

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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ALLEN WERNER,

Claimant,

vs.

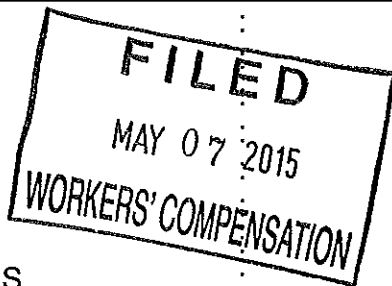
NCI BUILDING SYSTEMS,

Employer,

and

INSURANCE COMPANY OF THE  
STATE OF PENNSYLVANIA,

Insurance Carrier,  
Defendants.



File No. 5044478

ALTERNATE MEDICAL  
CARE DECISION

HEAD NOTE NO: 2701

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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, Allen Werner. Claimant appeared personally and through his attorney, Mark Sullivan. Defendants appeared through their attorney, Stephen Spencer. All parties were well-represented by counsel, who presented articulate and convincing arguments on behalf of all parties.

The alternate medical care claim came on for hearing on May 6, 2015. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Iowa Workers' Compensation 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 4 and defendants' exhibits A through C. All exhibits were offered without objection and received into evidence. Two witnesses testified telephonically. Claimant and his wife, Nancy Werner, both testified. Defendants elected not to call any witnesses to testify at the time of hearing.

## ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care. Claimant seeks an order compelling defendants to pay for any and all medications prescribed by authorized physicians and seeks an order that transfers responsibility for monitoring, supervising and prescribing the majority of claimant's medications to his personal physician, Dr. Weston. Defendants resist the request and seek to consolidate all stipulated causally related medication management through a pain specialist, Timothy Miller, M.D.

## FINDINGS OF FACT

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

On July 30, 2012, claimant sustained a serious work injury that resulted in physical injuries to his back, hips and pelvis. Claimant has undergone extensive medical treatment at the University of Iowa Hospitals and Clinics (UIHC) and other clinics with numerous different medical specialists. Claimant took no prescription medications before date of injury. However, he now takes about 15 medications.

Claimant's current request for alternate medical care revolves around various prescription medications. Within the past month, defendants have decided to consolidate medication management of all medications they stipulate are causally related to claimant's work injury through one physician. Defendants selected Timothy Miller, M.D. as the physician that would monitor, supervise and prescribe claimant's various causally related medications.

Claimant is not satisfied with defendants' selection of Dr. Miller as the physician that will be responsible for the various causally related medications. Claimant contends that defendants have acted unreasonably and seeks an order from this agency compelling defendants to pay for medications prescribed through his personal physician, Dr. Weston.

Xarelto is one of the medications claimant cannot currently get authorized through defendants and filled by his pharmacy. Xarelto was initially prescribed to claimant through the hematology department at UIHC. Following surgeries for his work related injuries, claimant was at risk of developing blood clots. Physicians at UIHC placed claimant on Heparin as a preventative measure to avoid blood clots. Claimant, unfortunately, developed an allergic reaction to the Heparin and developed blood clots in both of his legs.

The UIHC hematology department prescribed Xarelto as an alternative to combat claimant's proclivity to develop blood clots. The UIHC specialist advised claimant that he will have to take Xarelto for remainder of life. In July 2014, claimant's UIHC specialist gave him a one year prescription for Xarelto and indicated that moving

forward in July 2015, claimant's personal physician, Dr. Weston, could monitor and prescribe Xarelto for claimant. Dr. Weston has agreed to monitor and prescribe this medication.

Despite the current prescription from a specialist at UIHC, defendants have not authorized or paid for claimant's Xarelto prescription since late March 2015. Management of this medication was purportedly transferred to Dr. Miller. However, despite seeing claimant in April 2015, Dr. Miller did not offer claimant a prescription for Xarelto and claimant has been without this medication for approximately six weeks. Dr. Weston's nurse has been giving claimant baby aspirin as a blood thinning agent. However, this is not a medically acceptable replacement medication. Claimant needs Xarelto and defendants have not been providing it for the past six weeks. Defendants' selected authorized physician, Dr. Miller did not offer claimant a prescription for this necessary medication despite having seen claimant in the past month.

