

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JUWAN ELLEN TERRY,

Claimant,

vs.

DNC PARKS & RESORTS AT HONEY  
CREEK, INC.,

Employer,

and

NEW HAMPSHIRE INSURANCE CO.,

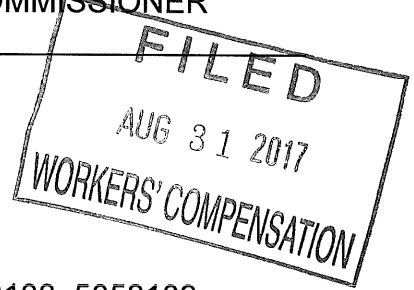
Insurance Carrier,  
Defendants.

File Nos. 5058108, 5058109

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701



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, Juwan Terry. Claimant appeared personally and through her attorney, Matthew Denning. Defendants appeared through their attorney, John Swanson.

The alternate medical care claim came on for hearing on August 30, 2017. 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 2, which include a total of 4 pages. The record also consists of defendants' exhibits A through D, which include 7 pages. All exhibits were received without objection. Claimant testified on her own behalf. Claimant also called Cheryl Bailey to testify. No other witnesses were called to testify.

At the commencement of the hearing, discussion was held with counsel of record. It is determined by the undersigned that the treatment requested in this alternate medical care hearing is pertinent to the December 9, 2016 injury date (File No. 5058108). The alternate medical care petition lists File No. 5058109 as included on the claim. However, the petition will be dismissed as it pertains to File No. 5058109 because that alleged injury does not involve a mental injury claim. The remainder of this decision, including all findings of fact, conclusions of law, and order pertain solely to File No. 5058108.

### ISSUE

The issue presented for resolution is whether somatic body work should be authorized, as recommended by claimant's treating mental health provider, Cheryl Bailey.

### FINDINGS OF FACT

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

Juwan Terry, claimant, was the victim of an attempted sexual assault while working for DNC Parks & Resorts at Honey Creek, Inc., on December 9, 2016. As a result of that attempted assault, Ms. Terry has been diagnosed with post-traumatic stress disorder. Defendants admitted the injury and admit causal connection between claimant's current condition and the December 9, 2016 work injury. Defendants authorized treatment for the December 9, 2016 injury through claimant's mental health therapist, Cheryl Bailey.

Ms. Bailey has a Master's degree and has been providing mental health therapy for patients for approximately 50 years. She has been treating post-traumatic stress disorder and other trauma related mental health conditions for approximately 25 years. Ms. Bailey has provided care and ongoing therapy for claimant on a weekly basis since December 2016 and continues to provide that care as of the date of this hearing.

Ms. Bailey testified that she utilizes some somatic body treatment techniques as part of her therapy sessions. She explained that the body will register trauma and exhibit physical manifestations of trauma. She testified that the somatic body therapy techniques utilized are based upon "cutting edge" research, though she also testified that these techniques have been around and implemented for approximately 30 years.

In May 2017, Ms. Bailey recommended that claimant seek somatic body therapy through a chiropractor, Jon Estrin, D.C. (Ex. 1, p. 3; Testimony of Cheryl Bailey) She testified that Dr. Estrin is specifically trained in and now teaches somatic body therapy techniques. Claimant scheduled treatment with Dr. Estrin and has already undergone at least one session of somatic body therapy with Dr. Estrin.

Ms. Terry testified that the somatic body therapy treatment provided by Dr. Estrin has already significantly benefitted her. Specifically, claimant testified that she had significant difficulties sleeping and eating after the December 9, 2016 assault and before her treatment with Dr. Estrin. Claimant testified that she is now better able to sleep and eat since undergoing treatment with Dr. Estrin. Claimant's therapist, Ms. Bailey, confirmed that claimant received noticeable benefit from the treatment provided by Dr. Estrin.

Claimant desires to continue somatic body therapy with Dr. Estrin. Ms. Terry testified that her religious beliefs preclude her, or at least discourage her, from taking medications that alter her mind and body. She testified that she previously used medications for pre-existing conditions such as migraine headaches and fibromyalgia. She worked with her treating neurologist for these unrelated conditions to wean off all medications and testified that she prefers not to take medications for her mental health conditions.

Defendants contend that the recommended treatment is neither reasonable nor necessary. Defendants further contend that they cannot obtain timely information from Ms. Bailey pertaining to her treatment of claimant. Defendants contend these delays in production of treatment records and recommendations make it very difficult to investigate and authorize appropriate care. Certainly, it is important in workers' compensation cases that medical providers disclose and produce their pertinent medical records and it is possible that delays by a medical provider could result in delays in authorization and receipt of important treatment. However, in this case, the question is not the reason for the delay in authorization of the requested somatic body therapy. Instead, defendants deny whether the somatic body therapy is reasonable and necessary medical care.

