BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED
JUL 02 2019
WORKERS COMPENSATION

JENTRY SALTZMAN, Claimant, vs. WOODWARD-GRANGER COMMUNITY SCHOOL DISTRICT, Employer, and EMCASCO INSURANCE COMPANY, Insurance Carrier, Defendants.	File Nos. 5067207, 5067208 ALTERNATE MEDICAL CARE ORDER

On May 16, 2019, the undersigned entered a consent order concerning two petitions for alternate medical care filed by claimant. The two petitions, File Nos. 5067207 and 5067208, involved claimant's back with injury dates of April 17, 2018 and October 2, 2018. The consent order stated that defendants agreed to authorize J. Joe Hawk, M.D., at the Iowa Clinic to evaluate and treat claimant's back condition, related to claimant's work injuries as pled in the above identified files.

On June 19, 2019, claimant filed an additional alternate medical care petition alleging that defendants failed to comply with the May 16, 2019 order and asking that claimant be allowed to designate the medical provider at defendants cost. The matter came on for telephonic hearing on July 2, 2019. The proceeding was digitally recorded by the undersigned.

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).

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); Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); 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.

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).

The facts are not significantly in dispute. Following the consent order, of May 16, 2019, claimant's counsel was contacted on or about June 28, 2019, and advised that claimant's first appointment with Dr. Hawk was scheduled for the following morning, June 29, 2019, at 8:00 a.m. Claimant attended that appointment. Claimant was advised at that appointment by Dr. Hawk that he had not received any medical records concerning claimant's prior back treatment, but that he was willing to provide the evaluation and make treatment recommendations.

Claimant is frustrated that it took about six (6) weeks from the date of the consent order before she actually had an appointment with Dr. Hawk and is equally frustrated that Dr. Hawk was apparently not provided with any prior medical records.

Defendants learned on July 2, 2019, (the date of this hearing) of claimant's complaint that Dr. Hawk had not received any prior medical records prior to her appointment with him on June 29, 2019. However, defendants also advised that they were unaware that claimant had any prior medical care or that any prior medical records exist. Additionally, defendants point out that they are unaware of any records stating that the condition is work related or that any treatment is needed, nevertheless, they have agreed to the evaluation and treatment as set forth in the consent order of May 16, 2019. Further, defense counsel stated that claimant has not provided a list of any prior medical providers and has not provided a release allowing defendants to obtain any medical records that may exist.

I find that the parties previously agreed to a consent order in which claimant would be evaluated and treated by Dr. Hawk. Although I recognize that it can sometimes take weeks to obtain an initial appointment with a physician, I appreciate claimant's frustration that six (6) weeks seems like a long time. Nevertheless, defendant did provide the appointment, albeit with short notice to claimant.

The issue at this moment is whether or not any medical records exist that should have been sent to Dr. Hawk prior to his appointment on June 29, 2019, that might have informed his evaluation and enhanced his ability to provide opinions and treatment recommendations. In this case defendants were not aware of any such medical records and claimant did state during the hearing the names of any prior medical providers that would have relevant records and did not refute that claimant has not yet provided a patient's waiver or a list of prior medical providers to defendants.

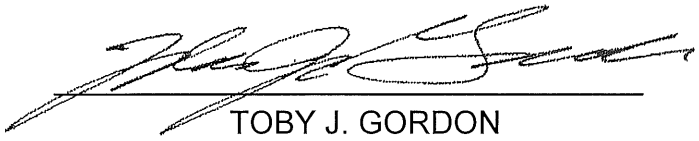
Therefore, to address this issue, I find that it is appropriate to require claimant to provide a patient's waiver and a list of prior medical providers that have provided evaluations or treatment within the previous five (5) years from the date of this order for the conditions that claimant complains of in this alternate care matter, including addresses, to defense counsel by Friday, July 5, 2019 at 1:00 p.m. Defendants shall then make every reasonable effort to swiftly obtain any such medical records and provide the same to Dr. Hawk within three (3) weeks of receipt of the waiver and list of medical providers from claimant.

The friction in this matter appears to be resolvable with cooperative effort from both parties. The claimant stated in the consent order of May 16, 2019, her desire to receive treatment as recommended by Dr. Hawk and defendants have agreed to provide said treatment with Dr. Hawk. The parties are encouraged to cooperate to give effect to their agreement in the consent order.