Tizanidine is a medication prescribed for claimant's restless leg syndrome. Defendants concede this medication is directly related to claimant's work injury. This medication was initially prescribed by a specialist at UIHC and responsibility for monitoring and prescribing this medication was ultimately transferred by UIHC to Dr. Weston. Claimant was unable to refill this medication between the end of March 2015 and May 1, 2015.

When Mrs. Werner checked with the pharmacy on May 1, 2015, a new prescription for Tizanidine had been offered by Dr. Miller. Claimant was able to refill this prescription on May 1, 2015.

Starting in December 2014, Dr. Miller prescribed Fentanyl patches for claimant's chronic pain. Claimant's pharmacy denied this prescription in March 2015 and claimant was forced to purchase the pain patches on his own. However, this problem appears to be rectified and claimant was able to fill this prescription in April 2015. Claimant does not seek to transfer responsibility or prescriptions for the pain patches and concedes this responsibility can and should remain with Dr. Miller.

Similarly, Dr. Miller prescribes oxycodone for claimant's chronic pain. Claimant concedes supervisory responsibility and prescription for chronic pain medications appropriately remains with the authorized pain specialist, Dr. Miller.

As a result of his injuries, claimant has difficulties with urination. Specifically, his wife testified that he has urine flow difficulties. The urology department at UIHC prescribed claimant Tamsulosin for this condition. However, defendants challenge whether this medication is causally related to claimant's work injury of July 30, 2012.

Hydrochlorothiazide is another medication prescribed by specialists at UIHC. Defendants deny that use of this medication is causally related to claimant's work injury of July 30, 2012.

Escitalopram is an antidepressant initially prescribed by Dr. Weston and later continued by claimant's authorized psychiatrist, Dr. Mittauer. Defendants now challenge whether escitalopram is causally related to claimant's July 30, 2012 work injury.

Mrs. Werner testified that claimant currently takes omeprazole. She understands that omeprazole helps protect the lining of claimant's stomach given the potential harmful effects on his stomach from all of the medications he is currently taking. Authorization was initially given for this medication. However, defendants have denied liability for this medication and its refill has not been authorized after March 2015.

Hydroxyzine is a muscle relaxer initially prescribed by a specialist at UIHC. Defendants now deny that there is a causal connection between claimant's July 30, 2012 work injury and the need for Hydroxyzine.

Claimant's wife testified that claimant continues to take lamotrigine, an antidepressant through the authorized psychiatrist, Dr. Mittauer. Claimant continues to take Duloxetine, an antidepressant and pain medication prescribed through Dr. Mittauer. He continues to take Gabapentin for nerve pain, as prescribed through Dr. Mittauer. Each of these medications is admitted to be causally related to claimant's work injury. Claimant seeks to have these medications continued through Dr. Mittauer and/or through his personal physician, Dr. Weston. Defendants seek to have these medications managed through Dr. Miller, though Dr. Miller concedes he is not terribly familiar with some of these medications and may require further consultation with specialists for these medications to be managed properly.

Claimant last visited Dr. Miller April 8, 2015. He is scheduled to be re-evaluated by Dr. Miller on June 3, 2015. Claimant is scheduled to return to one specialist at UIHC for a long-term follow up appointment in another year. Otherwise, he has been discharged from care through the UIHC with his prescriptions being transferred for monitoring to his personal physician, Dr. Weston. Otherwise, claimant's only scheduled medical appointments into the future are with Dr. Miller in June 2015 and with Dr. Mittauer next week.

Claimant testified that he could have a better doctor-patient relationship with Dr. Miller. He testified that Dr. Miller spends only about five minutes with him in the examination room and does not perform a physical examination of claimant. Mr. Werner is also of the impression that Dr. Miller does not have a good bedside manner and does not really care about claimant's well-being.

Mr. Werner testified that he gets along with Dr. Weston very well. He perceives that Dr. Weston is more understanding and appears to care more for his well-being than does Dr. Miller. Claimant would prefer to be treated by Dr. Weston rather than Dr. Miller.

## 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).

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).

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).

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); 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).

Claimant makes an emotionally compelling argument that defendants' have already selected the authorized physicians. Many of those physicians are at the University of Iowa Hospitals and Clinics (UIHC). The specialists at the UIHC have transferred medical responsibility for monitoring various medications to claimant's personal physician, Dr. Weston. Therefore, claimant argues, that defendants current attempts to transfer medication management to Dr. Miller constitutes an interference with the authorized medical care.

