

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JENNIFER POTTORFF, Claimant, vs. TELCO TRIAD COMMUNITY CREDIT UNION, Employer, TRAVELERS CASUALTY & SURETY CO., Insurance Carrier, Defendants.	File No. 5058507.05 ALTERNATE CARE DECISION HEADNOTE: 2701
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I. STATEMENT OF THE CASE.

Jennifer Pottorff applied for alternate care on March 23, 2023. The agency scheduled the case for a telephone hearing to be held on April 5, 2023. The defendants, Telco Triad Community Credit Union and Travelers Casualty & Surety Co., answered and accepted liability for the work injury and condition for which Pottorff seeks alternate care.

The undersigned presided over a hearing held by telephone and recorded on April 5, 2023. That recording constitutes the official record of the proceeding under agency rule 876 IAC 4.48(12). Pottorff participated personally and through attorney Ron Pohlman. The defendants participated through attorney James M. Ballard. The record consists of:

- Claimant's Exhibits (Cl. Exs.) A through C;
- Defendants' Exhibits (Def Exs.) A through C; and
- Hearing testimony by Pottorff.

II. ISSUE.

The issue in this contested case proceeding is whether Pottorff is entitled to alternate care in the form of a second opinion from neurosurgeon John S. Treves, M.D.

III. FINDINGS OF FACT.

Telco employed Pottorff in January of 2016. On January 8 and 25, 2016, Pottorff sustained injuries arising out of and in the course of her employment with Telco. The parties ultimately entered into an agreement for settlement under Iowa Code section 85.35(2) (2019) under which Pottorff “is entitled to medical care for the injury, including care in the future” under Iowa Code section 85.27. Pottorff v. Telco Triad Cmty. Credit Union, Agreement for Settlement, No. 5058507 (Iowa Workers’ Comp. Comm’r, Mar. 11, 2019).

The defendants arranged care with Michael T. Espiritu, M.D. (Testimony) The course of treatment included multiple surgeries, the most recent of which was a revision lumbar decompression-fusion extending up to L4 for adjacent segment disease with lumbar spinal stenosis with neurogenic claudication. (Cl. Ex. A, p. 1; Testimony) Before the surgery, Dr. Espiritu advised her she would be in the hospital for two days. The morning after the surgery, Pottorff woke up and was numb on her left side. She was unable to use her extremities without it causing her to nearly pass out. Pottorff wound up staying in the hospital for seven or eight days. (Testimony)

About two weeks after the surgery, Pottorff felt a pop in her back. Since then, she has had trouble walking with straight posture and experienced a grinding sensation in her back. Pottorff has seen Dr. Espiritu monthly since the surgery, but he has not identified the cause of her ongoing issues. (Testimony)

In November of 2022, Pottorff saw William Samuelson, IV, M.D., for a second opinion. (Cl. Ex. A) Dr. Samuelson examined Pottorff, discussed her symptoms with her, reviewed her imaging findings, and discussed care options. (Cl. Ex. A, p. 2) He noted she underwent electromyography (EMG) tests of her lower extremities that came back “normal.” (Cl. Ex. A, p. 2) They discussed how it is common following a lumbar fusion surgery for the patient to experience numbness, tingling, and low back pain. (Cl. Ex. A, p. 2) Dr. Samuelson also discussed with Pottorff that it can take as long as two years for a patient to see the full benefit of such a surgery. (Cl. Ex. A, p. 2)

After that visit, Pottorff tried injections to reduce her symptoms, but they did not provide relief. It was also around that time that Dr. Espiritu first recommended exploratory surgery to try to identify the cause of her ongoing issues. Pottorff saw Dr. Espiritu on March 21, 2023. (Cl. Ex. B) Dr. Espiritu noted:

[Pottorff had] possible failure of hardware meaning she has a grinding pain [and] difficulty standing straight up but I do not have an explanation for that other than the possibility that the rods may be moving within the screws at the L4 level based off of recent x-rays. However there is no absolute failure of hardware that I can see and unfortunately the L4-5 epidural steroid injections did not seem to relieve any of her symptoms. I told her that entering her back more than once additionally each time increases her chance of having chronic back pain from scar tissue but I would do it if that is the choice she wants to make. I told her the options

are at this point to go ahead and do an exploration of hardware for which the recovery time should be shorter than prior surgery has been because we would just be exposing the hardware not going into the canal and not checking the posterior lateral fusion mass at this time however it is another surgery. The other option would be turning over to pain management for the next 4 months to see if they can relieve her symptoms until she is a year out when we could order a CT myelogram to check for fusion and if we needed treatment for a pseudoarthrosis could also be done at the same time we do exploration of hardware for possible failure of hardware. Last option may be to get second opinion possibly from Dr. Samuelson again with the new information to see what he thinks in terms of if there is any other procedures or suggestions for treatment at this point.

