



On October 7, 2019, claimant was seen by Wade Jensen, M.D., in follow-up for her back condition. In the subjective portion, it is noted the claimant has had a long and complicated history with multiple neurological implications including complete right lower extremity loss, transient left lower extremity loss which improved, bowel and bladder issues with intermittent loss of control, right arm involvement with some right upper extremity dysfunction and weakness in the hand. (Ex 1)

She had undergone a complete stroke workup including a brain MRI, CTA neck, unremarkable TTE, MRI of the cervical and thoracic spine that revealed no significant spinal canal stenosis, as well as exploratory surgery with no obvious explanation for symptoms. (Exhibit page 1) She underwent intensive physical and occupational therapy with no improvement. (Exhibit page 1) During the January 8, 2020, examination, her condition was unchanged. She had equal and full strength in the quadriceps, hamstrings, EHL, FHL, tibialis anterior, and gastroc on the left. She had no function of her right lower extremity and less coordination of the right upper extremity as compared to the left. (Exhibit page 2)

Dr. Jensen noted that the overall clinical picture did not match what happened in the operating room and that her nerve roots showed normal neurological function. (Exhibit page 2) He attributed her ongoing symptoms to a stroke rather than categorizing them as psychosomatic, although there could be a component of that. (Exhibit page 2) Nonetheless, Dr. Jensen made the following recommendations:

- 1) Permanent handicap parking pass.
- 2) Continued home health aide for three hours a day two times a week.
- 3) A supply of Depends.
- 4) Car with hand controls.
- 5) Long-term lifting restrictions of the right upper extremity of 5 pounds, left upper extremity of 20 pounds, left lower extremity of body weight, and right lower extremity of 0 pounds.
- 6) Accommodate a walker to get her to and from a workstation.
- 7) Work restrictions of light duty to sedentary work.

(Exhibit page 2)

Claimant has not returned to work but was provided home health care and a supply of Depends. On January 8, 2020, she returned for follow-up with Dr. Jensen. Her condition was largely unchanged. (Exhibit page 3) It was noted she fell often. (Exhibit page 2) Prior to this visit, claimant had made a list with her physical therapist about needs that would help her function better at home including bedrails and grab bars, a power scooter and Lifeline access as well as a vehicle that she could independently get into and out of so that she could drive her two daughters—age 12 and 7—various destinations. (Exhibit page 3) At this time, she had an IME with Dr. Martin scheduled for later in the month. Dr. Jensen wrote that he would recommend a power scooter, which could be assessed at her IME, Lifeline to help with her falls, bedrails that she could use at home, Depends for the night, a psychology evaluation for counseling, hand control for

her car, companion pet to help increase her moods, and medical management for her weight gain. (Exhibit page 3) He also indicated that claimant should have an increase in her home healthcare hours to 4 to 5 times per week. (Exhibit page 3) He planned to refer claimant to the University of Nebraska for second opinion, especially the stroke department. (Exhibit page 5)

Dr. Martin conducted an IME on January 20, 2020. (Exhibit page 7) He opined that claimant had sustained a conversion disorder based upon the lack of objective evidence to support the claimant's subjective symptomatology. (Exhibit page 7, 8) He recommended a multidisciplinary strategy which would include a mental health focus. (Exhibit page 10) He did not find that weight loss drugs were appropriate given the claimant's current opioid usage. (Exhibit page 10)

Claimant became unhappy with the home healthcare service. The care providers that were sent to her home changed often. They were older and she feared that if she fell, they would not be able to help lift her to a safe place. She testified that she wasted time explaining her needs to them each time a new worker showed up. Eventually, her complaints resulted in the home health care provider terminating service on March 7. Julia Schindler testified that new home health care services were retained and started on March 31, 2020.

Additionally, there was some interruption in claimant's care. Claimant's attorney indicated that he did not want claimant to be seen by any CNOS doctor. This was later resolved and claimant was able to return to Dr. Jensen. An appointment was set for April 8, 2020, at 11:30 a.m.

Currently, claimant and her two minor children are living in a three bedroom apartment without handicap accessibility. She does have a shower seat and a toilet seat that self raises. Home healthcare provides services four days a week for three hours a day. They wash her dishes, help her cook, assist with cleaning, and drive her to medical visits. She also has the ability to order Depends directly from a medical service called One Call who also provides transportation to various medical appointments.

There is an appointment set up for a neurological consult on May 2, 2020, with Dr. Bhasin at Sanford Brain and Spine. Defendant's representative testified that they are attempting to schedule an appointment with Dr. McGrath, a board certified neurologist. An appointment with a neuropsychologist is scheduled for April 9, 2020. Ms. Schindler testified that there have been attempts to address the bedrails and grab bars but that it required the approval of the landlord who has not been responsive.

The outstanding issues for claimant appear to be the following:

- 1) Permanent handicap parking pass
- 2) Car with hand lift controls
- 3) Companion pet
- 4) Weight loss management and/or prescription for weight loss drugs

- 5) Lifeline
- 6) Bedrails and grab bars

### CONCLUSIONS OF LAW

As claimant is seeking relief in this case, claimant bears the burden of proof to show by a preponderance of the evidence that the offered medical treatment is not reasonably suited to treat the injury without undue inconvenience to the employee. There are no medical records see Lawyer and Higgs, Iowa Practice, Workers' Compensation, §15-4 and cases cited therein.