Defendants contend that they are not interfering with medical care but simply selecting the authorized medical provider in a manner that consolidates claimant's prescriptions to ensure all medications are considered by one medical provider. Defendants contend that it is potentially dangerous to have multiple medical providers prescribing medications unbeknownst to the other medical providers. Indeed, such a system of prescribing medications could be potentially dangerous given that one physician may or may not know about modifications of another physicians'

prescriptions. Drug interactions are important to know and understand when treating a patient and drug interactions can be dangerous to a patient's well-being.

Therefore, defendants' proposal to consolidate all medication management in one physician is facially reasonable. On the other hand, the physician they have selected, Dr. Miller, has indicated that he is not experienced in managing and prescribing some of claimant's current medications. Moreover, defendants deny liability for at least five of claimant's current medications and propose that those medications be managed and prescribed through physicians other than Dr. Miller. Therefore, it remains entirely possible and likely that multiple physicians will continue to prescribe claimant medications. Even under defendants' medication management plan, there remains a risk that medication interactions could be a danger to claimant without good communications among prescribing physicians.

Neither party offers a complete resolution of this problem. Claimant seeks to consolidate and maintain most prescriptions through his personal physician. Yet, Dr. Miller remains the authorized pain specialist and provides claimant prescriptions for fentanyl patches and oxycodone. Even if the remainder of the medications remain through Dr. Weston, there are still significant drug interactions and dangers presented unless the physicians work together to manage claimant's medication protocol. Neither party's proposal would entirely eliminate or resolve this potential danger. Therefore, I conclude that defendants' proposal for medication management through Dr. Miller is no more or less reasonable of a solution than that offered by claimant. Claimant's request for alternate medical care fails on this asserted basis.

Alternate care included alternate physicians when there is a breakdown in a physician/patient relationship. Seibert v. State of Iowa, File No. 938579 (September 14, 1994); Nueone v. John Morrell & Co., File No. 1022976 (January 27, 1994); Williams v. High Rise Const., File No. 1025415 (February 24, 1993); Wallech v. FDL, File No. 1020245 (September 3, 1992) (aff'd Dist Ct June 21, 1993).

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).

Claimant appears to raise a challenge to the care provided by Dr. Miller under a breakdown in the doctor-patient relationship. However, at the commencement of the hearing, claimant conceded that the request for alternate medical care is not an attempt to preclude Dr. Miller from remaining as a treating physician. Therefore, claimant is not realistically challenging the offered care on a breakdown of the doctor-patient relationship. Rather, claimant simply prefers the bedside manner of his personal physician, Dr. Weston over the bedside manner offered by Dr. Miller. In other words, claimant prefers to treat with his personal physician, Dr. Weston.

I certainly understand that the claimant may prefer a physician he selected, whom he trusts, and who offers a good bedside manner. However, the legal standard is not desirability. Care is not transferred simply because the claimant desires a different physician handle his medical treatment. Rather, the legal standard I must apply in an alternate medical proceeding is whether the defendants have offered reasonable, medically appropriate care to treat claimant's condition.

Defendants offer Dr. Miller, a pain specialist, as the authorized physician to manage claimant's prescriptions. Defendants contend that Dr. Miller is an appropriate medical specialist because he is a pain specialist and has agreed to manage claimant's medication. Certainly, the idea of a pain specialist managing claimant's pain medications is reasonable. However, defendants ultimately seek to transfer all medication management to Dr. Miller, including medications Dr. Miller concedes he is not experienced in managing. Ultimately, I conclude that claimant has not proven a breakdown in the doctor-patient relationship such that a transfer of care is necessary on this basis. Claimant's application for alternate medical care fails on this legal basis.

Finally, claimant presents an emotional and compelling argument that defendants' refusal to authorize several medications, including medications for blood thinning purposes and mental health purposes is unreasonable. Some of the medications to which claimant is referring in this argument are now challenged by defendants as not causally connected to the work injury.

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 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 the refusal to admit liability for several medications, claimant's original notice and petition for alternate medical care must be dismissed with respect to those medications for which defendants dispute casual connection. Given their refusal to admit liability for the low back condition, 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, including obtaining the disputed prescription medications. Bell Bros. Heating v. Gwinn, 779 N.W.2d 193 (Iowa 2010).

