

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DONALD TUTTLE,

Claimant,

vs.

ARCHER DANIELS MIDLAND,

Employer,  
Self-Insured,  
Defendant.File Nos. 22005076.02  
1642891.02ALTERNATE MEDICAL CARE  
DECISION

Headnote: 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, Donald Tuttle. Claimant appeared personally and through his attorney, Dennis Currell. Defendant appeared through its attorney, Peter Thill.

The alternate medical care claims came on for hearing on July 20, 2023. 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, 7, and 9-14; and defendant's exhibits A through E.<sup>1</sup> Claimant's wife, Michelle Tuttle, testified, and counsel offered oral arguments to support their positions.

ISSUES<sup>2</sup>

File No. 1642891.02 – The issue presented for consideration is whether claimant is entitled to authorization for treatment of his left knee injury with Holly Duck, M.D.

File No. 22005076.02 – The issue presented for consideration is whether claimant is entitled to an order authorizing treatment for his head injury with Opada

<sup>1</sup> Because the alternate care hearing involved two separate files with two distinct dates of injury, each party was allowed a total of 20 pages for exhibits.

<sup>2</sup> Claimant also initially sought authorization for treatment with Mark Mittauer, M.D., but defendant's counsel indicated at hearing that treatment has been authorized. Therefore, that portion of the claim is moot.

Alzohaili, M.D. Specifically, claimant requests an order directing defendant to authorize and pay for the human growth hormone injections Dr. Alzohaili prescribed.

#### FINDINGS OF FACT

Claimant sustained an injury to his left knee while working on January 21, 2018. Defendant has accepted compensability of the knee claim and provided treatment, including left knee arthroscopic surgery on February 28, 2018. (Defendant's Exhibit A, p. 1) A post-operative MRI taken in 2019 showed a retrograde drill tunnel in the tibial plateau up toward the medial meniscus root insertion. The operative report did not mention the drill tunnel. Matthew Bollier, M.D., and Nicholas Noiseux, M.D., provided a joint opinion dated November 24, 2020, indicating that the tibial tunnel is not the cause of claimant's ongoing pain, and is not causing any damage in his knee. (Def. Ex. A, pp. 2-3) They also opined that claimant needs a total knee replacement related to the initial work injury. (Def. Ex. A, p. 2) Defendant has authorized treatment at the University of Iowa with Drs. Bollier and Noiseux, including the total knee replacement.

Claimant sought care on his own at the Mayo Clinic with Holly Duck, M.D. On March 29, 2022, Dr. Duck noted claimant's previous treatment included NSAIDs, ice and heat, topical creams and gels, physical therapy, and injections. (Claimant's Exhibit 13, p. 4) Dr. Duck's record states he had a steroid injection into his knee with short-term relief. Dr. Duck noted that eventually claimant will need a total knee replacement. (Cl. Ex. 14, p. 5) However, at that visit, she recommended an ultrasound-guided injection of corticosteroid into the left pes anserine bursa/trigger point. She also recommended a Synvisc injection.

On January 12, 2023, claimant saw Leah Edquist, PA-C, at Dr. Duck's office. (Cl. Ex. 12, p. 3) PA-C Edquist provided a left knee intra-articular injection. Her note also states that they had recommended that claimant continue with conservative management as long as possible, and should continue with the injections as long as they are providing relief. The record indicates that claimant has a prior history of MRSA in his ankle, and as a result they hope to put off surgery for several years. The record further states that only when claimant has completely exhausted nonoperative management should he consider the total knee replacement surgery. He is to follow up on a yearly or as-needed basis.

Claimant's wife, Michelle Tuttle, testified that the injections provided at the Mayo Clinic are done with imaging, which is not how the injection at the University of Iowa was done. She also stated that while claimant has ongoing issues with his knee, he was able to return to work at ADM because of the treatment he received at the Mayo Clinic, until his head injury, discussed below. Claimant argues that the treatment he receives at Mayo Clinic for his knee is more extensive than that offered by the University of Iowa, as it provides pain relief while recognizing the risks of the total knee replacement surgery. In contrast, the University of Iowa has only offered the surgery as treatment, which claimant hopes to avoid as long as possible.

