

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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DENISE EMIG,  
Claimant,

vs.

FRONTIER CO-OP,  
Employer,

and

THE HARTFORD FINANCIAL,  
Insurance Carrier,

and

SECOND INJURY FUND OF IOWA,  
Defendants.

**FILED**  
MAY 02 2019  
WORKERS' COMPENSATION

File No. 5067106

ALTERNATE MEDICAL  
CARE DECISION

HEAD NOTE NO: 2701

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Claimant Denise Emig filed a petition for alternate medical care on April 22, 2019, against the defendants, Frontier Co-Op ("Frontier") and The Hartford Financial ("The Hartford"), alleging she sustained injuries to her upper extremities while working for Frontier. Frontier and The Hartford had initially denied the claim and she sought treatment on her own with Clifford Novak, M.D., an orthopedic surgeon, and Dr. Novak has recommended surgery for her left upper extremity, which Frontier and The Hartford have refused to authorize. Frontier and The Hartford filed an answer to the petition, and submitted Exhibits 1 through 4.

On May 2, 2019, a hearing was held on the petition for alternate medical care, by telephone conference call. Attorney Nicholas Pothitakis represented Emig. Emig appeared and testified. Attorney Jessica Voelker represented Frontier and The Hartford. Exhibits 1 through 4 and the Attachment to Application for Alternate Medical Care were admitted into the record. The proceeding was recorded by digital recorder and the digital record is the office record of the proceeding.

The undersigned has been delegated with the authority to issue final agency action in this matter. Appeal of this decision, if any, is to the district court pursuant to Iowa Code section 17A.19.

## FINDINGS OF FACT

In January 2017, Emig began experiencing problems with her left upper extremity. She reported her problems to Frontier and Frontier referred her to Megan Fernandez, D.N.P. (Emig Testimony) Fernandez ordered physical therapy, and placed Emig on light duty. (Emig Testimony) Emig's condition did not improve with physical therapy. (Emig Testimony)

In September 2017, Emig was referred to Brian Wills, M.D., an orthopedic surgeon. (Emig Testimony) Dr. Wills fitted her with a splint for her left hand and placed her on light duty. (Emig Testimony) Emig testified the splint did not help her symptoms. (Emig Testimony) Emig relayed she was having problems in her hands up to her elbows, and she was only receiving treatment focused on her hands. (Emig Testimony)

Tina Stec, M.D., an occupational medicine physician, conducted an independent medical examination records review only of Emig's case. (Emig Testimony) Dr. Stec never examined Emig. (Emig Testimony) After Dr. Stec issued her opinion, Emig's employer denied further care in May 2018. (Emig Testimony) After her employer denied care, Emig sought treatment through her family care provider. (Emig Testimony) Emig's family care provider referred Emig to Dr. Novak, an orthopedic surgeon. (Emig Testimony)

Dr. Novak examined Emig on September 24, 2018, and ordered an ultrasound of her left elbow. (Emig Testimony) Emig returned to Dr. Novak on October 18, 2018. (Exhibit 3) Dr. Novak assessed Emig with left elbow epicondylitis, left elbow lateral epicondylitis, and left elbow radial tunnel discomfort. (Ex. 3) Dr. Novak discussed the treatment Emig had received, and recommended a platelet rich plasma injection or surgery. (Emig Testimony; Ex. 3) At that time Emig wanted to proceed with the platelet rich plasma injection. (Emig Testimony)

There is a coverage dispute in this case between two insurance carriers. The Hartford accepted the claim for medical treatment this year.

After accepting the medical treatment, The Hartford sent Emig to Dr. Wills for an opinion letter in January 2019. (Ex. 2) Dr. Wills diagnosed Emig with bilateral lateral epicondylitis, and noted his previous diagnoses were left hand edema at the second webspace dorsally with small joint effusions noted involving the index and middle fingers and left cubital tunnel syndrome. (Ex. 2, p. 1) Dr. Wills opined Emig's work duties at Frontier can be considered to have materially aggravated what is likely a pre-existing bilateral upper extremity condition. (Ex. 2, p. 1) Dr. Wills opined the bilateral lateral epicondylitis was not caused by the 2017 work injury, and that it involves a second injury in 2018. (Ex. 2, p. 1) With respect to the 2017 injury, Dr. Wills recommended no additional treatment. (Ex. 2, p. 2) With respect to the 2018 injury, Dr. Wills recommended conservative treatment, that could include bracing, oral and topical medications, physical and occupational therapy, injections, and activity modification.

