

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TAMAIYSHA TURNER,

Claimant,

vs.

CCRC OF CEDAR RAPIDS, L.L.C.,  
d/b/a TERRANCE GLEN VILLAGE,

Employer,

and

UNITED WISCONSIN INSURANCE CO.,

Insurance Carrier,  
Defendants.

File No. 1664083.02

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, Tamaiysha Turner. Claimant appeared personally and through her attorney, Dennis Currell. Defendants appeared through their attorney, Laura Ostrander.

The alternate medical care claim came on for hearing on November 20, 2019. 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 1-5, which include a total of 11 pages. Defendants did not introduce any exhibits. Neither party elected to call a witness to testify. Counsel were permitted an opportunity to argue their cases and the record closed on November 20, 2019.

During the oral proceedings, defendants confirmed that they admit liability and current causal connection for claimant's low back condition. Defendants deny liability for any alleged hip injury or urinary incontinence. The undersigned gave notice to the parties that no alternate medical care decision would be rendered on the issues of the hip or urinary incontinence. Only issues related to future treatment of the low back are decided in this alternate medical care decision.

## ISSUE

The issue presented for resolution is whether the claimant is entitled to treatment of the low back through neurosurgeon, Jeannette M. Liu, M.D.

## FINDINGS OF FACT

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

Tamaiysha Turner sustained a work related injury to her low back on April 21, 2019. Defendants accepted the low back injury and provided medical care for the low back injury. Defendants selected and authorized medical providers that have evaluated and/or provided medical care to claimant, including a neurosurgeon, Chad Abernathey, M.D., and an occupational medicine physician, Nicholas Bingham, M.D. (Claimant's Exhibits 1 and 2) Both Dr. Abernathey and Dr. Bingham have opined that Ms. Turner has achieved maximum medical improvement and that no further medical care is recommended at this time. (Claimant's Exhibits 1 and 2)

Claimant sought additional medical care from a neurosurgeon of her choosing, Jeannette M. Liu, M.D. Dr. Liu diagnosed claimant with an L4-5 disc bulge, with an annular tear, and with mild right neuroforaminal narrowing at the L4-5 level. Dr. Liu also diagnosed claimant with an L5-S1 disc bulge with annular tear but no neural compression at that level. (Claimants' Ex. 3, page 1)

Dr. Liu recommended additional radiographic diagnostic testing, including a lumbosacral x-ray series, as well as additional physical therapy, including dry needling and development of a home exercise program, for the low back. (Claimant's Ex. 3, p. 2) Dr. Liu also recommended a return evaluation with the Mercy Medical Center pain management clinic for a potential lumbar epidural steroid injection at the L4-L5 level. (Claimant's Ex. 3, p. 2) Finally, Dr. Liu recommended work restrictions, precluding lifting over 20 pounds for a period of time (the specific number of weeks noted is difficult to read or verify in the exhibit filed with the agency). (Claimant's Ex. 3, p. 2)

Defendants assert that no further medical care is required. Defendants urge that Dr. Abernathey noted no work restrictions are required from a neurosurgical standpoint and that claimant has achieved a plateau and maximum medical improvement. (Claimant's Ex. 1, p. 2) Defendants further assert that Dr. Bingham declared Ms. Turner to be at maximum medical improvement and, beyond recommending a functional capacity evaluation to establish permanent restrictions, does not recommend further care. (Claimant's Ex. 2) In fact, Dr. Bingham opines that the medical treatment recommended by Dr. Liu is not reasonable and specifically disagrees with the additional treatment recommendations made by Dr. Liu. (Claimant's Ex. 2, p. 3)

I find that claimant continues to experience symptoms related to her low back injury. I find that the care rendered by the physicians selected and authorized by defendants has not been entirely effective. I find that defendants are not currently offering any medical care for claimant's low back condition.

I find that claimant has identified alternate medical care that offers additional hope of resolving claimant's low back condition and symptoms. I find that the care requested by claimant through Dr. Liu is more extensive than the care previously offered by defendants. I find that the medical treatment requested by claimant is certainly more extensive than defendants' current offer of no additional medical care. Therefore, I find that the care requested by claimant is more extensive than the care offered by defendants, which to date, has not been entirely effective.