Claimant sustained a second injury on April 14, 2022. Records indicate claimant struck his head on a solid pipe, which resulted in a fall and brief loss of consciousness. (Def. Ex. E, p. 11) Since that time, claimant has seen a number of medical providers. Ms. Tuttle provided a great deal of testimony regarding the course of claimant's initial treatment, as well as his current status and ongoing symptoms. In very brief summary, claimant was initially seen at a Unity Point urgent care clinic, who sent him to the emergency room in an ambulance. The emergency room physician told claimant to follow up with his primary care physician, Jill Flory, M.D., in one week. (Cl. Ex. 1, p. 1) Since that time claimant has continued to see Dr. Flory, and she has made multiple recommendations and referrals, including referral to the Mayo Clinic and to Dr. Alzohaili. (Cl. Ex. 3, p. 4)

It appears from the records that claimant saw Dr. Alzohaili on February 20, 2023. (Cl. Ex. 5, p. 6) Dr. Alzohaili is an endocrinologist, and diagnosed claimant with pituitary dysfunction and growth hormone deficiency. He recommended claimant receive regular and ongoing injections of human growth hormone (HGH) for the remainder of his life.

Claimant's wife testified that claimant was on the HGH injections for some time, and she noticed positive changes. She testified that before he started the injections, she was scared of him, as he had become unpredictable, and it was like "walking on eggshells" around him. It is unclear from the records in evidence whether the HGH was being authorized by workers' compensation or if claimant was using his group health insurance. However, at some point the prescription was no longer approved, and claimant could not take the injections for about a month or so. Claimant's wife noticed a decline in his condition over that time, as both his mental and physical symptoms began to return. Recently they were able to get an extension through their group health insurance to pay for the prescription until July 25, 2023. Ms. Tuttle testified that he restarted the injections a couple of weeks prior to hearing, and she has already noticed improvements.

Claimant had an independent medical examination with Jonathon Fields, M.D., on September 29, 2022. (Cl. Ex. 3, p. 3) On February 28, 2023, Dr. Fields provided an updated report after reviewing additional medical records, including Dr. Alzohaili's records. (Cl. Ex. 5, p. 6) Dr. Fields was asked to provide his opinion regarding Dr. Alzohaili's report, and Dr. Fields recommended a second opinion to a local endocrinologist at Mayo Clinic or the University of Iowa, as Dr. Alzohaili is located in Detroit, Michigan. It appears Dr. Fields was concerned about claimant's ability to travel that distance, but the record in evidence is not complete due to page limitations. Defense counsel indicated that the endocrinology department at the Mayo Clinic declined to see claimant for a second opinion. However, Amie Ogunsakin, M.D., an endocrinologist at the University of Iowa, has agreed to see claimant. (Def. Ex. D, p. 8) However, she is not able to see claimant until late August at the earliest, and the appointment has not yet been scheduled.

Claimant has also treated with Erica Bellamkonda, M.D., at the Mayo Clinic. (Def. Ex. E, pp. 11-12) Dr. Bellamkonda provides a brief summary of claimant's injury and treatment history in her letter dated May 23, 2023. She provided a list of treatment recommendations, and was asked to comment on Dr. Alzohaili's treatment recommendations as well. Dr. Bellamkonda stated that as a physiatrist, she is not able to comment on the state of claimant's hypothalamic-pituitary axis, as it is outside her area of expertise and clinical practice. (Def. Ex. E, p. 12) She stated that if there continue to be concerns in that area, "another opinion may be considered with direct referral to another endocrinologist."

Defendant argues that two doctors have recommended a second opinion from another endocrinologist regarding the HGH injections, and they are in the process of scheduling that appointment. Claimant argues that Dr. Flory was the initial authorized treating physician, and the authorization has never been revoked. As such, her referral to Dr. Alzohaili makes him an authorized treating physician, and defendant cannot interfere with his treatment recommendations or delay claimant's care.

### 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).

Iowa Code section 85.27 provides:

The employer, for all injuries compensable under this chapter or chapter 85A, shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance and hospital services and supplies therefor and shall allow reasonably necessary transportation expenses incurred for such services. The employer shall also furnish reasonable and necessary crutches, artificial members and appliances but shall not be required to furnish more than one set of permanent prosthetic devices.

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). In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997), the court approvingly quoted Bowles v. Los Lunas Schools, 109 N.M. 100, 781 P.2d 1178 (App. 1989):

[T]he words “reasonable” and “adequate” appear to describe the same standard.

[The New Mexico rule] requires the employer to provide a certain standard of care and excuses the employer from any obligation to provide other services only if that standard is met. We construe the terms “reasonable” and “adequate” as describing care that is both appropriate to the injury and sufficient to bring the worker to maximum recovery.

