

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

<p>JEENLEE NIELSEN, Claimant, vs. MIDWEST MEDICAL TRANSPORT COMPANY, Employer, OLD REPUBLIC INSURANCE, Insurance Carrier, Defendants.</p>	<p>File No. 22005624.02</p> <p>ALTERNATE CARE DECISION</p>
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I. STATEMENT OF THE CASE.

This case stems from the second application for alternate care JeenLee Nielsen has filed with the agency under Iowa Code section 85.27 and rule 876 IAC 4.48 seeking care for alleged injuries relating to an April 28, 2022 vehicle crash. On December 19, 2022, Nielsen first applied for alternate care. The agency assigned the case File No. 22005624.01 and scheduled a telephone hearing. However, after the defendants, employer Midwest Medical Transport Company (Midwest) and insurance carrier Old Republic Insurance (Old Republic), filed an answer disputing liability, the undersigned issued an order dismissing the case without prejudice under rule 876 IAC 4.48(7). Nielsen has requested the agency take administrative notice of the filings in that proceeding and the undersigned hereby does so.

After the defendants changed their position and again accepted liability for Nielsen's injuries stemming from the crash, Nielsen applied to the agency for alternate care a second time, on January 23, 2023. The defendants did not file an answer, which is their prerogative in an alternate care proceeding, and responded to Nielsen's allegations on the record during the hearing under rule 876 IAC 4.48(12).

The undersigned presided over a hearing held by telephone and recorded on February 2, 2022. That recording constitutes the official record of the proceeding under agency rule 876 IAC 4.48(12). Nielsen participated personally and through attorney Jennifer M. Zupp. The defendants participated through attorney Madaline McGill. The record consists of:

- Claimant's Exhibit 1;

- Defendants' Exhibit A; and
- Hearing testimony by Nielsen.

II. ISSUE.

During the hearing, the parties refined their dispute. They do not dispute the defendants' choice of doctor for Nielsen's leg or back. Nor do they dispute the choice of Robert Arias, PhD, for a neuropsychological evaluation. The parties dispute the following:

- 1) Should Dr. Arias's examination, which is estimated to take about six hours, take place in Lincoln, Nebraska, on February 7, 2023, given the fact that Nielsen has a previously scheduled appointment for that afternoon in Omaha, Nebraska?
- 2) Should Michael Chen, D.O., continue as the authorized treating neurologist?
- 3) Should Kirsten Jorgensen, M.S., continue as the authorized treating speech therapist?
- 4) Should the defendants provide care in the form of a neuro-optometry examination, as recommended by Morgan LaHolt, M.D.?
- 5) Should Nielsen undergo magnetic resonance imaging (MRI) of her left knee, as recommended by Dr. LaHolt, before or after her first appointment with Ryan Arnold, M.D., the defendants' chosen treating physician for the alleged injury?

III. FINDINGS OF FACT.

On April 28, 2022, Nielsen was working for Midwest, riding in a vehicle that was traveling down Highway 59. A large black truck struck the vehicle Nielsen was in. Her first memory after the collision is being upside down, held in her seat by her seatbelt. Nielsen unbuckled her seatbelt, fell to the roof of the vehicle, and exited. Her memory of the aftermath of the crash is spotty. (Testimony)

A helicopter transported her to the emergency room (ER) at the University of Nebraska Medical Center (UNMC) in Omaha. Nielsen received care at the ER overnight. UNMC discharged Nielsen and referred her to Takashi Kawamitsu, M.D., her personal care physician, and Brandon Reicks, PA-C, at UNMC Neurosurgery. There is no indication in the record that the defendants communicated to the providers or Nielsen that this care was unauthorized. (Testimony)

Nielsen provided an executed authorization to release medical information to Brooke Johnson, from Gallagher Bassett shortly after the crash. Later, Nielsen executed a second authorization for defense counsel's law firm that had the sections regarding substance abuse, mental health, and AIDS information crossed out. Nielsen has

subsequently given a full release. It is unclear based on the record what issues the defendants have had obtaining medical records relating to the care Nielsen has received for the alleged conditions she contends relate to the crash other than an apparent lag time with respect to the fulfillment of requests relating to records from speech therapy. (Testimony)

Nielsen saw Reicks. He prescribed medication and physical therapy (PT). Nielsen participated in PT after the Reicks referral. He also referred Nielsen to her personal care physician for prescription medication and PT follow-up. There is no indication the defendants took issue with this course of care. (Testimony)

Nielsen received care with Dr. Kawamitsu. A nurse case manager (NCM) attended at least some of her early appointments as an agent of the defendants. Dr. Kawamitsu continued PT, managed prescriptions, and ultimately referred her to see Dr. Chen, a neurologist, and a neurosurgeon. Dr. Kawamitsu's office scheduled an appointment with Dr. Chen for her. There is no indication the defendants took issue with this care. (Testimony)

The NCM was at the appointment during which Dr. Kawamitsu referred Nielsen to Dr. Chen. The NCM attended Nielsen's first appointment with Dr. Chen. Dr. Chen continued to treat Nielsen, managing her medication and referring her for PT and speech therapy. Dr. Chen referred Nielsen to Jorgensen for speech therapy, which she has participated in about once per week. There is no indication the defendants took issue with this treatment. (Testimony)

The defendants arranged for Nielsen to undergo an independent medical examination (IME) with Morgan LaHolt, MD, on December 5, 2022. (Ex. 1) After the IME, Nielsen applied to the agency for alternate care under File No. 2205624.01. The defendants answered, denying liability, and the agency dismissed the case without prejudice. This all happened before Dr. LaHolt issued an IME report.

