

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOSEPHINE CRUZ-CRAVEN,

Claimant,

vs.

WHIRLPOOL CORPORATION,

Employer,  
Self-Insured,  
Defendant.

File No. 22004052.02

ALTERNATE MEDICAL CARE  
DECISION

Headnote: 2701

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, Josephine Cruz-Craven.

This alternate medical care claim came on for hearing on April 12, 2023. 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 Exhibit 1-2, Defendant's Exhibits A-B, 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 authorization for treatment with a pain specialist.

## FINDINGS OF FACT

Defendant accepts liability for a work-related injury to claimant's right upper extremity occurring on October 25, 2021.

On March 21, 2022, claimant was evaluated by Matthew Bollier, M.D., for shoulder pain. Dr. Bollier is an orthopedic specialist. Claimant had pain in her upper trapezius, scapula, biceps and triceps. Claimant had a 50 percent improvement in pain following medication, activity modification and physical therapy. At the time of the exam, claimant was still not at 100 percent and had difficulty sleeping. (Defendant's Exhibit A, pages 1-2)

Dr. Bollier assessed claimant as having myofascial shoulder and trapezius pain. He did not believe claimant had a SLAP tear and indicated surgery was not a treatment option. Dr. Bollier found claimant had no permanent impairment. He found claimant at maximum medical improvement (MMI) as of March 21, 2022. He returned claimant to work without restrictions. (Ex. A, pp. 2-3)

Dr. Bollier noted "Ongoing medication management should be provided locally. This letter will act as a referral for the Workers' Compensation Insurance Carrier to assist the patient with locating a provider for maintenance medication." (Ex. A, p. 3)

On June 23, 2022, claimant was seen by Thomas Gorsche, M.D., for a second opinion. Dr. Gorsche is an orthopedic specialist. Claimant indicated she had constant pain at a level 6, on a scale where 10 is excruciating pain. Claimant's pain worsened with activities at work. (Ex. B, p. 4)

Dr. Gorsche assessed claimant as having myofascial trapezial pain. He advised against surgery. He returned claimant to her regular work duties. He did not have anything further to offer claimant. (Ex. B, p. 5)

In a July 13, 2022, letter, written by defendant's attorney, Dr. Gorsche opined he reviewed an MRI of claimant's right shoulder, and he did not believe claimant had a SLAP tear. He indicated claimant did not require surgery. Dr. Gorsche did not have additional treatment to offer claimant.

In a January 31, 2023, report, David Segal, M.D., gave his opinions concerning claimant's condition following an independent medical evaluation. (IME) Dr. Segal assessed claimant as having a labral tear and an AC joint arthropathy in the right shoulder. He also diagnosed claimant as having a biceps tendinopathy and biceps pain and weakness in the right arm. (Claimant's Exhibit 1, page 2)

Dr. Segal recommended claimant have additional treatment for her condition including, but not limited to, pain medication, a TENS unit, physical and occupational therapy, aqua therapy, and cortisone/PRP injections. (Ex. 1, p. 4)

In a March 27, 2023, letter to defendant's counsel, claimant's attorney asked for defendant to authorize treatment for claimant's chronic pain (Ex. 2)

Claimant testified she did not have any shoulder pain prior to her work accident. Since the work accident claimant has had constant right shoulder pain. Claimant testified she also has some clicking in her right shoulder. Claimant said that the pain affects her sleep. Claimant testified the night before the hearing she woke up at 2 a.m. due to shoulder pain and was unable to return to sleep.

Claimant testified she tried to get treatment at the on-site nursing clinic at Whirlpool but was told her case was "closed." Claimant said she brings ice packs to

work to ice her shoulder. She said she uses ice and heat at home for pain. She said the ice and heat only relieves her symptoms temporarily.

Claimant said that she occasionally is “farmed out” to other positions at Whirlpool. She said these other jobs require her to more actively use her shoulder and increases her shoulder pain.

Claimant testified she wants to see a pain specialist to help her with pain.

#### CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3).

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.

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).

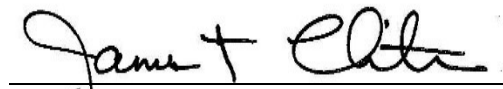
Medical records indicate claimant has consistently complained of right shoulder pain following her work accident. Records indicate claimant has consistently complained of loss of sleep due to shoulder pain. The records are consistent with claimant’s testimony at hearing. Dr. Bollier and Dr. Gorsche both indicated they had no further treatment to provide claimant, but both providers are orthopedic specialists. Dr. Gorsche’s records are silent regarding recommendations of pain treatment. Dr. Bollier’s records suggest he recommended claimant be referred to a provider for pain medication. There is no evidence in the record this recommendation was followed. Dr. Segal recommends claimant receive treatment for her chronic right shoulder pain.

Two of the three experts indicate, in this matter, claimant requires some kind of pain treatment. Claimant continues to have chronic pain since her injury that is aggravated by work activities and impacts her ability to sleep. Claimant's un rebutted testimony is that she tried to seek treatment for her shoulder at the on-site clinic at Whirlpool, but was turned away as her case was "closed." At the time of hearing, claimant is not receiving any treatment for her chronic pain. Given the record as detailed above, it is found the lack of care is not reasonably suited to treat claimant's ongoing chronic pain in her right shoulder. Claimant has carried her burden of proof she is entitled to alternate medical care.

ORDER

Therefore, it is ordered that defendant shall authorize claimant to treat with a physician for her ongoing chronic right shoulder pain.

Signed and filed this 13<sup>th</sup> day of April, 2023.

  
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JAMES F. CHRISTENSON  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Thomas Wertz (via WCES)

Kent Smith (via WCES)