(Cl. Ex. B, p. 2)

Pottorff's ongoing issues have caused her to miss time from work. She has exhausted her allotted leave under the federal Family Medical Leave Act (FMLA). She is concerned that her ongoing symptoms and care for them may place her job in jeopardy. (Testimony)

Pottorff's confidence in Dr. Espiritu as a surgeon has deteriorated because of the inability to identify the cause of her ongoing issues. She has also lost trust in the other physicians at CNOS, where Dr. Espiritu practices. Pottorff wants to see a neurosurgeon instead of an orthopedic surgeon because of the numbness she continues to experience in her legs. She believes the numbness is most likely caused by a nerve issue. She is dissatisfied with the arrangement for a second opinion with an orthopedic surgeon because of her belief that her numbness is caused by a nerve issue. (Testimony)

Pottorff has specifically requested a second opinion by Dr. Treves, a neurosurgeon in Omaha, Nebraska. Claimant's Exhibit C is a printout of some online reviews of Dr. Treves. They are submitted for the truth of the matter asserted in them—that Dr. Treves is a quality physician—which makes them hearsay. They are consequently given little weight in this proceeding.

For the defendants' part, they took Pottorff's dissatisfaction under advisement. Instead of arranging a second opinion with Dr. Samuelson, who is a physician at the same practice as Dr. Espiritu, they have arranged for Pottorff to receive a second opinion from Dr. Chris Cornett at the Lauritzen Outpatient Center in Omaha, Nebraska. (Def. Ex. A, p. 1; Def. Ex. C, p. 4) Pottorff rejected the offer before the hearing because she wants to see a neurosurgeon. (Def. Ex. B, pp. 2–3)

IV. CONCLUSIONS OF LAW.

“Iowa Code section 85.27(4) affords an employer who does not contest the compensability of a workplace injury a qualified statutory right to control the medical care provided to an injured employee.” Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 769 (Iowa 2016) (citing R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 195, 197 (Iowa 2003)). Under the law, the employer must “furnish reasonable medical services and supplies *and* reasonable and necessary appliances to treat an injured employee.” Stone Container Corp. v. Castle, 657 N.W.2d 485, 490 (Iowa 2003) (emphasis in original). Such employer-provided care “must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee.” Iowa Code § 85.27(4).

An injured employee dissatisfied with the employer-furnished care (or lack thereof) may share the employee’s discontent with the employer and if the parties can’t reach an agreement on alternate care, “the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.” Id. “Determining what care is reasonable under the statute is a question of fact.” Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995); Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 436 (Iowa 1997). As the party seeking relief in the form of alternate care, the employee bears the burden of proving that the authorized care is unreasonable. Id. at 124; Gwinn, 779 N.W.2d at 209; Reynolds, 562 N.W.2d at 436. Because “the employer’s obligation under the statute turns on the question of reasonable necessity, not desirability,” an injured employee’s dissatisfaction with employer-provided care, standing alone, is not enough to find such care unreasonable. Id. “[W]hen 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.” Reynolds, 562 N.W.2d at 437 (quoting Long, 528 N.W.2d at 124).

The evidence in this case shows that Pottorff underwent an EMG of her lower extremities, which tested nerve conduction, and they came back normal. While this was before Pottorff saw Dr. Samuelson in November of 2022, she was experiencing symptoms similar to those that have continued to the time of hearing. The normal EMGs of her legs cuts against a neurosurgeon being the most appropriate doctor to provide a second opinion at this time. Reinforcing this conclusion is Dr. Espiritu’s suspicion (though not confirmed) that Pottorff has experienced some loosening of the hardware implanted in her back during the July 2022 surgery.

For these reasons, Pottorff has failed to establish that a referral to Dr. Cornett, a spine surgeon, is unreasonable. The weight of the evidence shows that it is reasonable for Pottorff to see a spine surgeon instead of a neurosurgeon because the EMG of her legs came back normal and her treating surgeon believes she may have experienced loosening of the hardware in her back. Therefore, Pottorff’s application for alternate care is denied.

V. ORDER.

Under the above findings of facts and conclusions of law, it is ordered:

- 1) Pottorff's application for alternate care is DENIED.
- 2) The defendants shall promptly authorize all reasonable care recommended by Dr. Cornett.

On February 16, 2015, the Iowa workers' compensation commissioner issued an order delegating authority to deputy workers' compensation commissioners, such as the undersigned, to issue final agency decisions on applications for alternate care. Consequently, there is no appeal of this decision to the commissioner, only judicial review in a district court under the Iowa Administrative Procedure Act, Iowa Code chapter 17A.

Signed and filed this 5th day of April, 2023.

A handwritten signature in black ink, appearing to read "Ben Humphrey", is written over a horizontal line.

BEN HUMPHREY
Deputy Workers' Compensation Commissioner

The parties have been served, as follows:

Ron Pohlman (via WCES)

James M. Ballard (via WCES)