BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JEANNA PACHTINGER, Claimant, vs. FAMILY DOLLAR SERVICE, LLC, Employer, and SAFETY NATIONAL CASUALTY CORP., Insurance Carrier, Defendants.	File No. 20002580.02 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, Jeanna Pachtinger. Claimant appeared through attorney Randall Schueller. Ms. Pachtinger did not participate in the hearing. Defendants appeared through their attorney, Dru Moses.

The alternate medical care claim came on for hearing on August 25, 2023. The proceedings were digitally recorded through a program called Quality Management Suite. That recording constitutes the official record of this proceeding.

Pursuant to the Commissioner's 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 exhibit 1 which was received without objection. The defendants do not dispute liability for claimant's February 20, 2020, work injury.

It should be noted that an arbitration hearing was held before the undersigned in this case on July 27, 2023. In that case (File No. 20002580.01), the defendants accepted liability for claimant's February 20, 2020, work injury as well, via a stipulation in the Hearing Report.

ISSUE

The issue presented for resolution is whether the claimant is entitled to return to the authorized treating physician or any physician of the employer's choosing.

FINDINGS OF FACT

The claimant sustained an injury to her left foot and ankle on or about February 20, 2020. This is an administratively accepted fact.

An arbitration hearing was held before the undersigned regarding her extent of disability and other issues on July 27, 2023. Neither medical expenses nor alternate care were raised at that hearing.

The only evidence in the record (beyond stipulations and professional statements by counsel) is an email chain between opposing counsel contained in Claimant's Exhibit 1. On July 20, 2023, claimant's counsel (hereinafter, Schueller) contacted defense counsel (hereinafter, Moses) and stated the following:

> This stinks but we have a development. Jeanna was walking and her foot popped yesterday. She called Dr. Femino's office to make an appointment to see her. His office refused to see her unless approved by your client. Let us know when and where Jeanna should go for treatment for her foot. She did go to Jackson Country ER yesterday after Femino's office would not see her. She requests treatment so let us know on the appointment and she will be there.

(Claimant's Exhibit 1, page 4) Schueller followed up on July 27, 2023, the day of the arbitration hearing, and again on August 8, 2023. (Cl. Ex. 1, p. 3) Moses responded on August 8, 2023. "I'm on it. Does Femino just need approval/authorization from the adjustor?" (Cl. Ex. 1, p. 2) Schueller responded within two minutes. "Yes, I believe that is all that is needed." (Cl. Ex. 1, p. 2) Schueller followed up again on August 14, 2023. "Let us know on the appointment or whether we need to file the alt care?" Moses then responded as follows: "What is your basis for associating the recent event with the underlying work injury? Does not seem related to me, and I have not seen nothing [*sic*] to the contrary. Thanks." (Cl. Ex. 1, p. 1) Schueller did not respond to the question but simply stated his client "needs and requests treatment." (Cl. Ex. 1, p. 1)

Claimant filed her alternate care petition two days later on August 16, 2023. In her petition, she alleged that she sustained an injury on February 20, 2020, which caused her to need medical care for her left foot, ankle, and leg. (AC Petition, paragraph 5) She further alleged she is dissatisfied with the care provided by the defendants because they have refused to "provide medical treatment" for her. (AC Petition, paragraph 8) While the defendants did not provide a formal answer prior to the alternate care hearing, defense counsel provided a detailed answer on the record. To

summarize, defendants contend that there may have been some initial confusion about the nature of the incident and whether defendants were responsible to provide any treatment for a non-work-related incident. The defendants further indicated that the matter was under investigation by the defendants and that no party had yet secured treatment records from the Jackson County ER, where treatment was sought by claimant after defendants refused to authorize treatment upon her initial request. When asked pointedly by the undersigned about the defendants' current position on liability, counsel answered unequivocally that defendants are not disputing liability for her left foot and ankle injury.

REASONING AND CONCLUSIONS OF LAW

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. Iowa Code Section 85.27 (2013).

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See 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).

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).

An employer's statutory right is to select the providers of care and the employer may consider cost and other pertinent factors when exercising its choice. Long, at 124. An employer (typically) is not a licensed health care provider and does not possess medical expertise. Accordingly, an employer does not have the right to control the methods the providers choose to evaluate, diagnose and treat the injured employee. An employer is not entitled to control a licensed health care provider's exercise of professional judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 18, 1988). An employer's failure to follow recommendations of an authorized physician in matters of treatment is commonly a failure to provide reasonable treatment. Boggs v. Cargill, Inc., File No. 1050396 (Alt. Care Dec. January 31, 1994).

It is also important to remember the purpose behind the workers' compensation act:

> "The fundamental reason for the enactment of [the workers' compensation act] is to avoid litigation, lessen the expense incident thereto, minimize appeals, and afford an efficient and speedy tribunal to determine and award compensation under the terms of this act.
>
> > `It was the purpose of the legislature to create a tribunal to do rough justice — speedy, summary, informal, untechnical. With this scheme of the legislature we must not interfere; for, if we trench in the slightest degree upon the prerogatives of the commission, one encroachment will breed another, until finally simplicity will give way to complexity, and informality to technicality.'"

Zomer v. West River Farms, Inc., 666 N.W.2d 130, 133 (Iowa 2003) (emphasis added) quoting Flint v. City of Eldon, 191 Iowa 845, 847, 183 N.W. 344, 345 (1921). The Workers' Compensation Act is not intended to create procedural traps for either party.

Based upon the record before me, I find that the claimant is entitled to receive an evaluation of her left foot and ankle as it relates to her February 20, 2020, work injury. Claimant has alleged that she needs care for *this* condition. While it is possible that she has sustained a new, intervening, or superseding injury for which the defendants are not responsible, these facts are entirely unknown at this time. All we really know at this time is that she believes she needs treatment for her original, accepted work injury.

The reality is that these situations arise all the time in workers' compensation claims. The only real way to investigate the causation issues is to have a medical evaluation. There are literally thousands of possibilities of what is going on here which will remain unknown until proper evaluation. Based upon the facts presented at hearing today, the defendants are required to have her evaluated, at a minimum, to determine whether her ongoing complaints in her left foot and ankle are connected to her original work injury.

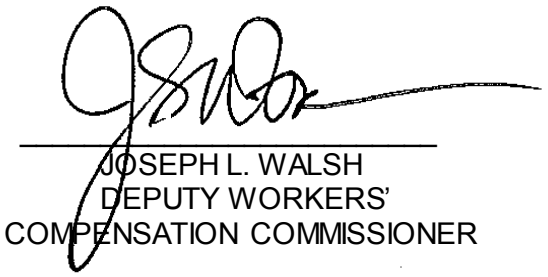
Stated another way, even if the "incident" on July 19, 2023, turns out to be an intervening, superseding cause, for which the defendants have no liability or legal responsibility, Ms. Pachtinger is entitled to a return appointment to the authorized treating physician to evaluate her original February 20, 2020, work injury.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is GRANTED. Defendants shall immediately authorize a medical appointment for the claimant for her February 20, 2023, work injury.

Signed and filed this __25th____ day of August, 2023.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Randall Schueller (via WCES)

Dru Moses (via WCES)