



## FINDINGS OF FACT

The claimant sustained an injury which arose out of and in the course of his employment on April 17, 2019. The injury was a crush injury which resulted in the need for mental health care.

Claimant filed for alternate medical care on March 10, 2020, requesting a referral to a pain psychologist. Prior to hearing, the parties agreed upon Tork Harman, M.D., as an authorized provider to direct claimant's mental health care. I dismissed that claim on March 26, 2020, on the basis of this agreement. (Defendants' Exhibit 1) Claimant's counsel wrote to Dr. Harman on March 23, 2020, asking for a referral. (Def. Ex. 2) On March 24, 2020, Dr. Harman recommended one of two pain psychologists. "Recommend the St. Luke's pain psychologist; if not available rec Luke Hansen at MMC." (Cl. Ex. 1) Claimant's counsel attempted to have Dr. Harman authorize a specific provider, Frank Gersh, in Iowa City. (Def. Ex. 2) Dr. Harman ignored this request.

For reasons not in the record, the defendants did not like the options initially provided by Dr. Harman. On April 1, 2020, the nurse case manager, Brenna Bass, asked Dr. Harman if he would approve Valerie Keffala, PhD, at the University of Iowa Hospitals and Clinics for this treatment. (Def. Ex. 3, p. 2) Dr. Harman confirmed this was a reasonable choice. (Id.) Dr. Harman confirmed this again in correspondence on April 9, 2020. (Def. Ex. 4) For reasons that are also not in the record, the claimant did not like this option. He preferred one of the original two choices set forth by Dr. Harman on March 24, 2020.

An appointment was arranged for claimant to see Dr. Keffala on May 18, 2020. (Def. Ex. 5) Counsel sparred back and forth about whether either side was honoring the agreement related to the earlier alternate medical care dismissal. (Def. Ex. 7)

Mr. Ohlhauser testified at hearing. He testified that it would create a hardship for him to travel to Iowa City for treatment, although he conceded that the medical provider his attorney was recommending was also located in Iowa City. The claims adjustor, Julie Jauron, also testified. She testified she was given three choices to choose from, and she chose Dr. Keffala. She was evasive on cross examination and never provided any reason for not wanting to authorize the other two treatment providers.

## 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. Iowa Code section 85.27 (2013).

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See 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).

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).

An employer's statutory right is to select the providers of care and the employer may consider cost and other pertinent factors when exercising its choice. Long, at 124. An employer (typically) is not a licensed health care provider and does not possess medical expertise. Accordingly, an employer does not have the right to control the methods the providers choose to evaluate, diagnose and treat the injured employee. An employer is not entitled to control a licensed health care provider's exercise of professional judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988). An employer's failure to follow recommendations of an authorized physician in matters of treatment is commonly a failure to provide reasonable treatment. Boggs v. Cargill, Inc., File No. 1050396 (Alt. Care January 31, 1994).

In March 2020, the parties agreed that Dr. Harman would direct claimant's treatment related to psychological pain management. Dr. Harman did this, almost immediately, providing two names of treatment providers in Cedar Rapids who could manage his treatment needs. The defendants, for an unknown reason, asked Dr. Harman to expand his referral list to include another specific treatment provider. The record provides no answer as to why this was done. The question is whether it was unreasonable for the defendants to ask Dr. Harman to expand his list of authorized referrals to include a treatment provider he did not initially recommend.

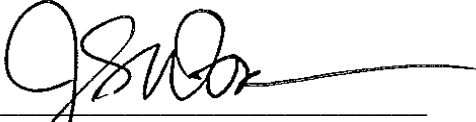
In these narrow circumstances, I find that it is unreasonable for the defendants to fail to authorize one of the two treatment providers initially recommended by Dr. Harman. The defendants provided no reason at hearing for refusing to authorize one of the two referrals made by Dr. Harman on March 23. Instead of authorizing one of these providers, the case manager contacted Dr. Harman and asked him to make a specific referral to a different provider who was further away. In this record, it is completely unknown why this action was taken. I find this action was an unreasonable interference with claimant's medical care.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is GRANTED. Defendants shall authorize one of the referrals in Dr. Harman's March 24, 2020, office note.

Signed and filed this 11<sup>th</sup> day of May, 2020.



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JOSEPH L. WALSH  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Bob Rush (via WCES)

Anthony Olson (via WCES)

Coreen Sweeney (via WCES)