The question of reasonable care is a question of fact. An application for alternate medical care is not granted simply because the employee is dissatisfied with the care the employer has chosen. Mere dissatisfaction with the care is not sufficient grounds to grant an application for alternate medical care. The employee has the burden of proving that the care chosen by the employer is unreasonable. Unreasonableness can be established by showing 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. West Side Transport v. Cordell, 601 N.W.2d 691 (Iowa 1999); Long v. Roberts Dairy Company, 528 N.W. 2d 122 (Iowa 1955). Unreasonableness can be established by showing that the care authorized by the employer has not been effective and is "inferior or less extensive" than other available care requested by the employee. Pirelli-Armstrong Tire co. v. Reynolds, 562 N.W.2d at 437 (Iowa 1997).

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, Declaratory Ruling, File No. 866389 (May 18, 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).

Right to choose the care means the right to choose the provider, not the treatment modalities recommended by the provider. 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 Decision, File No. 1138063, May 30, 1997 (work hardening program); Hawxby v. Hallett Materials, File No. 1112821, Alt Care Decision February 20, 1996. Leitzen v. Collis, Inc. File No. 1084677, Alt Care Decision 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 Decision January 31, 1994.

1) Independent mobility

Claimant is not independently mobile. She does not have a vehicle but instead must either rely on One Call or her home health aides for transportation. It is not clear from the record that it is safe for the claimant to drive or that she has the capability of doing so at this time. Claimant has been immobilized to a great extent since her surgery in January 2019. While Dr. Jensen did order hand controls for a vehicle and a parking pass, it is unclear whether he was aware that she did not have a vehicle in the first place. The agency has generally held that the purchase of a vehicle was not required by an employer but that the conversion of a vehicle to make it handicapped accessible was a reasonable and necessary expense. See Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996) (upholding agency's determination that the costs of converting a van, but not the purchase price of the van, was a reasonable) In Manpower Temporary Services v. Siosin, 529 N.W.2d 259 (Iowa 1995), the Supreme Court upheld the purchase of a vehicle where the claimant did not own a vehicle prior to the injury but instead relied on public transportation, bicycle or walking and that the purchase of the van was considered a medical necessity based upon the opinions of at least four health care providers. These facts are not in evidence here. Claimant has access to One Call for medical appointments and a home health care aide four days a week for three hours a day. She testified that these home health care aides will purchase groceries and make trips to Walmart. There was no testimony regarding where claimant needed to go in a vehicle, what activities her children were missing because of the lack of a vehicle, and what pre-injury transportation she and her family used. Claimant did not carry her burden to show that a purchase of a vehicle with hand controls was reasonable and necessary.

2) Companion Pet

Claimant requested a companion pet in conjunction with neuropsychology services. As with the independent mobility issues, it is determined that there is not sufficient evidence that a companion pet is a reasonable and necessary medical treatment. While Dr. Jensen did indicate that she could get one, this pet would increase the burden on the home health aides and decrease the time spent attending to claimant's needs. It would increase the monthly budget needs for claimant and her family. The benefits of the companion pet were not in evidence and based on the evidence in the record, particularly the lack of medical expert opinion on the efficacy of the companion pet, the claimant did not carry her burden to show she was entitled to this alternate care request.

3) Weight loss management

Dr. Martin opined that prescription weight loss drugs were not appropriate in claimant's case. Claimant testified that due to her inactivity she has gained at least ten to twenty pounds. To the extent that claimant is requesting the undersigned order a prescription for weight loss management drugs, the record does not support such a holding. The evidence does support a finding that based on her limited function and her weight gain, a treatment plan for weight loss including diet, exercise to the best of her ability, food counseling, and other medically appropriate would be advisable. What would

be medically appropriate in claimant's case, however, is speculative based on this record. To that end, the undersigned is only able to order weight loss management plan be undertaken based on the medical advice of claimant's medical team.

4) Lifeline

Claimant falls often and has limited function. She has children ages 7 and 12 in her house. While there is intermittent home health care, most of the time claimant is without another adult in her home. Therefore, Lifeline is a reasonable and necessary medical service. This alternate care request is granted.

5) Bedrails and grab bars

Defendant has acknowledged claimant is entitled to these medical appliances. Defendant is ordered to work expeditiously in obtaining approval for the installation of these devices. If the landlord is not agreeable to this, some other accommodation should be made.

ORDER

THEREFORE, the following is ordered:


1. Claimant's petition for alternate care is granted in part and denied in part. Defendant is specifically ordered to immediately provide at its expense the medical care requested in the petition, namely:

- a) Weight loss management plan
- b) Lifeline
- c) Bedrails and grab bars in the apartment

The 30 day time period within which to appeal begins upon the filing of this decision. There is no intra agency appeal from this decision, appeal is by means of judicial review within 30 days of this decision.

The only record of the hearing is the digital voice recording of this proceeding until such time as the recording may be transcribed. A compact disc containing the digital recording may be obtained from the Iowa Division of Workers' Compensation Services at our offices located at 150 Des Moines Street, Des Moines, Iowa.

Signed and filed this 10<sup>th</sup> day of April, 2020.

  
JENNIFER S. GERRISH-LAMPE  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Dennis Mahr (via WCES)

Lee Hook (via WCES)