

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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RICHARD SCHRAMM,

Claimant,

vs.

WERNER ENTERPRISES,

Employer,  
Self-Insured,  
Defendant.

File No. 21701248.01

ALTERNATE MEDICAL CARE

DECISION

Head Note: 2701

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This is a contested case proceeding under Iowa Code chapters 85 and 17A. The expedited procedures of rule 876 IAC 4.48, the "alternate medical care" rule, are invoked by claimant, Richard Schramm.

This alternate medical care claim came on for hearing on December 7, 2021. The proceedings were recorded digitally and constitute the official record of the hearing. By an order filed by the Workers' Compensation Commissioner, this decision is designated final agency action. Any appeal would be by petition for judicial review under Iowa Code section 17A.19.

The record in this case consists of Claimant's Exhibits 1-3, Defendant's Exhibits A-F, and the testimony of claimant.

## ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of authorized care with physicians and therapists at the University of Florida.

## FINDINGS OF FACT

Defendant accepts liability for a work-related accident on December 21, 2020. On December 21, 2020, claimant worked for Defendant Werner Enterprises (Werner) as a truck driver. On that date, claimant slipped on ice while in Davenport and hit his head.

On September 3, 2021, claimant was evaluated by John DeCerce, M.D. in Starke, Florida. Claimant was evaluated as having a migraine, vertigo, a mild traumatic head injury, bilateral tinnitus, organic insomnia, visual loss in one eye and seizures. Testing indicated problems with focus and cognitive function. Claimant's testing

suggested post-concussive cognitive impairment. Claimant was prescribed medications and referred for an MRI. (Exhibit C)

In a September 14, 2021 email, a claims examiner for defendant believed an MRI was scheduled but that no referral had been received from Dr. DeCerce's office. The email indicated defendant had difficulty getting records from Dr. DeCerce's office previously. (Ex. 2, p.1)

On October 7, 2021 claimant underwent an MR of the brain without contrast. (Ex. D)

In an October 25, 2021 email, defendant's claims examiner indicated claimant failed to attend the October 7, 2021 MRI. The email indicates Dr. DeCerce did not schedule claimant for an MRI. The email indicates claimant will be rescheduled for an MRI. (Ex. 2, p. 2)

In an email dated November 2, 2021, defendant's claims examiner indicated they were still attempting to set up an MRI for claimant. The email indicates defendant was having difficulty getting a referral from Dr. DeCerce's office. (Ex. 2, p. 3)

Another MRI was scheduled for November 4, 2021. In an affidavit, claimant's wife, Kimberly Alsabrook-Schramm (Schramm) testified she drove claimant approximately 45 minutes for the second MRI, even though claimant had already had an MRI. Claimant's wife testified that when they arrived at the diagnostic center for the MRI, they were told Dr. DeCerce failed to provide a referral for the MRI. (Ex. 1, p. 2)

In a November 8, 2021 email, defendant's claims examiner indicates claimant failed to attend the second November 4, 2021 MRI. The email suggests claimant was being non-compliant for failure to attend two MRI exams. (Ex. 2, p. 4)

In a November 8, 2021 email, claimant's counsel requested claimant be authorized to treat with physicians from the University of Florida. This was due, in part, to the fact there was no communication from Dr. DeCerce's office regarding assessment or plan of care for claimant. (Ex. 2, p. 5)

In a November 23, 2021 email, defendant's counsel indicated claimant was scheduled for an appointment with Dr. DeCerce in his Lake City, Florida office. (Ex. E)

In her affidavit, Ms. Schramm indicated she and her husband attempted to drive to the Lake City office. She testified she called Dr. DeCerce's office. The office did not have a street address for the Lake City office, but told Ms. Schramm it was in the "Stone Gate Plaza." Ms. Schramm testified she drove to the Stone Gate Plaza but could not find the address. Ms. Schramm testified she called Dr. DeCerce's office four times to find the office, but she never received a reply to any of her calls. Ms. Schramm indicated she and her husband drove 122 miles roundtrip to see Dr. DeCerce but were unable to find his office. (Ex. A)

Claimant testified at hearing he and his wife were told the appointment was at Stone Gate Plaza, but that they were not given an address. He said they Googled the office address but were unable to find the office. Claimant said he and his wife tried calling Dr. DeCerce's office four times for directions and those calls were not returned.

