

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

AMY ORBAN,

Claimant,

vs.

SELECT REHABILITATION, LLC,

Employer,

and

TRAVELERS INDEMNITY CO. OF CT,

Insurance Carrier,  
Defendants.

File No. 20006471.03

ALTERNATE MEDICAL

CARE DECISION

Head Note No.: 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, Amy Orban. Claimant appeared telephonically and through her attorney, Lee Hook. Defendants appeared through their attorney, Kevin Rutan.

Claimant filed an application for alternate medical care on April 25, 2022. The case was scheduled for hearing on May 6, 2022. On May 5, 2022, claimant filed an amended application for alternate medical care. Defense counsel contacted the undersigned and claimant's attorney and objected to the amended petition being filed so close to the hearing date. Rule 4.48 does not provide a mechanism for amending a petition for alternate medical care. As such, the undersigned gave claimant the option of dismissing the original petition filed on April 25, 2022, and proceeding with the second petition on a later date, or proceeding to hearing on May 6, 2022 on the original petition filed. Claimant elected to proceed to hearing on the April 25, 2022 petition. As such, the amended petition filed on May 5, 2022 is dismissed without prejudice.

The alternate medical care claim came on for hearing on May 6, 2022. 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 and 2, consisting of 10 pages; defendants' exhibits A through E, consisting of 5 pages, and claimant's sworn testimony. No other witnesses were called.

#### ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of a referral back to Daniel Moyse, M.D.

#### FINDINGS OF FACT

The undersigned having considered all of the testimony and evidence in the record finds:

Claimant sustained an injury to her low back and left hip while working on May 27, 2020. Defendants admitted liability for this injury and the current low back/left hip condition for which claimant seeks alternate medical care.

Claimant is employed by Select Rehabilitation and works as an occupational therapy assistant. She testified that her injury occurred while assisting a coworker with transferring a non-weightbearing patient from a recliner to a wheelchair. After the patient was transferred, claimant felt a sudden sharp, shooting pain in her low back, radiating down her left leg.

Since the injury occurred, defendants have provided medical care. Claimant had left hip surgery with Christopher Nelson, D.O., at Des Moines Orthopaedic Surgeons (DMOS) to repair a torn labrum in February 2021. (Claimant's Exhibit 1, p. 5) Claimant testified that she has also been told she has a bulging disk at L4-L5, and recently had an EMG that showed abnormal findings at L5. At some point following surgery, claimant was referred to Mauricio Acebey, M.D., at DMOS. On December 9, 2021, Dr. Acebey referred claimant for a consultation for radiofrequency ablation (RFA) of the left sacroiliac joint. (Cl. Ex. 1, p. 1)

At her one-year follow up with Dr. Nelson, he noted that she was about 50 percent improved since surgery, but continued to have pain. (Cl. Ex. 1, p. 2) Claimant testified that Dr. Nelson released her from his care.

Claimant saw Daniel Moyse, M.D., at Pain Specialists of Iowa, on February 14, 2022. (Cl. Ex. 1, pp. 3-4) Claimant testified that Dr. Moyse gave her three options for treatment, which are also reflected in his office note. The options included a therapeutic left SI joint injection; a lumbar branch block; and/or a sacral RFA. (Claimant's testimony; see also Cl. Ex. 1, p. 5) Claimant wished to proceed with the least invasive option first – the SI joint injection. As such, she was referred back to Dr. Acebey for the injection.

Claimant was also referred to Trevor Schmitz, M.D., for a surgery consultation. Claimant testified that Dr. Schmitz looked at her X-rays and determined she had both

low back and hip issues, and he also recommended an EMG. The EMG took place on March 10, 2022, and showed left L5 radiculopathy. (Cl. Ex. 1, p. 6)

On April 5, 2022, claimant saw Dr. Acebey for the left SI joint injection. (Cl. Ex. 1, p. 7) Claimant testified that the injection was only minimally helpful. She said that Dr. Acebey told her to follow up with him for any complications following the injection, and to follow up with Dr. Moyse for his ongoing recommendations.

