepola.

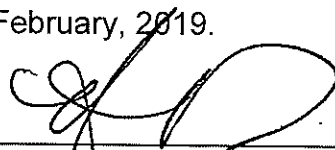
Offering care with a physician located over ninety miles away, a roundtrip distance over 180 miles, is unreasonable. I find Great River and Sentry have failed to provide reasonable and necessary medical treatment to Ickes, but I also find Great River and Sentry are entitled to maintain the right to choose a physician to provide care to Ickes. I decline her request to order Great River and Sentry to provide care with Dr. Hendricks. Great River and Sentry shall provide appropriate care for Ickes within a reasonable distance of West Burlington.

### ORDER

IT IS THEREFORE ORDERED:

Claimant's application for alternate medical care is denied, in part, and granted, in part. Claimant's request the defendants be ordered to provide care with Dr. Hendricks is denied. Defendants shall immediately schedule an appointment with an appropriate treatment provider within a reasonable distance of the claimant's home in West Burlington.

Signed and filed this 28<sup>th</sup> day of February, 2019.

  
HEATHER L. PALMER  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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