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. See Iowa Code § 85.27(4). Thus, 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, 528 N.W.2d at 124.

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). Defendants are not entitled to interfere with the medical judgment of their own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening Dec., June 17, 1986).

The right to choose the care means the right to choose the provider, not the treatment modalities recommended by the provider. The employer must provide the treatment, testing, imaging or other treatment modalities recommended by its own authorized treating physician, even if another consulting physician disagrees with those recommendations. Haack v. Von Hoffman Graphics, File No. 1268172, p. 9 (App. July 31, 2002) [MRI and x-rays]; Cahill v. S & H Fabricating & Engineering, (Alt Care Dec., File No. 1138063, May 30, 1997) (work hardening program); Hawxby v. Hallett Materials, File No. 1112821, (Alt Care Dec., February 20, 1996); Leitzen v. Collis, Inc. File No. 1084677, (Alt Care Dec., September 9, 1996). The right to choose the care does not authorize the employer to interfere with the medical judgment of its own treating physician. Boggs v. Cargill, Inc. File No. 1050396, (Alt Care Dec., January 31, 1994).

Additionally, the commissioner is justified in ordering alternate care when employer-authorized care has not been effective, and evidence shows that such care is “inferior or less extensive” than other available care requested by the employee. Long; 528 N.W.2d at 124; Pirelli-Armstrong Tire Co. v. Reynolds; 562 N.W.2d 433, 437 (Iowa 1997).

Ultimately, determining whether care is reasonable under the statute is a question of fact. Long, 528 N.W.2d at 123. In this case, with respect to the knee injury, I find that the treatment being offered by the Mayo Clinic, specifically Dr. Duck's office, is more extensive and better suited to treat claimant's knee injury. There are documented concerns with claimant having a total knee replacement surgery, given his history of MRSA. That is the only treatment being offered by the University of Iowa at this time. However, Dr. Duck is providing yearly intra-articular injections, which provide claimant with enough relief to delay the total knee replacement for the time being. As such, the care being provided by Dr. Duck is better suited to treat claimant's knee injury and should be authorized.

With respect to claimant's head injury, the issues are more complicated. However, looking at the case from the beginning, it does appear that Dr. Flory was the initial authorized treating physician, and there is no evidence her authorization has been revoked. The employer cannot interfere with the judgment of the authorized treating physician, and must authorize treatment modalities recommended by that provider. In this case, by way of Dr. Flory's referral, Dr. Alzohaili is also an authorized treating physician, and his recommendations must be authorized. As such, defendant is responsible for the HGH prescription he has recommended.

Additionally, defendant has known about Dr. Field's recommendation for a second opinion since February 28, 2023. Understanding that the Mayo Clinic declined the request for a second opinion, the fact that there is no appointment scheduled at this time, and none available until late August at the earliest, is an unreasonable delay in treatment. Claimant has already had to go off the medication once, and only has insurance approval through his group health for five more days. The injections have provided benefit, and stopping the injections had a negative effect. As such, it is unreasonable to make claimant wait until August or later for a second opinion before authorizing the prescription.

Therefore, I conclude that claimant has proven his claim for alternate medical care in both files. Defendant is ordered to authorize and pay for claimant's treatment related to his left knee at the Mayo Clinic with Dr. Duck's office. Additionally, defendant is ordered to authorize and pay for claimant's treatment related to his head injury with Dr. Alzohaili, including authorization of the prescription for human growth hormone injections.

#### ORDER

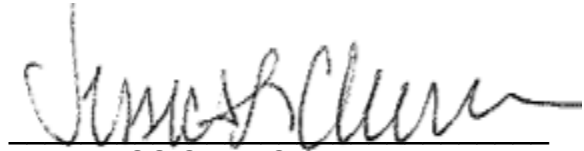
THEREFORE, IT IS ORDERED:

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

With respect to File No. 1642891.02, defendant is ordered to authorize and pay for claimant's treatment related to his left knee at the Mayo Clinic with Dr. Duck's office.

With respect to File No. 22005076.02, defendant is ordered to authorize and pay for claimant's treatment related to his head injury with Dr. Alzohaili, including authorization of the prescription for human growth hormone injections.

Signed and filed this 21st day of July, 2023.

A handwritten signature in black ink, appearing to read 'Jessica L. Cleereman', is written over a horizontal line.

JESSICA L. CLEEREMAN  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Dennis Currell (via WCES)

Peter Thill (via WCES)