

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LIZZI CORONEL,

Claimant,

vs.

SMITHFIELD FOODS, INC.,

Employer,

and

SAFETY NATIONAL CASUALTY CORP.,

Insurance Carrier,  
Defendants.

File No. 20700286.02

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, Lizzi Coronel. Claimant appeared through attorney, Jennifer Zupp. Defendants appeared through their attorney, Michael Miller.

The alternate medical care claim came on for hearing on May 19, 2020. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding.

Pursuant to the Commissioner's 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 claimant's exhibits 1 through 3 and defense exhibits A and B, which were all received without objection. The defendants do not dispute liability for claimant's left shoulder or rotator cuff condition.<sup>1</sup>

<sup>1</sup> At the outset, it is noted that there is some dispute as to which injury date/File Number this claim should fall under. The claimant has alleged a date of injury of January 7, 2019. The defendants have not specifically admitted liability for this injury date. The defendants, however, do concede responsibility and have directed medical treatment for claimant's left shoulder condition. They have alleged and conceded that they are directing care for a September 12, 2018, date of loss. At the outset of the hearing, all parties agreed on the record to proceed with the hearing with the understanding that all parties would

## ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care under Iowa Code section 85.27.

## FINDINGS OF FACT

The claimant sustained an injury to her left shoulder which arose out of and in the course of her employment. The employer has directed the medical treatment for this injury.

On April 9, 2020, Ms. Coronel was evaluated by Timothy Vinyard, M.D., an authorized physician. He diagnosed tendinitis of the left rotator cuff recommended physical therapy. "I also gave the patient a prescription for physical therapy." (Claimant's Exhibit 1 page 2) He recommended four weeks of physical therapy for 2-3 times per week. (CI Ex. 2, p. 4)

On May 4, 2020, counsel for defendants informed claimant's counsel that her therapy would be in the plant. (CI. Ex. 2, pp. 2-3) Claimant's counsel immediately responded that claimant did not want to go back into the plant for the therapy. "Yeah, she is not going to do therapy there during the outbreak." (CI. Ex. 2, p. 2) Defense counsel responded immediately. "My client says she will need to come to the plant. She will be given a mask at the entrance and there is no one in the room with her other than the therapist. She will not be in high traffic areas." (CI. Ex. 2, p. 2) After a further back-and-forth exchange, the following day, claimant's counsel clarified her position. "Lizzi is asking if she can do the PT via tele-therapy from her home. They had her do tele-therapy in the plant when the PT was unavailable to come there, so this is a natural spin-off. She assured me she has a good wi-fi connection and camera." (CI. Ex. 2, p. 2) Defense counsel wrote back that he would pass the request on to his client. On May 7, 2020, defense counsel responded. "They tell me that the therapy outfit does not have the capability to do therapy from home. Has to do with HIPPA and secure connection issues." (CI. Ex. 2, p. 1)

Claimant filed her petition for alternate medical care the same day. In her petition (attachment), claimant alleged that the claimant does not wish to have her physical therapy in the plant in Denison because it is a serious health risk due to the Covid-19 pandemic. She also alleged she is responsible for eight children and is fearful of contracting Covid-19 by being forced to attend treatment at the plant. In a supplemental filing, claimant cites an article from the Carroll Times Herald, as well as Smithfield's own website as evidence of the serious nature of the Covid-19 pandemic, particularly in Crawford County. (Supplement to Petition, paragraphs 1-2)

In their answer, defendants state that they authorized RehabVisions, to provide in-person and teletherapy services to the claimant and other employees from the

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have an opportunity to investigate and dispute which date of injury is a cause of claimant's need for treatment and entitlement to any other benefits. I accepted this stipulation on the record.

Denison Smithfield plant. (Addendum to Answer, pars. 10-11) Defendants further outlined the safety protocols undertaken to ensure individuals receiving such services are not unnecessarily exposed to Covid-19. (Addendum to Answer, par. 16) Defendants also offered to provide in-person physical therapy to the claimant outside the plant, 28 miles away in Harlan, Iowa. (Addendum to Answer, par. 20)

In an email dated May 13, 2020, Marge Mumm, Smithfield's medical manager, contacted the Director at RehabVisions, asking if they were providing tele therapy services to anyone. The Director of RehabVisions responded that it was currently not providing such services to any Smithfield employees.

We had a request for a patient, but the clinical decision making by the therapists indicates that this patient is not a candidate for telehealth due to:

- Manual therapy (hands on)
- Modalities (Astym, US, manual techniques)
- PT evaluation requires face to face with the stated diagnosis

(Def. Ex. A)

Claimant provided a note from Active Performance Physical Therapy in Denison, Iowa which outlined their safety protocols for in-person treatment. (Cl. Ex. 3) Defendants confirmed this in an email. (Def. Ex. B)

I have taken official notice of the State of Iowa's website related to the Covid-19 pandemic. <https://coronavirus.iowa.gov/pages/case-counts> Denison, Iowa is located in Crawford County which has the second highest number of Covid cases in the State per capita. It is a well-known fact that Covid-19 has had a significant impact on meatpacking communities.

Having reviewed all of the evidence in the record I find that it is unreasonable to deny the claimant telehealth services if such services are available to the claimant.

#### 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. Iowa Code section 85.27 (2013).

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See 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 statutory right is to select the providers of care and the employer may consider cost and other pertinent factors when exercising its choice. Long, at 124. An employer (typically) is not a licensed health care provider and does not possess medical expertise. Accordingly, an employer does not have the right to control the methods the providers choose to evaluate, diagnose and treat the injured employee. An employer is not entitled to control a licensed health care provider's exercise of professional judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988). An employer's failure to follow recommendations of an authorized physician in matters of treatment is commonly a failure to provide reasonable treatment. Boggs v. Cargill, Inc., File No. 1050396 (Alt. Care Dec. January 31, 1994).

Based upon the record before me, I find that it is unreasonable to require the claimant to attend physical therapy appointments at the Smithfield plant in Denison. Although I have no doubt that the employer is taking reasonable steps to prevent the spread of Covid-19, the claimant's fears of contracting Covid-19 at the plant are reasonable. It is unreasonable to require her to come to the plant for such services, if telehealth services are a viable alternative. The employer, however, did not appear to explore this option. Even though this option had been provided in the past for workers receiving therapy at the plant, since their provider began providing in-person therapy services again, the employer has chosen to not offer this service to the claimant. I find this is unreasonable.


It is not entirely clear in this record whether the claimant can receive all of the services she needs through telehealth physical therapy. This is the primary weakness of her case. Nevertheless, I find that claimant has met her burden of proof. Ultimately, her fears at this time appear well-grounded. The first option the parties should attempt is telehealth physical therapy services. Simply stated, I find it is not reasonable for the employer to effectively require a mother of eight children to go to a location which is known to be a hot spot for the Covid-19 pandemic when other options are available. I am not going to enter an order which would effectively require this outcome.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is GRANTED. Defendants shall authorize telehealth physical therapy services with Active Performance Physical Therapy. If, after evaluation, it is determined that claimant requires in-person treatment, Active Performance Physical Therapy shall be the treating provider.

Signed and filed this 20<sup>th</sup> day of May, 2020.



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JOSEPH L. WALSH  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Jennifer Zupp (via WCES)

Michael Miller (via WCES)