

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

REBECCA PAGEL,

Claimant,

vs.

BEATON, INC., d/b/a BURGER KING,

Employer,

and

FIRST DAKOTA INDEMNITY CO.,

Insurance Carrier,
Defendants.

File No. 21700533.01

CONSENT ORDER
REGARDING ALTERNATE
MEDICAL CARE

REBECCA PAGEL,

Claimant,

vs.

BEATON, INC., d/b/a BURGER KING,

Employer,

and

DEPOSITORS INSURANCE CO.,

Insurance Carrier,
Defendants.

File No. 1663828.03

DISMISSAL OF
ALTERNATE MEDICAL CARE

Claimant has filed two petitions seeking alternate medical care. The petition for File No. 1663828.03 was filed on May 27, 2021 by claimant, Rebecca Pagel, against defendants, Beaton, Incorporated d/b/a Burger King and Depositors Insurance Company. The petition for File No. 21700533.01 was filed on May 28, 2021 by claimant, Rebecca Pagel, against defendants, Beaton, Incorporated d/b/a Burger King and First Dakota Indemnity Company.

The petitions were consolidated and a telephonic hearing on the petitions was scheduled to occur on June 10, 2021, at 1:00 PM. Prior to going on the record at the alternate medical care hearing, counsel for Beaton, Incorporated d/b/a Burger King and First Dakota Indemnity Company notified the undersigned that his clients had agreed to

authorize and direct claimant's medical care for the alleged April 22, 2021, work injury. The parties agreed that a consent order should be entered.

With respect to the specific alternate medical care requested, claimant simply sought for defendants to "authorize and arrange medical treatment to address her right knee pain." Defendants Beaton, Incorporated d/b/a Burger King and First Dakota Indemnity Company have agreed to authorize and arrange medical treatment for claimant's injury.

The parties desired that a consent order be entered in this case, in lieu of a hearing. After discussion between the parties and an agreement to provide the requested care, there is no justiciable issue for hearing and determination on File No. 21700533.01. Both parties agree that a consent order is appropriate, and a formal hearing is unnecessary to resolve the contested case dispute.

For File No. 1663828.03, defendants Beaton, Incorporated d/b/a Burger King and Depositors Insurance Company admit that claimant sustained an injury to the right lower extremity on April 17, 2019, but deny that the medical care currently sought is causally related to the April 17, 2019, work injury. This answer was determined by the undersigned to be a dispute concerning liability on the claim.

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).

Given defendants' denial of liability, claimant's original notice and petition for alternate medical care must be dismissed in File No. 1663828.03. Given their denial of liability for the condition sought to be treated in the petition for alternate medical care, defendants lose their right to control the medical care claimant seeks 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). Additionally, defendants are precluded from asserting an authorization defense as to any future treatment during their period of denial. Brewer-Strong v. HNI Corp., 913 N.W.2d 235 (Iowa 2018).

Again, the denial of liability and dismissal of claimant's petition for alternate medical care only applies to File No. 1663828.03, involving defendants Beaton, Incorporated d/b/a Burger King and Depositors Insurance Company.

THEREFORE, IT IS ORDERED:

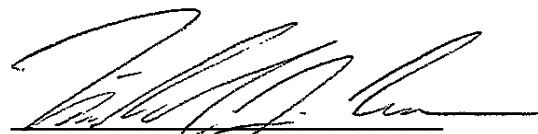
In File No. 21700533.01:

Pursuant to the agreement of the parties prior to the scheduled June 10, 2021, alternate medical care hearing for File No. 21700533.01, defendants shall authorize and arrange medical treatment for claimant's right knee injury and hold claimant harmless from any expenses related to the same.

In File No. 1663828.03:

Claimant's original notice and petition for alternate medical care in File No. 1663828.03 are hereby dismissed without prejudice. The hearing scheduled for June 10, 2021, is cancelled.

Signed and filed this 14th day of June, 2021.



MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Nate Willems (via WCES)

Paul Barta (via WCES)

Anne Clark (via WCES)