

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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MOKHLES HABSHY,

Claimant,

vs.

RACCOON VALLEY  
MANAGEMENT, L.L.C.,

Employer,

and

EMPLOYERS PREFERRED  
INSURANCE COMPANY,

Insurance Carrier,  
Defendants.

File No. 20010121.04

ORDER OF DISMISSAL  
FOR LUMBAR CONDITION  
and CONSENT ORDER FOR  
ALTERNATE MEDICAL CARE

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Claimant has filed an original notice and petition for alternate medical care under Iowa Code section 85.27, invoking the provisions of rule 876 IAC 4.48. Claimant seeks authorization of a CT scan of his ribs, an MRI of his thoracic spine, and an MRI of his lumbar spine.

Defendants filed an answer in this alternate medical care proceeding. In their answer, defendants denied liability for the alleged lumbar spine condition. Defendants admit liability for the rib and thoracic spine injuries and concede current causal connection of the requested medical care to the rib and thoracic spine injuries.

The case was scheduled for an alternate medical care hearing on May 18, 2021. Counsel for both parties appeared and were prepared to proceed. However, after discussions with counsel, it was determined that no evidentiary record was needed and that the parties were in agreement as to the result of the alternate medical care proceeding such that an order could be entered without the need for an evidentiary hearing.

The initial issue for determination is claimant's request for alternate medical care and specifically a lumbar MRI. As noted above, defendants denied liability for the alleged lumbar condition in their alternate medical care answer. Before any benefits can be ordered, including medical benefits, compensability of the claim must be established, either by admission of liability or by adjudication. The summary provisions of Iowa Code section 85.27, as more particularly described in rule 876 IAC 4.48, are not designed to adjudicate disputed compensability of a claim.

The Iowa Supreme Court has held:

We emphasize that the commissioner's ability to decide the merits of a section 85.27(4) alternate medical care claim is limited to situations where the compensability of an injury is conceded, but the reasonableness of a particular course of treatment for the compensable injury is disputed. . . . Thus, the commissioner cannot decide the reasonableness of the alternate care claim without also necessarily deciding the ultimate disputed issue in the case: whether or not the medical condition Barnett was suffering at the time of the request was a work-related injury.

. . . .

Once an employer takes the position in response to a claim for alternate medical care that the care sought is for a noncompensatory injury, the employer cannot assert an authorization defense in response to a subsequent claim by the employee for the expenses of the alternate medical care.

R. R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 197-198 (Iowa 2003) (fn 2).

Given the denial of liability for the alleged lumbar condition or injury, claimant's original notice and petition for alternate medical care must be dismissed with respect to the request for the lumbar MRI. Given their denial of liability for the lumbar condition, defendants lose their right to control the medical care claimant seeks for the lumbar condition during their period of denial and the claimant is free to choose that care. Brewer-Strong v. HNI Corp., 913 N.W.2d 235 (Iowa 2018); Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193 (Iowa 2010).

As a result of the denial of liability for the lumbar condition sought to be treated in this proceeding, claimant may obtain reasonable medical care from any provider for this treatment but at claimant's expense and seek reimbursement for such care using regular claim proceedings before this agency. Haack v. Von Hoffman Graphics, File No. 1268172 (App. July 31, 2002); Kindhart v. Fort Des Moines Hotel, Iowa Industrial Comm'r Decisions No. 3, 611 (App. March 27, 1985). "[T]he employer has no right to choose the medical care when compensability is contested." Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010). Therefore, defendants are precluded from asserting an authorization defense as to any future treatment of the lumbar spine during their period of denial.

Defendants concede the compensability and current causal connection of the alleged rib and thoracic injuries and the diagnostic testing recommended by Dr. Miller. Defendants consent to entry of an order directing defendants to authorize the recommended CT scan of claimant's ribs and the MRI of claimant's thoracic spine. Defendants' concession is appropriate and reasonable. Claimant was willing to accept the concession and entry of a consent order. Therefore, no disputes remain for

determination, no formal alternate medical care hearing was required, and no evidence was received as part of these proceedings.

IT IS, THEREFORE, ORDERED:

Claimant's original notice and petition for alternate medical care is hereby dismissed without prejudice with respect to his request for an MRI of the lumbar spine.

If claimant seeks to recover the charges incurred in obtaining care for the lumbar condition for which defendants denied liability, defendants are barred from asserting lack of authorization as a defense to those charges during the period of their denial.

Defendants shall promptly authorize the recommended CT scan of claimant's ribs and the recommended thoracic spine MRI.

Signed and filed this 18<sup>th</sup> day of May, 2021.

A handwritten signature in black ink, reading "William H. Grell", is written over a horizontal line.

WILLIAM H. GRELL  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Samuel Aden (via WCES)

Nathan McConkey (via WCES)