(Ex. 2, p. 2) Dr. Wills noted surgical intervention can be considered, but the outcome of surgery is often unpredictable. (Ex. 2, p. 2)

Emig conducted some additional research and she determined she did not want to proceed with the platelet rich plasma injection and that she wanted to proceed with surgery. (Emig Testimony) Emig paid a deposit to Dr. Novak for the surgery. (Emig Testimony)

Frontier and The Hartford arranged an appointment for Emig with Dr. Buckwalter, with the University of Iowa Hospitals and Clinics ("UIHC"). (Emig Testimony) Dr. Buckwalter recommended a referral to Dr. Hall. (Emig Testimony) Based on the testimony it is unclear whether Dr. Buckwalter is an orthopedic surgeon or a sports medicine physician and whether Dr. Hall is an orthopedic surgeon or a sports medicine physician. (Emig Testimony) A Mederic Hall, M.D. is a sports medicine specialist at the UIHC and two individuals named Joseph Buckwalter, M.D. are orthopedic surgeons at the UIHC.

[https://uihc.org/doctors?query=&idx=providers&p=6&dFR%5Bfield\\_person\\_provider\\_department%5D%5B0%5D=Orthopedics%20and%20Rehabilitation](https://uihc.org/doctors?query=&idx=providers&p=6&dFR%5Bfield_person_provider_department%5D%5B0%5D=Orthopedics%20and%20Rehabilitation).

The parties agreed Emig has an appointment scheduled with Dr. Hall for June 12, 2019. A procedure is scheduled for June 27, 2019, depending on the recommendations from the June 12, 2019 appointment. Counsel for Frontier and The Hartford agreed at hearing the June 12, 2019 appointment will determine whether surgery occurs on June 27, 2019.

Emig testified she has had severe pain in her left elbow for a long time. (Emig Testimony) Emig wants to proceed with surgery with Dr. Novak for her left upper extremity. (Emig Testimony) Emig agreed she would continue to treat with the UIHC for her right upper extremity. (Emig Testimony)

### CONCLUSIONS OF LAW

Under Iowa Code section 85.27 (2017), an employer is required to furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under Iowa Code chapters 85 and 85A. The employer has the right to choose the provider of care, except when the employer has denied liability for the injury. Id.

"The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." Id. § 85.27(4). If the employee is dissatisfied with the care, the employee should communicate the basis for the dissatisfaction to the employer. Id. If the employer and employee cannot agree on alternate care, the commissioner "may, upon application and reasonable proofs of necessity therefore, allow and order other care." Id.

The employee bears the burden of proving the care authorized by the employer is unreasonable. R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 196 (Iowa 2003). "The employer's obligation under the statute turns on the question of reasonable necessity, not desirability." Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995). The care authorized by the employer is unreasonable if it is ineffective, inferior, or less extensive than the care requested by the employee. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997). The determination of whether care is reasonable is a question of fact. Long, 528 N.W.2d at 123.

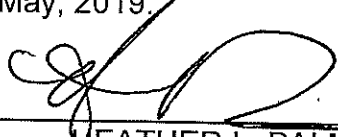
Emig has been experiencing severe pain in her left upper extremity for many months. Her claim was denied and she sought care on her own with Dr. Novak. Dr. Novak recommended surgery in October 2018. Emig wants to proceed with the surgery. Frontier and The Hartford have arranged for an appointment for Emig at the UIHC on June 12, 2019. While Emig may be scheduled for surgery on June 27, 2019, the treatment course has not been determined. The recommended treatment course will be determined on June 12, 2019, which may include no additional treatment. Meanwhile, Emig continues to suffer in pain.

The care that has been offered to Emig for her left upper extremity has been unreasonable. It has been ineffective in treating her pain, and less extensive than the care she is requesting through Dr. Novak. Emig's petition should be granted for her left upper extremity surgery only. Emig has agreed to receive additional care for her right upper extremity at the UIHC authorized by Frontier and The Hartford.

#### ORDER

Claimant's application for alternate care is GRANTED. Frontier and The Hartford shall authorize the left upper extremity elbow surgery recommended by Dr. Novak.

Signed and filed this 2<sup>nd</sup> day of May, 2019.

  
HEATHER L. PALMER  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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HLP/sam