Defendants had claimant evaluated by a board certified psychiatrist, Sharon L. Koele, M.D. (Ex. D, pp. 4-7) Dr. Koele evaluated claimant on only one occasion, April 18, 2017. She diagnosed claimant with post-traumatic stress disorder, along with unrelated physical conditions. (Ex. D, p. 6) Dr. Koele recommended medication management but claimant was "quite adamant she does not wish to return [to] any sort of psychiatric medication." (Ex. D, p. 7) Instead, claimant notified Dr. Koele that she was contemplating "body talk therapy" and did not wish to pursue further psychiatric evaluation or treatment. (Ex. D, p. 7)

When asked about the use of somatic body work for the treatment of claimant's post-traumatic stress disorder, Dr. Koele opined, "I have seen absolutely no research over these years that would lead me to believe that there is any chiropractic treatment that would be a reasonable, approved, and standard form of treatment of Post-traumatic Stress Disorder in any patient." (Ex. A, p. 1)

Based upon Dr. Koele's opinion, defendants contend that the treatment recommended by Ms. Bailey is neither reasonable nor necessary. Defendants contend that they have offered reasonable and necessary medical care such that they have met their legal obligations and should not be ordered to provide treatment that is not recognized as reasonable or standard treatment by a board-certified psychiatrist.

Claimant contends that Dr. Koele may not be aware of the recommended course of care. However, claimant contends that the treatment has already been proven efficacious and that defendants do not offer any reasonable alternate medical care for claimant's post-traumatic stress disorder. Claimant further contends that this care is recommended by the authorized mental health provider, Cheryl Bailey, and that defendants are interfering with her medical judgment.

Having considered all of the competing evidence in this record, I find that claimant has identified additional treatment options that are consistent with her religious beliefs and that have been demonstrated to be efficacious. While I recognize that Dr. Koele probably has more impressive credentials as a long-time, board-certified psychiatrist, I also recognize that Ms. Bailey is a long-term mental health therapist with significant years of experience in this field. Ms. Bailey is an authorized provider and has identified an alternate mode of treatment that has already been established to be efficacious.

Recognizing that the somatic body therapy is non-traditional and not recognized as a scientifically proven treatment regimen by a board-certified psychiatrist, I find that the treatment is consistent with claimant's religious beliefs. I find that the somatic body therapy has been demonstrated to be effective and to have improved claimant's function since initiating this treatment. Defendants offer no alternative treatment regimen that appears likely to provide similar results. Therefore, I find that the claimant has identified and specifically demonstrated that there is a treatment option that is more extensive than the treatment being offered by defendants. While it is out of the mainstream of medical thought and treatment, as known by the board-certified psychiatrist, the somatic body therapy option is reasonable and necessary because it has already been demonstrated to be efficacious. Defendants attempt to question or second-guess the treatment recommendations of Ms. Bailey without offering an alternative course of care that appears to also be efficacious and reasonable.

#### 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); Bell Bros. Heating v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); 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. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). 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).

Reasonable care includes care necessary to diagnose the condition and defendants are not entitled to interfere with the medical judgment of its own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening Decision June 17, 1986).

When a designated physician refers a patient to another physician, that physician acts as the defendant employer's agent. Permission for the referral from defendant is not necessary. Kittrell v. Allen Memorial Hospital, Thirty-fourth Biennial Report of the Industrial Commissioner, 164 (Arb. November 1, 1979) (aff'd by industrial commissioner). See also Limoges v. Meier Auto Salvage, Iowa Industrial Commissioner Reports 207 (1981).

Having found that claimant proved the somatic body therapy is efficacious, I also found that the treatment was reasonable and necessary despite perhaps being outside the realm of conventional medical treatment. Having found that the defendants did not offer a reasonable and likely efficacious alternative treatment option, I conclude that defendants are not offering all reasonable and necessary medical care for claimant's December 9, 2016 work injury. Instead, I conclude that defendants have attempted to question the medical judgment of the treating therapist without alternate medical options being made available. Given that the treatment sought by claimant has been demonstrated to be efficacious for claimant's post-traumatic stress physical

manifestations, I conclude that claimant has carried her burden of proof and that the requested somatic body therapy should be authorized through Dr. Jon Estrin.

ORDER

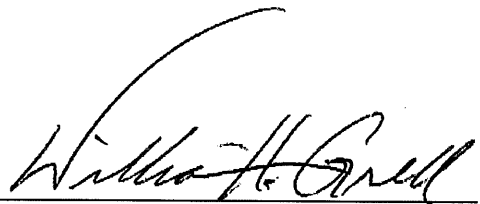
THEREFORE IT IS ORDERED:

Claimant petition for alternate medical care in File No. 5058109 is dismissed without prejudice.

With respect to the petition for alternate medical care in File No. 5058108, the petition is granted.

Defendants shall give authorization for the recommended somatic body treatment through Dr. Jon Estrin within fourteen (14) days of the entry of this decision and shall schedule treatment to commence with Dr. Estrin at his earliest reasonable availability.

Signed and filed this 31<sup>st</sup> day of August, 2017.



WILLIAM H. GRELL  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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