

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BRITTANY MEYER,

Claimant,

vs.

RR DONNELLEY &amp; SONS CO.,

Employer,

and

AIU INSURANCE COMPANY,

Insurance Carrier,  
Defendants.

File No. 22002346.01

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. By filing an original notice and petition for alternate medical care, claimant, Brittany Meyer, invoked the expedited procedure of rule 876 IAC 4.48. The alternate medical care claim came on for telephonic hearing on April 22, 2022. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Claimant appeared personally and through her attorney, Chad Swanson. Defendants failed to answer the petition or appear for this proceeding. Defendants were determined to be in default at the commencement of the hearing.

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. Any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code section 17A.

The evidentiary record consists of claimant's exhibit 1, consisting of ten pages. Ms. Meyer testified on her own behalf. No other witnesses testified at the hearing, and the evidentiary record closed at the conclusion of the hearing.

## ISSUE

The issue presented for resolution is whether the claimant is entitled to an alternate medical care order requiring defendants to authorize an orthopaedic surgeon for evaluation and treatment of claimant's left hand, wrist, and/or arm.

## FINDINGS OF FACT

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

Brittany Meyer, claimant, sustained injuries to her left hand, left wrist, and/or left arm as a result of her work duties on January 22, 2022. Ms. Meyer worked without pain or symptoms on January 21, 2022. However, on Saturday, January 22, 2022, she was working overtime and was stuffing paper into a box in a repeated manner and had to use some force. Halfway through her shift, she developed symptoms in her left wrist that worsened through the shift. She tried to use her forearm to stuff the paper into the box to alleviate symptoms. Unfortunately, she continued to experience symptoms until she returned for her regular shift on Monday afternoon. (Claimant's testimony)

Claimant reported her symptoms to management, attempted to continue working, but ultimately was sent home because of her symptoms. The employer ultimately scheduled an appointment for Ms. Meyer to be evaluated by Dr. Kim at North Iowa Occupational Health on January 31, 2022. Dr. Kim diagnosed claimant with a work-related injury and ordered some physical therapy. (Claimant's testimony; Exhibit 1, pages 1-2)

Unfortunately, physical therapy did not resolve claimant's problems. Ultimately, Dr. Kim recommended an MRI of claimant's wrist, which was performed on March 10, 2022. (Claimant's testimony) Upon her return to Dr. Kim after the MRI, Dr. Kim recommended evaluation by an orthopaedic surgeon. (Exhibit 1, p. 6) Defendants have not authorized or scheduled claimant to be evaluated by an orthopaedic surgeon since the March 16, 2022 referral by Dr. Kim. (Claimant's testimony)

Claimant has not heard from her employer, the insurance carrier, Dr. Kim's office, or received any information regarding an evaluation by an orthopaedic surgeon. (Claimant's testimony) Claimant's counsel has made reasonable attempts to secure an evaluation with an orthopaedic surgeon without response from the defendants. Claimant has appropriately expressed her dissatisfaction with the lack of care. (Exhibit 1, pp. 7-10) Claimant requests an order requiring defendants to authorize an evaluation with an orthopaedic surgeon.

I find that claimant has established defendants are not currently offering reasonable care. In fact, claimant has established that no care is currently being

offered and that defendants have not complied with the referral of their chosen physician. Accordingly, I find that claimant has proven the lack of care offered is unreasonable and that alternate, reasonable and necessary medical care is indicated and available.

#### 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 Heating & 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).

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).

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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 authorized care with an occupational medicine physician, Dr. Kim. However, defendants have not honored or authorized the care recommended by their chosen physician. Dr. Kim has made a referral for evaluation with an orthopaedic surgeon. Defendants have not authorized or scheduled an appointment consistent with Dr. Kim’s recommendations. Claimant established that defendants’ lack of offered medical care is unreasonable. Claimant has proven that defendants are not offering care that is prompt nor reasonably suited to treat her injury. Claimant also proved alternate medical care is available and recommended by the physician selected by defendants and specifically an evaluation and treatment with an orthopaedic surgeon. Therefore, I conclude that claimant has established entitlement to alternate medical care and specifically an evaluation and treatment with an orthopaedic surgeon.

Claimant testified that it is approximately 40 miles from her home to Mason City and that the next closest location with a larger medical facility is Rochester. I conclude that defendants should provide an orthopaedic surgeon in a convenient location and specifically that defendants should authorize an orthopaedic surgeon in Mason City, Rochester, or a closer location, if available, for evaluation and treatment of claimant’s injuries. If defendants fail to act promptly, as delineated in the order section, they will lose their right to select claimant’s treating orthopaedic surgeon and forfeit any potential authorization defense.

#### ORDER

THEREFORE, IT IS ORDERED:

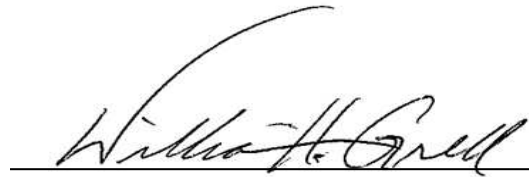
The claimant's petition for alternate medical care is granted.

Defendants shall promptly authorize and pay for an evaluation and treatment through an orthopaedic surgeon in Mason City, Rochester, or a location closer to claimant’s residence.

If defendants do not identify an orthopaedic surgeon to provide treatment within 14 days of the filing of this order and schedule claimant for the first available appointment with that surgeon, claimant shall be permitted to select the treating orthopaedic surgeon.

If defendants do not timely select and schedule an appointment with an orthopaedic surgeon and claimant subsequently selected a surgeon, defendants will be obligated to pay all charges incurred for treatment with or at the direction of claimant's chosen surgeon without the right to assert an authorization defense.

Signed and filed this 22<sup>nd</sup> day of April, 2022.

A handwritten signature in black ink, reading "William H. Grell", is written over a horizontal line.

WILLIAM H. GRELL  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Chad Swanson (via WCES)

RR Donnelley & Sons Co. (via regular mail)  
900 Heritage Drive  
Osage, IA 50461-1500

AIU Insurance Co. (via regular mail)  
26000 Sumerian Dr. Ste. 101  
Land O'Lakes, FL 34638