In a December 6, 2021 email, Joseph Caminiti, CDMS, a case manager, indicated he appeared at claimant's appointment on December 2, 2021, but that claimant failed to appear for the appointment. (Ex. F)

In her affidavit, Ms. Schramm testified that because Dr. DeCerce's office does not keep up with paperwork, claimant's prescriptions have been denied by defendant. She opined Dr. DeCerce has failed to address claimant's issues with vertigo, memory loss, neck pain, headaches, and other issues regarding claimant's fall. She said Dr. DeCerce's office routinely fails to return phone calls. She said that due to the lack of communication from Dr. DeCerce's office, she and her husband have no idea what claimant's diagnosis or treatment is. (Ex. A)

In her affidavit, Ms. Schramm requests that her husband be allowed to treat at the University of Florida for his various conditions. (Ex. A)

Claimant testified he has had difficulty communicating with Dr. DeCerce's office. He said he has had difficulty knowing when and where to go for appointments. He said he is not avoiding care with Dr. DeCerce but that the doctor's office has failed to communicate with him.

Claimant said that since his fall he has had constant headaches, speech difficulties, ringing in his ears, blurred vision in one eye, neck pain, balance problems, and problems with memory and focus. Claimant stuttered during his testimony. Claimant testified his stuttering has only occurred after his work-related fall. Claimant said he wants to be allowed to treat with physicians and therapists at the University of Florida.

#### CONCLUSION OF LAW

Iowa Code section 85.27(4) provides, in relevant part:

For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. . . . The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such

alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

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 Rule of Appellate Procedure 6.904(3)(e); 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.

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" care than other available care requested by the employee. Long, 528 N.W.2d at 124; Pirelli-Armstrong Tire Co., 562 N.W.2d at 437.

Alternate care includes alternate physicians when there is a breakdown in a physician/patient relationship. Seibert v. State of Iowa, File No. 938579 (September 14, 1994); Neuaone v. John Morrell & Co., File No. 1022976 (January 27, 1994); Williams v. High Rise Const., File No. 1025415 (February 24, 1993); Wallech v. FDL, File No. 1020245 (September 3, 1992) (aff'd Dist Ct June 21, 1993).

Claimant has been assessed as having a migraine, vertigo, a mild traumatic head injury, bilateral tinnitus, organic insomnia, visual loss in one eye and seizures. Testing indicated problems with focus and cognitive function. Claimant's testing suggested post-concussive cognitive impairment. There is little evidence in the record claimant has received treatment for most of these conditions. The record is clear that both defendant and claimant have had little or no communication from Dr. DeCerce's office regarding assessment, treatment or testing for claimant. Because of Dr. DeCerce's lack of communication, defendant had no idea claimant had an MRI on October 7, 2021. As a result, defendant attempted to schedule claimant for a second unnecessary MRI and suggested claimant was noncompliant with treatment.

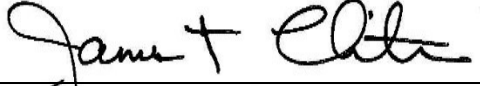
The record indicates there is a total lack of communication from Dr. DeCerce's office. The record also indicates there has been a breakdown in the patient/physician relationship in this case, because of the lack of communication. Because of Dr. DeCerce's failure to communicate with either party in this case regarding claimant's diagnosis, treatment and testing, it is found the authorized care is unreasonable. Claimant has carried his burden of proof he is entitled to alternate medical care.

ORDER

THEREFORE, IT IS ORDERED:

That claimant's petition for alternate medical care is granted. Defendant is ordered to authorize and pay for treatment with physicians and therapists at the University of Florida.

Signed and filed this 7<sup>th</sup> day of December, 2021.

  
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JAMES F. CHRISTENSON  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Sara Lamme (via WCES)

Patrick Mack (via WCES)