In the event that Dr. Hawk indicates that he is unable to adequately evaluate and treat claimant due to a failure to receive prior medical records within the deadline established above, claimant's request to control her own medical care may be reconsidered more favorably by the undersigned.

IT IS THEREFORE ORDERED that claimant shall provide to defendants a patient's waiver and a list of prior medical providers that have conducted evaluations or treatment within the previous five (5) years from the date of this order for the conditions that claimant complains of in this alternate medical care matter, including addresses, to defense counsel by Friday, July 5, 2019 at 1:00 p.m. Defendants shall then make every reasonable effort to swiftly obtain any such medical records and provide the same to Dr. Hawk within three (3) weeks of receipt of the patient's waiver and list of medical providers supplied by claimant.

Signed and filed this 2nd day of July, 2019.



TOBY J. GORDON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

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katrina.phillip8@gmail.com

D. Brian Scieszinski
Attorney at Law
801 Grand Avenue Ste 3700
Des Moines IA 50309-2727
Scieszinski.brian@bradshawlaw.com

TJG/kjw

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

Claimant:	JENTRY SALTZMAN	File No. 5067207; 5067208
vs.		NOTICE OF
Employer:	WOODWARD-GRANGER CSD	TELEPHONE HEARING
and		ALTERNATE MEDICAL CARE
Insurance Carrier:	EMC	(876 IAC 4.48)

You are notified that a telephone hearing on claimant's application for Alternate Medical Care under rule 876 IAC 4.48 is scheduled before a deputy workers' compensation commissioner as follows:

SCHEDULING INFORMATION

DATE: JULY 2, 2019

IOWA TIME: 10:30AM

You will be called for the hearing at the telephone number that you placed on your application or answer. If your application or answer indicates that you have an attorney, the call will be placed to the telephone number for your attorney. We will call one additional number for you when the hearing begins if you or your attorney request that we do so.

If you or your attorney need to be called at a number different from the number shown on the application or answer or if you need us to call more than one additional number, you must notify us no later than 4:30 p.m. on the last business day before the date of the hearing. You may notify us by telephone at (515) 725-4120, or by fax at (515) 281-6501, or you may deliver a written notice to the Division of Workers' Compensation, 1000 East Grand Avenue, Des Moines, IA 50319. WE WILL ONLY CALL THE NUMBER SHOWN ON YOUR APPLICATION OR ANSWER UNLESS YOU GIVE US A DIFFERENT OR ADDITIONAL NUMBER.

This hearing will be held under authority and jurisdiction of Iowa Code chapter 17A, section 85.27 and 876 IAC 4.48. The only issue to be considered is whether claimant is entitled to alternate medical care.

INSTRUCTIONS AND INFORMATION

You must be prepared to present your case at the time specified in this notice.

If you wish to participate in this telephone hearing you must have given the Division of Workers' Compensation (DWC) the number(s) to call by: (1) placing the number(s) on your application/answer; **OR** (2) by telephone (515) 725-4120; **OR** (3) by fax (515) 281-6501.

All written evidence to be used at the hearing must be: (1) limited to ten pages per party; (2) exchanged with all parties prior to hearing; (3) filed with DWC BEFORE the hearing. Clearly identify the evidence as "under rule 876 IAC 4.48."

All discovery must be completed prior to hearing. DWC will not rule on discovery disputes or motions.

All motions, except motions to change the type of hearing (telephone or in-person), will be considered at the hearing.

Hearing briefs, if any, must be filed with DWC before the date of hearing and are limited to three pages.

A party may be represented as provided in rule 876 IAC 4.48(13).

At hearing, the employer will be required to respond on the record to the allegations contained in claimant's petition if a written answer is not on file.

The provisions of rule 876 IAC 4.48 are properly invoked only where liability of the employer is not at issue. If employer places liability at issue, this case will be dismissed without prejudice. Disputed liability cases should be commenced under rule 876 IAC 4.1 (Contested Case Proceeding).

To Defendant(s): You have the right to request an in-person hearing in Des Moines. You may do so by filing an answer prior to hearing, on the same form containing claimant's original notice and petition.

