

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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KRISTAL JONES,

Claimant,

vs.

REM IOWA COMMUNITY SERVICES,

Employer,

and

NEW HAMPSHIRE INSURANCE  
COMPANY,

Insurance Carrier,  
Defendants.

File No. 20700950.02

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, Kristal Jones. Claimant appeared personally and through her attorney, Brian Keit. Defendants appeared through their attorney, Edward Rose.

The alternate medical care claim came on for hearing on November 5, 2020. 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 exhibits 1 through 5, which contain 10 pages. Claimant's exhibit was received without objection. Defendants offered no exhibits. Claimant testified on her own behalf. No other witnesses were called to testify.

## ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care. Claimant seeks an order compelling defendants to authorize and pay for an evaluation with an optometrist and an occupational medicine physician.

## FINDINGS OF FACT

The undersigned having considered all the evidence in the record finds:

The facts related to this alternate medical care proceeding are not significantly disputed. Ms. Jones worked for the employer, REM Iowa Community Services. On September 28, 2020, a client of the employer struck Ms. Jones in the eye. The injury is admitted to be work related. (Answer)

Claimant seeks an alternate medical care order that authorizes and requires defendants to identify and pay for an evaluation with an occupational medicine physician and a separate evaluation with an optometrist. Defendants consent and authorize an evaluation with an occupational medicine physician, but deny that an optometrist evaluation should be ordered at this time.

Ms. Jones explained that the client punched her three times in the eye on the date of injury. She also testified that she has been to the emergency room twice and seen her personal physician's office twice since the injury. Many of these records are in claimant's exhibit set.

After the injury occurred, Ms. Jones sought evaluation at the Mercy Clinton Emergency Department on September 29, 2020. On that date, claimant reported no visual changes, but told the emergency room physician that she had pain to the right periorbital area and that it "hurts when she tries to move her eye." (Exhibit 3, page 5) A CT scan taken at the emergency room on September 29, 2020, demonstrated no fractures or obvious deformities as a result of the assault. (Ex. 3, pp. 7-8) The emergency room physician discharged claimant and recommended she follow-up with her personal physician in a few days. (Ex. 3, p. 8)

On October 5, 2020, Ms. Jones followed-up with a nurse practitioner at her personal physician's office. Audrey Housman, ARNP, NP-C, diagnosed a potential concussion and also noted that claimant reported, "You feel like there is a foreign object in your eye and you are having some facial numbness. I recommend you see an eye doctor for further evaluation." (Ex. 1, p. 1) Nurse Housman's October 5, 2020 note indicates, "patient needs to be evaluated by eye doctor prior to returning to work." (Ex. 1, p. 2)

Ms. Jones returned for evaluation by Nurse Houseman on October 15, 2020. Claimant reported her pain was much worse on that date and Nurse Houseman recommended claimant return to the emergency room for further evaluation. Ms. Houseman noted that claimant, "Has not seen an eye doctor yet, waiting on approval from work comp." (Ex. 2, p. 4) Ms. Houseman indicated, "I strongly encourage you to see an eye doctor for further evaluation." (Ex. 2, p. 3)

Ms. Jones also testified that she has pain, pressure, and a blurry spot in her eye since the date of injury. Claimant confirmed that her personal medical provider strongly

recommended she see an optometrist because the personal medical provider did not have the equipment or tools necessary to view the eye or diagnose her condition.

According to claimant, Nurse Housman indicated she would not release claimant to return to work without an evaluation performed by an optometrist. In fact, claimant has not yet returned to work. She would like to get necessary treatment so she can return to work.

However, Ms. Jones has not yet been evaluated by an eye specialist. She requests authorization of an evaluation with an optometrist pursuant to the recommendations of Nurse Houseman. There is no evidence in this record that an eye evaluation is contraindicated, dangerous, unreasonable, or unnecessary. Nurse Houseman's recommendation is not rebutted or contradicted.

Yet, defendants have not authorized an evaluation with an optometrist. Instead, defendants offer an evaluation with an occupational medicine physician, Camilla Frederick, M.D. The evaluation with Dr. Frederick is scheduled to occur on November 6, 2020, the day after this hearing.

Ms. Jones concedes that Dr. Frederick is an occupational medicine physician, but does not know her specific credentials. Claimant does not believe Dr. Frederick is an optometrist. Defendants also concede that they will authorize an evaluation with an optometrist if recommended by their occupational medicine physician.

I find that the defendants' authorization of an occupational medicine physician is a reasonable treatment option for purposes of claimant's injury. Claimant may have experienced a concussion and it is possible that some of her ongoing symptoms are related to neurologic issues or medical issues other than directly related to the eye. However, I also find that a specific recommendation has been made by a treating medical provider for claimant to be evaluated by an optometrist as a result of specific eye symptoms.

An occupational medicine physician is not qualified to offer specific diagnosis and treatment of an eye injury. Therefore, I find that defendants are offering medical care that is less extensive or inferior to the referral and recommendation made by claimant's personal medical provider. I also find that an occupational medicine physician evaluation is not reasonably suited to treat an eye injury.

Finally, I note that an eye evaluation was recommended as early as October 5, 2020. Claimant has already waited a month for an eye examination with a specialist. While defendants may not have been aware of the recommendation for a full month, claimant has certainly waited for a month to obtain such an evaluation. Claimant is entitled to prompt medical care and I perceive no reason to further delay an evaluation with an optometrist, even if by a day before claimant is evaluated by the occupational medical physician. Therefore, I conclude defendants' offer of an occupational medical

evaluation is not reasonable care specific to claimant's eye injury. I find that claimant has proven the need for an evaluation with an optometrist.

#### 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).

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).

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 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).

In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997), the supreme court held that "when evidence is presented to the commissioner that the employer-authorized medical care has not been effective and that such care is 'inferior or less extensive' than other available care requested by the employee, . . . the commissioner is justified by section 85.27 to order the alternate care."

In this case, I found that the occupational medicine physician offered by defendants for claimant's eye complaints is less extensive or inferior to the recommendation of Nurse Houseman for evaluation with an optometrist. I also found that further delay to obtain an eye specialist evaluation is not reasonable. Therefore, I conclude that claimant has proven entitlement to an order for alternate medical care. Specifically, I conclude that claimant has proven entitlement to an evaluation with an optometrist.

ORDER

THEREFORE, IT IS ORDERED:

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

Within fourteen (14) days of the entry of this order, defendants shall identify, authorize, and schedule an evaluation with an optometrist of their choosing.

Signed and filed this 5<sup>th</sup> day of November, 2020.

A handwritten signature in black ink, reading "William H. Grell". The signature is written in a cursive style with a large, sweeping initial "W".

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WILLIAM H. GRELL  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Brian Keit (via WCES)

Edward Rose (via WCES)