As a result of the refusal to admit liability for various medications, 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 v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010). Therefore, defendants are precluded from asserting an authorization defense as to any future prescription charges for disputed medications during their period of denial.

However, one of the medications Dr. Miller (and defendants) concedes is causally related to the work injury is Xarelto. Xarelto is a medication prescribed to prevent blood clots. Mr. Werner apparently was placed on Heparin after surgery following this work injury. He experienced an allergic reaction to that medication and developed blood clots in both his legs. As a result, he was transferred to Xarelto and has been advised that he will require that medication for the remainder of his life to avoid blood clots and potentially life threatening conditions.

Defendants gave claimant notice that they were no longer authorizing the Xarelto medication to be prescribed through Dr. Weston. Defendants declined to authorize and the pharmacy did not fill the Xarelto prescription since March 2015. Given that this is a causally related medication, prescribed for a potentially life-threatening condition, it is unreasonable for defendants to not authorize this medication or have it filled for the past six weeks.

Claimant was evaluated by Dr. Miller in April 2015. Despite the transfer of medication management to Dr. Miller in April and his agreement to assume that role, Dr. Miller did not prescribe Xarelto for claimant. Instead, claimant has obtained baby aspirin from his family physician's office as a substitute (albeit insufficient substitute) for the Xarelto. Defendants' failure to authorize Xarelto, coupled with Dr. Miller's failure to prescribe this medication for claimant after the transfer of prescription management, is not reasonable medical care to treat a potentially life threatening condition.



Given the nature of claimant's injuries and resulting medical needs, defendants owed it to claimant to ensure a smooth and complete transfer of the medication management to Dr. Miller. It is unreasonable to leave claimant without a blood thinner, given that a specialist at the UIHC has prescribed that medication and indicated it would be a life-long needed medication. No justification has been offered for discontinuing or not refilling this prescription in a timely manner. Therefore, I conclude defendants have not provided timely, reasonable care related to this need for a blood thinner.

Claimant has proven that defendants' offered care is not reasonable or consistent with the statutory standards required of them at least with respect to the Xarelto prescription. Claimant has proven that the specialists at the UIHC delegated supervisory duties for refilling the Xarelto and other causally related medications to Dr. Weston. As I found previously, it is probably a good idea to keep as many prescriptions as possible within and under the control of one physician. Therefore, I conclude that it is appropriate to transfer medical care for monitoring and prescribing the following medications to Dr. Weston: (1) Xarelto; (2) Lamotrigine, (3) Duloxetine, (4) Gabapentin; and (5) Tizanidine.

Dr. Miller remains the authorized pain specialist. He shall remain responsible for prescribing the fentanyl patches and oxycodone, or other pain medications as he deems medically reasonable. The parties and the physicians are strongly encouraged to ensure there is a good line of communication between Dr. Weston and Dr. Miller to ensure drug interactions are considered and to avoid any adverse medical effects to claimant.

#### ORDER

#### THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is sustained in part.

Timothy Miller, M.D., shall remain the authorized pain specialist and shall remain responsible for prescribing fentanyl patches, oxycodone, and/or any other medications he deems medically reasonable for treatment of claimant's chronic pain.

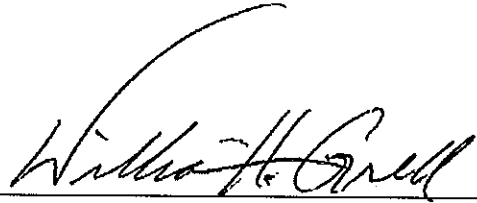
All other medications stipulated to be causally related to claimant's work injury, including Lamotrigine, Duloxetine, Gabapentin, Xarelto, and Tizanidine shall be monitored, supervised, and prescribed through claimant's personal physician, Dr. Weston.

Claimant's original notice and petition for alternate medical care is dismissed with respect to his request for authorization and payment of the following medications: Tamsulosin, Hydrochlorothiazide, Hydroxyzine, Omeprazole, and Escitalopram.

Defendants' denial of liability for the medications noted in the immediately preceding paragraph results in the loss of their ability to select the authorized medical provider for these medications during the period of their denial.

If claimant seeks to recover the charges incurred in obtaining medications 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 7<sup>th</sup> day of May, 2015.



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