Dr. LaHolt issued his IME report to defense counsel on or about January 13, 2023, and defense counsel provided a copy of it to claimant's counsel. (Ex. 1) Dr. LaHolt opined that Nielsen's alleged traumatic brain injury (TBI), headaches, neck, back, and leg injuries were caused by the April 28, 2022 crash and recommended care for them. (Ex. 1) Dr. LaHolt recommended neuropsychological testing, seeing her speech therapy through to completion, an MRI of her injured knee, physical therapy for the cervical and lumbar spine, care by a neurologist, and a neuro-optometry evaluation. (Ex. 1) No doctor has opined any of the care recommended by Dr. LaHolt in his IME report is inappropriate or unreasonable.

The defendants acted on Dr. LaHolt's recommendations. They have arranged for care with:

- Matthew Hahn, M.D., for Nielsen's back and neck;
- Dr. Arnold for the left knee;
- Dr. Arias for neuropsychological testing; and

- Joel Cotton, M.D., which would change Nielsen's treating neurologist from Dr. Chen.

However, Nielsen is not satisfied with the proposed care. She does not want to change from Dr. Chen to Dr. Cotton as her treating neurologist. Nielsen also wants to continue speech therapy and PT, which the defendants have not authorized at present. Moreover, Nielsen wants to undergo the MRI recommended by Dr. LaHolt for her knee before her appointment with Dr. Arnold. She further believes Dr. LaHolt's recommendation of a neuro-optometry examination should be authorized.

The defendants argue that it is reasonable to start Nielsen with a clean slate for care because they contend she has made misrepresentations to her treating doctors. However, it is unclear based on the record how any such alleged misrepresentations have resulted in care that is inappropriate for her injuries. There is consensus amongst the doctors that have treated and examined her that she needs to continue physical therapy and speech therapy. No doctor disputes that she needs a neuro-optometry examination or MRI, as recommended by the defendants' chosen IME physician, Dr. LaHolt. There is no indication in the record that Nielsen has made a material misrepresentation to Dr. Chen that is of a nature so severe as to dictate ending his care and starting over with a different neurologist.

Nielsen is happy with the care provided by Dr. Chen. He has diagnosed her issues and the treatment regime he implemented has helped reduce her symptoms. Nielsen does not want to change neurologists. (Testimony)

Nielsen's speech therapy has been ongoing. She was still participating in regular speech therapy appointments at the time of hearing. Jorgensen's care is ongoing. Nielsen is happy with it. (Testimony)

IV. CONCLUSIONS OF LAW.

"Iowa Code section 85.27(4) affords an employer who does not contest the compensability of a workplace injury a qualified statutory right to control the medical care provided to an injured employee." Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 769 (Iowa 2016) (citing R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 195, 197 (Iowa 2003)). Under the law, the employer must "furnish reasonable medical services and supplies *and* reasonable and necessary appliances to treat an injured employee." Stone Container Corp. v. Castle, 657 N.W.2d 485, 490 (Iowa 2003) (emphasis in original). Such employer-provided care "must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." Iowa Code § 85.27(4).

An injured employee dissatisfied with the employer-furnished care (or lack thereof) may share the employee's discontent with the employer and if the parties cannot reach an agreement on alternate care, "the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care." Id. "Determining what care is reasonable under the statute is a question of fact." Long v.

Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995); Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 436 (Iowa 1997). As the party seeking relief in the form of alternate care, the employee bears the burden of proving that the authorized care is unreasonable. *Id.* at 124; Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d at 209; Reynolds, 562 N.W.2d at 436. Because “the employer’s obligation under the statute turns on the question of reasonable necessity, not desirability,” an injured employee’s dissatisfaction with employer-provided care, standing alone, is not enough to find such care unreasonable. *Id.* “[W]hen 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.” Reynolds, 562 N.W.2d at 437 (quoting Long, 528 N.W.2d at 124).

A. Neurologist.

After the crash that caused the injuries at issue here, Nielsen was flown by helicopter to the ER and UNMC. The doctors there referred her to Dr. Kawamitsu. The defendants dispatched at least one NCM to attend multiple of Nielsen’s appointments with Dr. Kawamitsu. This demonstrates the defendants knew of the care and did not object to it or attempt to arrange care with another physician.