Claimant followed up with Dr. Schmitz on April 8, 2022, regarding the EMG results. (Cl. Ex. 1, p. 8) Claimant testified that Dr. Schmitz gave her three options; another epidural injection; a microdiscectomy; or living with her pain. Claimant testified that Dr. Schmitz did not seem very optimistic about the microdiscectomy option. She did not want to pursue the invasive microdiscectomy procedure at that time, and preferred to try less invasive options first. Dr. Schmitz's note indicates that claimant said she could live with her pain, and he encouraged her to do so. He placed her at maximum medical improvement (MMI) from a low-back perspective. (Cl. Ex. 1, p. 8)

On April 7, 2022, claimant's attorney wrote to defense counsel requesting a follow-up appointment with Dr. Moyse, as recommended by Dr. Acebey. (Cl. Ex. 2, p. 9) The letter also reflects that the nurse case manager assigned to claimant's case had stated she was going to recommend claimant return to Dr. Moyse. Claimant testified that she called Dr. Moyse's office on April 15, 2022, and spoke to Angie, who appears to be his workers' compensation coordinator. (See Defendants' Exhibit B) Claimant testified that Angie was confused and said she needed more information.

On April 19, 2022, Angie from Dr. Moyse's office emailed defense counsel and indicated that Dr. Moyse had reviewed the records from DMOS, and felt claimant should continue care with Dr. Acebey. (Def. Ex. B) Defense counsel relayed this information to claimant's attorney and advised that on April 20 and April 22, 2022, the insurance carrier attempted to contact Dr. Acebey's office to schedule an appointment for claimant. As of the time of hearing, defendants had not yet heard back from Dr. Acebey's office regarding an appointment for claimant.

Claimant testified that she called Dr. Moyse's office again after learning he would not see her, and Angie advised that the reason he provided was that she was already getting pain management treatment at DMOS. Claimant does not know if either Dr. Moyse or Dr. Acebey have been provided with a copy of the recent EMG study. Claimant testified that she does not want to "live with the pain" as Dr. Schmitz indicated, but would like to continue to pursue less invasive treatment before considering a potential microdiscectomy surgery. She does not currently have any appointments scheduled and is seeking a physician to help her with pain management and medication management. She understands that Dr. Moyse is currently refusing to see her but believes it may be due to his belief that she is currently treating with Dr. Acebey. Claimant also testified that the reason Dr. Acebey referred her to Dr. Moyse is because Dr. Acebey does not perform the sacral RFA procedure that he believes may help, and Dr. Moyse does perform that procedure.

## REASONING AND CONCLUSIONS 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.

Iowa Code § 85.27(4).

Defendants' "obligation under the statute is confined to *reasonable* care for the diagnosis and treatment of work-related injuries." Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995) (emphasis in original). In other words, the "obligation under the statute turns on the question of reasonable necessity, not desirability." Id.

Similarly, an application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care she 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. 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.

Ultimately, determining whether care is reasonable under the statute is a question of fact. Long, 528 N.W.2d at 123.

In this case claimant has not proven that the care offered by defendants is unreasonable. Defendants have attempted to schedule an appointment with Dr. Moyse, who has declined to see claimant. Regardless of his reason, neither defendants nor this agency can force a doctor to accept a patient. Dr. Moyse's office advised that claimant should continue to treat with Dr. Acebey, which defendants have authorized. While it is concerning that his office has not yet scheduled an appointment, defendants have made and continue to make efforts to schedule an appointment. While it is understandable that claimant is frustrated with the delay, defendants have not abandoned care, and are not denying authorization of treatment. Perhaps there is some confusion with Dr. Moyse's office regarding why he was asked to see claimant again, but at this juncture,

defendants have authorized reasonable care and are awaiting an appointment date. As such, claimant has not met her burden to prove she is entitled to alternate medical care.

**ORDER**

THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care is denied.

Signed and filed this 6<sup>th</sup> day of May, 2022.



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JESSICA L. CLEEREMAN  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Lee Hook (via WCES)

Kevin Rutan (via WCES)