

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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APRIL GIBSON,

Claimant,

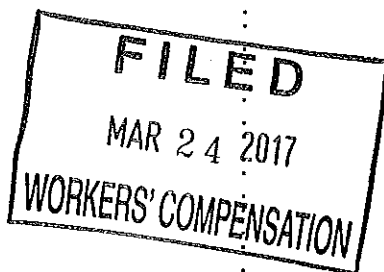
vs.

DAC, INC.,

Employer,  
and

ACCIDENT FUND GENERAL INS. CO.

Insurance Carrier,  
Defendants.



File Nos. 5062848, 5062849

ALTERNATE MEDICAL

CARE DECISION

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April Gibson, claimant, on March 16, 2017, filed an application for alternate medical care under Iowa Code section 85.27, invoking the provisions of rule 876 IAC 4.48. A hearing was March 24, 2017. Defendants on March 16, 2017 filed an answer to the application disputing that claimant was entitled to alternate medical care.

Claimant filed these two petitions for alternate care requesting that the defendants' independent medical examination (IME) be canceled.

Claimant has provided no authority to use the procedures of an alternate care petition to challenge an Iowa Code 85.39 IME.

The undersigned called claimant's attorney at 8:30 a.m., and left a voice message. The undersigned called the claimant's attorney at about 8:34 a.m., and spoke to a staff person in Mr. Soper's office who informed me that Mr. Soper was not in the office and "thought the matter was moot." Defendants' attorney was called and was willing to participate in the hearing.

Certainly if claimant's attorney thought the matter was moot and there was no need for a hearing, he should have filed a dismissal and emailed the deputy commissioner and defense counsel to confirm that fact. As of the time of the hearing the undersigned did not have any notice from our docket section that claimant had filed a dismissal.


Claimant has the burden of proof to show the care offered by defendants is not reasonable. Claimant has failed to show the medical care provided by defendants is not reasonable. Claimant offered no authority that an 85.39 examination could be challenged in an alternate care proceeding.

As claimant and her counsel did not appear and did not prove entitlement to relief these two files are dismissed.

IT IS THEREFORE ORDERED that these cases should be and are hereby dismissed.

Pursuant to a standing order of delegation of authority by the workers' compensation commissioner pursuant to Iowa Code section 86.3, the undersigned enters this decision for the workers' compensation commissioner. There is no right of appeal of this decision to the workers' compensation commissioner. Appeal of this decision, if any, would be by judicial review pursuant to Iowa Code section 17A.19.

Signed and filed this 24<sup>th</sup> day of March, 2017.

  
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JAMES F. ELLIOTT  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

Copies to:

Jerry A. Soper  
Attorney at Law  
5108 Jersey Ridge Road, Ste C  
Davenport, IA 52807-3133  
[jerry@soperlaw.com](mailto:jerry@soperlaw.com)

Laura J. Ostrander  
Attorney at Law  
PO Box 40785  
Lansing, MI 48901-7985  
[Laura.ostrander@accidentfund.com](mailto:Laura.ostrander@accidentfund.com)

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