DATE FILED: 6/21/2019

CC: STEPHEN D LOMBARDI
KATRINA M PHILLIP
D BRIAN SCIESZINSKI

14-0051 (9/06)

FILED
JUN 19 2019
WORKERS' COMPENSATION

(TYPE OR PRINT)

14-0011 (11/06)
FORM 100C

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

Claimant Jentry Saltzman
VS. Employer Woodward-Granger CSD
Street 1904 State St.
City Granger State IA Zip 50109
Insurance Carrier EMC
Street 717 Mulberry St.
City Des Moines State IA Zip 50309

File Number 5067207, 5067208,

ORIGINAL NOTICE, PETITION, AND ANSWER CONCERNING APPLICATION FOR ALTERNATE MEDICAL CARE (IOWA CODE SECTION 85.27) (Rule 876 IAC 4.48)

Injury Date 4-17-2018, 10-2-2018
Body Part(s) Injured Back, Back

ORIGINAL NOTICE

To the Above-Named Employer:

You are notified that an action has been commenced before the Iowa Workers' Compensation Commissioner seeking relief as set forth in the petition below. **DUE TO THE TIME CONSTRAINTS, IT IS NOT NECESSARY TO FILE AN ANSWER.** If no answer is filed, a response will be required at a hearing. If it is disputed that the employer is liable on this claim, this case will be dismissed without prejudice. NOTE: You should promptly advise your workers' compensation insurance carrier and attorney that you have received this notice.

PETITION (To Be Completed By Claimant)

In support of this claim for alternate medical care, claimant states:

1. Claimant sustained injury arising out of and in the course of employment with the employer on (Date) 4-17-2018, 10-2-2018
2. The injury occurred at (City) Granger, (County) Dallas, and (State) Iowa.
3. The injury has caused need for medical treatment.
4. The treatment offered by employer is not reasonably suited to treat the injury without undue inconvenience to claimant.
5. Claimant is dissatisfied with the care provided and has communicated that dissatisfaction to employer.
   Reason for dissatisfaction and relief sought: Treatment for extreme back pain was ordered by Deputy Gordon on 5-16-2019. Defendants will not comply with order. See attached addendum.
6. **A hearing is requested**
   [✓] by telephone conference call; or.
   [ ] in person
   to be held in Des Moines, Iowa (If neither party requests an in-person hearing, a telephone hearing will be scheduled.)
7. Employer does not dispute liability on this claim.
8. The provisions of Rule 876 IAC 4.48 are invoked.

(If Represented by Attorney)
Attorney Stephen D. Lombardi, Katrina M. Phillip
Street 5000 Westown Pkwy Ste 440
City W. Des Moines State IA Zip 50266
Stephen Lombardi / Katrina Phillip
Attorney Signature
Phone (Include Area Code) 515-222-1110

(Claimant's Signature)
Claimant's Phone No. (515) 333-1322
(Include area code)
Date signed: 5-2-2019
sdlombardi@aol.com, katrina.phillip8@gmail.com
Email Address of Attorney
Fax (Include Area Code 515-222-0718
Date Signed: 6-13-2019

THE INFORMATION PROVIDED WILL BE OPEN FOR PUBLIC INSPECTION UNDER IOWA CODE §22.11

NURE
NEC

Jentry Saltzman (Claimant) **VS.** Woodward-Granger CSD (Employer) **File No.** 5067207 5067208

PROOF OF SERVICE

On the 13th day of June, 2019, I mailed a copy of the foregoing original notice and petition by certified mail, return receipt requested, to the employer's last known address which is: 1904 State St. Granger, Iowa 50109

I CERTIFY under penalty of perjury and pursuant to the laws of the State of Iowa that the preceding is true and correct.

Date 6-13-2019 Signature Barbara Ann Lombardi

ANSWER (Employer/Insurance Carrier must answer on this form)

1. Employer/Insurance Carrier admit all allegations of the petition except those contained in paragraphs (Enter numbers) _____ which are expressly denied.
2. Employer/Insurance Carrier consent to pay the reasonable expenses of the requested examination.
3. Evidentiary hearing under Iowa Code section 17A.12 is waived.