During the hearing, defendants argued that claimant has previously refused medical care recommended by Dr. Bingham and that the care now being requested is identical to the care previously recommended and refused by claimant. Claimant disagrees with that assertion and made arguments at hearing why the care now sought is different than the previously recommended care. Realistically, the arguments of counsel may be helpful to potentially put this case in perspective at the time of a later arbitration hearing.

However, the evidentiary record before the undersigned in this alternate medical care proceeding does not contain any evidence of ongoing medical recommendations by Dr. Bingham, refusals of care by claimant, or permit a finding that the care now being sought is identical to previously offered and refused medical care. The undersigned is constrained by and evaluates this case solely upon the evidentiary record created in this alternate medical care proceeding. Defendants' invitation to consider facts outside the alternate medical care record is rejected.

### REASONING AND CONCLUSIONS OF LAW

Claimant's original notice and petition for alternate medical care asserts a request for future treatment of her lumbar discs, hip, and urinary incontinence. During hearing, defendants admitted liability and current causal connection for claimant's lumbar disc, or low back condition. Defendants denied liability for the alleged hip and urinary incontinence conditions.

Before any benefits can be ordered in an alternate medical care proceeding 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) (fn 2).

Given the denial of liability, claimant's original notice and petition for alternate medical care must be dismissed with respect to the claim for treatment of the hip or urinary incontinence. Given their denial of liability for the hip and urinary incontinence conditions sought to be treated in the petition for alternate medical care, defendants lose their right to control the medical care claimant seeks for these conditions 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).

As a result of the denial of liability for the conditions sought to be treated in this proceeding, claimant may obtain reasonable medical care from any provider for this treatment but at claimant's expense and seek reimbursement for such care using regular claim proceedings before this agency. Haack v. Von Hoffman Graphics, File No. 1268172 (App. July 31, 2002); Kindhart v. Fort Des Moines Hotel, Iowa Industrial Comm'r Decisions No. 3, 611 (App. March 27, 1985). "[T]he employer has no right to choose the medical care when compensability is contested." Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010). Therefore, defendants are precluded from asserting an authorization defense as to any future treatment during their period of denial for the hip and/or urinary incontinence conditions.

Defendants admit liability for the lumbar disc, or lower back condition. Defendants admit current causal connection for the current condition of the low back and the work injury of April 21, 2019. Therefore, it is appropriate to proceed with the alternate medical care proceeding with respect to the request for treatment of the low back. R. R. Donnelly & Sons v. Barnett, 670 N.W.2d 190 (Iowa 2003); Iowa Code section 85.27(4); 876 IAC 4.48(7).

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 and Air Conditioning 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).

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, defendants have taken the position that claimant requires no further medical care. Both of defendants' selected physicians have opined that claimant requires no further care. No further treatment is being offered by defendants.

Claimant has identified additional medical care that can be provided for her low back condition. Claimant identifies specific treatment modalities being recommended by a neurosurgeon. Claimant also documents that she has continuing symptoms.

Having found that Ms. Turner has ongoing symptoms and that the treatment offered to date by defendants has not fully resolved her condition and having found that claimant identified additional, more extensive, treatment that can be attempted, I conclude that claimant has established the care offered by defendants has not been effective and that the care she now seeks is more extensive than the care currently offered (no care is currently being offered) by defendants. Therefore, I conclude that claimant has established entitlement to an order for alternate medical care and specifically a transfer of care to Dr. Liu for completion of physical therapy she recommended, the lumbar x-rays she recommended, and completion of the pain clinic referral she recommended.

ORDER

THEREFORE, IT IS ORDERED:

The claimant's petition for alternate medical care is granted with respect to treatment of the low back or lumbar discs.

Medical care is transferred to Jeannette M. Liu, M.D.

Defendants shall authorize and pay for all medical care through or recommended by Dr. Liu, including the lumbar x-rays recommended and the physical therapy being recommended at Therapy Plus.

Defendants shall authorize and pay for the recommended Mercy Medical Center pain clinic evaluation and potential epidural steroid injection for claimant's low back.

With respect to the request for treatment of the hip and urinary incontinence, claimant's petition for alternate medical care is dismissed without prejudice.

If claimant seeks to recover the charges incurred in obtaining care for the hip or urinary incontinence for which defendants denied liability, defendants are barred from asserting lack of authorization as a defense to those charges during the period of their denial.

Signed and filed this 20<sup>th</sup> day of November, 2019.



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WILLIAM H. GRELL  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Dennis Currell (via WCES)

Laura Ostrander (via WCES)