A NCM retained as an agent of the defendants attended the appointment at which Dr. Kawamitsu referred Nielsen to Dr. Chen. A NCM attended Nielsen’s first appointment with Dr. Chen. There is an insufficient basis in the evidence from which to conclude the defendants objected to Dr. Chen providing care or took steps to make alternative arrangements. Dr. Chen’s care has been ongoing and effective. Nielsen is happy with Dr. Chen’s care and does not want to change doctors in the middle of care. Under these circumstances, Nielsen has met her burden to establish the challenged care—changing her treating neurologist—is unreasonable.

B. Speech Therapy.

The ER doctors at UNMC referred Nielsen to Dr. Kawamitsu. He referred Nielsen to Dr. Chen. And Dr. Chen then recommended speech therapy and referred Nielsen to Jorgensen. There is no indication the defendants voiced an objection to this course of care. Moreover, Dr. LaHolt recommended Nielsen see her speech therapy through to completion.

Nielsen is happy with her speech therapy and wants to continue her regular sessions. The defendants indicated they have had issues when requesting medical records from Jorgensen but that is not a reason to end it entirely, especially when two physicians have prescribed it. Under the circumstances, ceasing speech therapy prescribed by a treating physician and IME doctor and that is being provided by a therapist with whom Nielsen has an ongoing provider-patient relationship is unreasonable.

C. Physical Therapy.

Dr. LaHolt recommended physical therapy for Nielsen's cervical and lumbar spine. Nielsen wants physical therapy scheduled with a provider that is convenient for her. This is understandable, given the number of appointments she must juggle and for which she must travel.

The defendants have refused to authorize the recommended physical therapy because the defendants want their chosen specialists to prescribe her care. These appointments are not scheduled for multiple months. It would be unreasonable to deny Nielsen the recommended care because of the logistical reality of the timing of her appointments with specialists. And the specialists will be able to alter her care as they see fit once they begin treatment. Under the circumstances, it would be unreasonable to deny Nielsen the care recommended by Dr. LaHolt because of its potential benefit, the potential harm of forgoing it, and the ability of the defendants' chosen specialists to alter her course of care once they are able to begin treatment.

D. Neuro-Optometry Evaluation.

Dr. LaHolt recommended a neuro-optometry evaluation based on Nielsen's complaints. The defendants have refused to authorize it because they contend she misrepresented to Dr. LaHolt what other doctors have said regarding her symptoms. The need for a neuro-optometry evaluation is the traumatic brain injury that medical personnel seem to uniformly agree Nielsen sustained in the crash. Under these circumstances, it is reasonable for her to undergo such an evaluation.

E. MRI.

Dr. LaHolt recommended an MRI to assess Nielsen's ongoing symptoms. The defendants have arranged care with Dr. Arnold for her leg. They want Dr. Arnold to determine whether an MRI is needed. Under the circumstances, it is reasonable to rely on the expert judgment of the defendants' chosen specialist to make treatment determinations with respect to imaging such as an MRI.

F. Neuropsychological Testing.

The defendants scheduled the neuropsychological testing recommended by Dr. LaHolt. They worked with claimant's counsel to set up an appointment with Dr. Arias. The appointment will take about six hours. It is scheduled to take place in the morning of the same day on which Nielsen has an appointment scheduled with Dr. Kawamitsu. Dr. Arias charges a \$4,000 cancellation fee. Under the circumstances, it is reasonable to maintain the currently scheduled neuropsychological testing and allow Nielsen to determine whether to reschedule or maintain her appointment with Dr. Kawamitsu.

V. ORDER.

Under the above findings of facts and conclusions of law, it is ordered:

- 1) Nielsen's application is GRANTED as follows:
 - a) The defendants shall continue to authorize Dr. Chen as Nielsen's treating neurologist.
 - b) The defendants shall continue to authorize Jorgensen as Nielsen's treating speech therapist.
 - c) The defendants shall authorize physical therapy for her cervical and lumbar spine at a reasonable location relative to Nielsen's home and the offices where she sees her other care providers.
 - d) The defendants shall authorize a neuro-optometry evaluation.
- 2) Nielsen's application is DENIED as follows:
 - a) The defendants may maintain the scheduled neuropsychological testing with Dr. Arias as currently scheduled. It is up to the parties to determine whether the afternoon appointment with Dr. Kawamitsu is rescheduled.
 - b) The defendants may rely on the recommendation of Dr. Hahn and Dr. Arnold with respect to the need for imaging such as an MRI.
- 3) The parties are encouraged to openly communicate during the scheduling of future care and examinations.

On February 16, 2015, the Iowa workers' compensation commissioner issued an order delegating authority to deputy workers' compensation commissioners, such as the undersigned, to issue final agency decisions on applications for alternate care. Consequently, there is no appeal of this decision to the commissioner, only judicial review in a district court under the Iowa Administrative Procedure Act, Iowa Code chapter 17A.

Signed and filed this 3rd day of February, 2023.



BEN HUMPHREY
Deputy Workers' Compensation Commissioner

The parties have been served, as follows:

Jennifer M. Zupp (via WCES)

Madaline McGill (via WCES)