On behalf of the employer and insurance carrier and based upon my own knowledge of the circumstances, I certify under penalty of perjury and pursuant to the laws of the State of Iowa that the preceding answer is true and correct. Date: _____

Employer _____

Street _____

City _____ State _____ Zip _____

Phone (Include Area Code) _____

Insurer _____

Street _____

City _____ State _____ Zip _____

Phone (Include Area Code) _____

_____
Signature of Person Answering

Name: _____

Title: _____

(If Represented by Attorney)

Attorney _____

Street _____

City _____ State _____ Zip _____

Phone (Include Area Code) _____

Fax Number (include Area Code) _____

Email Address: _____

ORDER (Completed by the deputy workers' compensation commissioner)

☐ Allegations 3 and 4 of the petition are found to be true.

☐ The application is granted. Employer/Insurance Carrier shall immediately reimburse claimant the reasonable expenses of the requested examination, including travel expenses.

☐ The application is denied. Reason: _____

☐ The application will be heard as an issue in an arbitration decision and should be identified as an issue in the hearing report.

Signed and filed this _____ day of _____, _____

Deputy Workers' Compensation Commissioner _____

Copies To: Attorney(s) at Law or Pro Se _____ Attorney(s) at Law or Pro Se _____

INSTRUCTIONS - BOTH PARTIES MUST USE THIS FORM

To Claimant:

1. You must attach to this form a copy of the physician's report which evaluates your permanent disability to support paragraph "3" of the petition. You must also attach the claimant's confidential information sheet.
2. Deliver a copy of this form with the front page completed and the physician's report to the employer by certified mail, return receipt requested or by personal services as in civil actions (rule 876 IAC 4.7) and mail a copy to the employer's attorney of record for this file if known (rule 876 IAC 4.13).
3. Complete the proof of service portion on the original of this form and deliver this entire form with the physician's report to the Division of Workers' Compensation at 1000 East Grand Avenue, Des Moines, Iowa 50319-0209.
4. If you desire an evidentiary hearing, delete paragraph "6" of the petition and in its place enter "I request a hearing." Rule 876 IAC 4.4.

To Employer/Insurance Carrier:

BEFORE THE IOWA INDUSTRIAL COMMISSIONER

Jentry Saltzman, Claimant, v. Woodward-Granger Community Schools, Employer, EMC, Insurance Carrier, Defendants.	FILE NO: 5067207, 5067208 DOI: 4/17/2018 10/2/2018 ADDENDUM TO ALTERNATE MEDICAL CARE PETITION

FILED
JUN 19 2019
WORKERS' COMPENSATION

COMES NOW the Claimant, Jentry Saltzman, and files this Addendum to Alternate Medical Care Petition. In support of this Addendum, states the following:

1. A Petition for Alternate Medical Care was filed on May 2, 2019, requesting authorization for treatment related to the back injuries of 4/17/2018 and 10/2/2018.
2. A Hearing in response to the above Motion took place on May 16, 2019 with Deputy Gordon.
3. During the course of this Hearing, Attorney Scieszinski admitted the back injuries of 4/17/2018 and 10/2/2018 were work related and confirmed treatment would be authorized with Dr. Hawk at the Iowa Clinic.
4. Deputy Gordon entered an Order on 5/16/2019 restating this agreement.
5. Since that date of May 16, 2019, 28 days, or 4 weeks, have passed.
6. Claimant has called the office of Dr. Hawk several times to schedule an appointment for treatment. Each time, the Claimant has been told they are waiting for medical records AND authorization for treatment.
7. Claimant's attorney faxed a letter to Defendants' attorney on 6/11/2019 at 2:27 pm, requesting treatment be authorized within 48 hours. (Exhibit 1)

8. Defendants' attorney has not responded to the request for treatment within 48 hours.
9. At this time, the Claimant is requesting the Commission order the Defendants to immediately authorize treatment or allow the Claimant to control her medical treatment at the expense of the Defendants.
10. If the Commission wants their orders to have the authority that they presumably should have, it will Order the Claimant to take control of her medical care in light of the Defendants' complete disregard for the Order of this Commission requiring treatment authorization for Claimant in this matter.

WHEREFORE, the Claimant prays the Commission grant this new Petition for Alternate Medical Care, in accordance to Chapter 85.27(4) Employer Obligations, Alternative Care and Employee Remedies.

LOMBARDI LAW FIRM

BY: _____
Stephen D. Lombardi AT0004702

BY: _____
Katrina M. Phillip AT0011709
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West Des Moines, IA 50266
515-222-1110/ F: 515-222-0718
sdlombardi@aol.com
katrina.phillip8@gmail.com
ATTORNEYS FOR CLAIMANT

Original filed.
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801 Grand Ave., Suite 3700
Des Moines, IA 50309
515-246-5849/F: 515-246-5808
scieszinski.brian@bradshawlaw.com
ATTORNEY FOR DEFENDANTS

CERTIFICATE OF SERVICE
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on June 13 20 19
By: ☐ Overnight Courier ☐ FAX ☐ E mailed
☐ Hand Delivered ☑ U.S. Mail ☐ E filed
☐ Certified Mail ☐ Scanned ☐ Other
Signature: Barbara A. Lombardi

FILED
JUN 19 2019
WORKERS' COMPENSATION

LOMBARDI LAW FIRM

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ALSO LICENSED IN FLORIDA

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June 11, 2019

D. Brian Scieszinski
Bradshaw Law Firm
801 Grand Ave., Suite 3700
Des Moines, IA 50309-8004

*****URGENT *****

FAX: 515-246-5808

Re: Jentry Saltzman
DOI: 4/17/2018 and 10/2/2018

Dear Brian:

This is the **4th request** for authorization for treatment for the back injuries sustained on 4/17/2018 and 10/2/2018. As you are aware, the Hearing for Alternate Medical Care took place on May 16th and at that time there was an agreement to authorize treatment with Dr. Hawk at the Iowa Clinic. Since then, Ms. Saltzman has called several times and has been told they are waiting for medical records and authorization.

I doubt this is what Deputy Gordon expected when an agreement was met for care to be provided, at the hearing 27 days ago. I expect care to be authorized within 48 hours or I will consider filing a Motion to Compel.

Please advise.

Very truly yours,

Stephen D. Lombardi
Attorney at Law

Katrina M. Phillip
Attorney at Law

SDL/KMP/btl

EXHIBIT
1-1

TRANSACTION REPORT

JUN/11/2019/TUE 02:28 PM

'AX(TX)

#	DATE	START T.	RECEIVER	COM.TIME	PAGE	TYPE/NOTE	FILE
001	JUN/11	02:27PM	2465808	0:00:43	1	MEMORY OK ECM	8350

FILED
JUN 19 2019
WORKERS' COMPENSATION

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June 11, 2019

D. Brian Scieszinski
Bradshaw Law Firm
801 Grand Ave., Suite 3700
Des Moines, IA 50309-8004

***URGENT ***

FAX: 515-246-5808

Re: Jentry Saltzman
DOI: 4/17/2018 and 10/2/2018

Dear Brian:

This is the **4th request** for authorization for treatment for the back injuries sustained on 4/17/2018 and 10/2/2018. As you are aware, the Hearing for Alternate Medical Care took place on May 16th and at that time there was an agreement to authorize treatment with Dr. Hawk at the Iowa Clinic. Since then, Ms. Saltzman has called several times and has been told they are waiting for medical records and authorization.

I doubt this is what Deputy Gordon expected when an agreement was met for care to be provided, at the hearing 27 days ago. I expect care to be authorized within 48 hours or I will consider filing a Motion to Compel.

Please advise.

Very truly yours,

Stephen D. Lombardi
Attorney at Law

Katrina M. Phillip
Attorney at Law

SDL/KMP/btl

1-2

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

IN THE MATTER OF DELEGATION OF AUTHORITY	ORDER	FILED FEB 16 2015 WORKERS' COMPENSATION

The legislative intent of Iowa Code section 85.27 is that applications for alternate care be decided by the agency in a timely manner. Delegating authority to the presiding deputy workers' compensation commissioner to act as the workers' compensation commissioner in presiding at the contested case hearing and issuing final agency action is consistent with the legislative intent.

The deputy workers' compensation commissioner presiding at the contested case in an application for alternate medical care, pursuant to rule 876 IAC 4.48, is hereby delegated the authority to issue the final agency decision on the application, Iowa Code section 86.3. There is no right of intra-agency appeal on this decision. Continental Telephone Co. v. Colton, 348 N.W.2d 623 (Iowa 1984) and LeaseAmerica Corp. v. Iowa Dept. of Revenue, 333 N.W.2d 847 (Iowa 1983).

The presiding deputy workers' compensation commissioner's decision in an application for alternate care is the final agency decision. Iowa Code section 17A.15(1).

This authority shall continue until further ordered.

Signed and filed this 16th day of February, 2015.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER