BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CLINTON J. JANSSEN, Claimant, vs. UNITED SUGARS CORPORATION, Employer, and NATIONWIDE AGRIBUSINESS INSURANCE COMPANY, Insurance Carrier, Defendants.	File No. 19007180.01 ALTERNATE MEDICAL CARE DECISION Head Note No.: 2701

STATEMENT OF THE CASE

On June 1, 2021, Clinton Janssen filed for alternate care under Iowa Code section 85.27(4) and 876 Iowa Administrative Code rule 4.48. Defendants United Sugars Corporation (employer) and Nationwide Agribusiness Insurance Company (insurance carrier) filed their answer on June 9, 2021, accepting liability. For clarity this decision will refer to the defendants collectively as United Sugars.

The undersigned presided over an alternate care hearing by telephone and recorded on June 11, 2021. The audio recording constitutes the official record of the proceeding. 876 IAC 4.48(12). Janssen participated through attorney Mindi Vervaecke. United Sugars participated through attorney Anne Clark. The record consists of Exhibits 1 through 3.

ISSUE

The issue under consideration is whether Janssen is entitled to alternate care in the form of treatment by James Nepola, M.D., at the University of Iowa Hospitals and Clinics (UIHC).

FINDINGS OF FACT

Janssen sustained an injury arising out of and in the course of his employment with United Sugars on May 6, 2019. Janssen describes it as an injury to his right upper extremity and body as a whole in his petition. United Sugars labels it a shoulder injury.

Regardless of the exact body part or parts injured, United Sugars provided care under Iowa Code section 85.27. Magnetic resonance imaging (MRI) on May 28, 2019 showed a superior glenoid labrum tear. Janssen went to Dr. Potthoff in Mason City for an injection that provided decent relief for about six weeks. Janssen performed light duty office work for a period of time. Janssen then returned to work without restrictions on August 29, 2019.

Janssen's symptoms worsened after returning to full duty. United Sugars chose Dr. Knudson in Waterloo to provide care. On January 6, 2021, Dr. Knudson performed another subacromial injection. Janssen's relief from it lasted only a few hours. He believes his symptoms were worse after than before due to more pinching and catching when using his shoulder. Consequently, Dr. Knudson performed a diagnostic arthroscopy, finding:

- No full-thickness tear of the rotator cuff;
- Some modest synovitis of the biceps tendon, which was otherwise intact and left alone;
- Degeneration of the superior and posterior labrum was lightly debrided;
- Moderate anteroinferior laxity;
- Anterior labral tear with laxity, which was repaired.

Dr. Knudson also performed subacromial decompression and distal clavicle resection due to acromial hypertrophy and impingement. Janssen then went through physical therapy. Dr. Knudson found him to have reached maximum medical improvement (MMI) on February 9, 2021. Dr. Knudson released Janssen from care and opined on Janssen's permanent impairment from the work injury. But Janssen continued experiencing symptoms relating to his injury.

Because of Janssen's ongoing symptoms, he requested, through counsel, a second opinion with Dr. Nepola, M.D., at UIHC. Janssen's attorney emailed Ana Larive, a workers' compensation claims specialist with Nationwide Agribusiness, who denied the request. In a March 2, 2021 email, Larive explained her decision thusly: "I have the impairment rating from the treating doctor. Once we have the rating, Mr. Janssen can certainly see Dr. Nepola for his 85.39 exam. I will not authorize a change of physician or second opinion with Dr. Nepola." (Ex. 1) It is unclear whether Larive consulted with Dr. Knudson or another physician before denying Janssen's request for additional care due to ongoing symptoms.

On March 31, 2021, Janssen's attorney emailed Larive a second time regarding ongoing care, stating, "Following up on my request for [Janssen] to be seen by Dr. Nepola for his ongoing shoulder issues. Please advise." Later the same day, Larive replied, "I responded to this request on 03.02.21. It is not approved." It is unclear whether Larive consulted with Dr. Knudson or another physician before reiterating her denial of Janssen's request.

After the second denial, Janssen's attorney set up an appointment with Dr. Nepola. Between that appointment's scheduling and shortly before its occurrence, United Sugars offered to arrange for additional care with Dr. Knudson or a doctor at Des Moines Orthopedic Surgeons (DMOS) or Iowa Ortho instead of Dr. Nepola. Janssen declined the offer because the appointment with Dr. Nepola would soon occur.

Janssen saw Dr. Nepola on May 18, 2021. (Ex. 2) Dr. Nepola ordered radiographs and reviewed them. (Ex. 2) The X-rays appeared benign. (Ex. 2) Because of Janssen's ongoing symptoms, Dr. Nepola opined, "In order to better assess where the pain is coming from, would recommend serial diagnostic injections performed in the office with lidocaine, first starting with a glenohumeral injection to see if numbing the joint space helps . . . ." (Ex. 2) He concluded, "Further diagnosing the source of the pain will help to determine if there is a further revision surgery that could benefit him, versus other treatment modalities." (Ex. 2) Thus, Dr. Nepola's prescription is to attempt to diagnosis the source of Janssen's pain to see if any additional care is possible to help alleviate it.

Janssen then applied for alternate care with the agency. Because United Sugars denied his request for additional care due to Janssen's ongoing symptoms, he seeks alternate care in the form of authorization for the additional care with Dr. Nepola as outlined above.

CONCLUSIONS OF LAW

"Iowa Code section 85.27(4) affords an employer who does not contest the compensability of a workplace injury a qualified statutory right to control the medical care provided to an injured employee." Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 769 (Iowa 2016) (citing R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 195, 197 (Iowa 2003)). Under the law, the employer must "furnish reasonable medical services and supplies *and* reasonable and necessary appliances to treat an injured employee." Stone Container Corp. v. Castle, 657 N.W.2d 485, 490 (Iowa 2003) (emphasis in original). Such employer-provided care "must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." Iowa Code § 85.27(4).

An injured employee dissatisfied with the employer-furnished care (or lack thereof) may share the employee's discontent with the employer and if the parties can't reach an agreement on alternate care, "the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care." Id. "Determining what care is reasonable under the statute is a question of fact." Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995); Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 436 (Iowa 1997). As the party seeking relief in the form of alternate care, the employee bears the burden of proving that the authorized care is unreasonable. Id. at 124; Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d at 209; Reynolds, 562 N.W.2d at 436; Long, 528 N.W.2d at 124. Because "the employer's obligation under the statute turns on the question of reasonable necessity,

not desirability," an injured employee's dissatisfaction with employer-provided care, standing alone, is not enough to find such care unreasonable. Id.

"In enacting the right-to-choose provision in section 85.27(4), our legislature sought to balance the interests of injured employees against the competing interests of their employers." Ramirez-Trujillo, 878 N.W.2d at 770–71 (citing Bell Bros., 779 N.W.2d at 202, 207; IBP, Inc. v. Harker, 633 N.W.2d 322, 326–27 (Iowa 2001)). The term "care" in the alternate care provision of Iowa Code section 85.27

> includes services and supplies, as suggested by the first paragraph in the same statute. . . . The term 'care in medical context means 'prevention or alleviation of a physical or mental defect or illness." See, e.g., Browning v. Burt, 66 Ohio St.3d 544, 613 N.E.2d 993, 1003 (1993). The term includes such things as crutches, artificial members, and appliances because these things, just as services by health care professionals, prevent or alleviate physical or mental defects or illnesses.

Manpower Temporary Services v. Sioson, 529 N.W.2d 259, 263 (Iowa 1995).

"[W]hen evidence is presented to the commissioner that the employer-authorized medical care has not been effective and that such care is 'inferior or less extensive' than other available care requested by the employee, Long, 528 N.W.2d at 124, the commissioner is justified by section 85.27 to order the alternate care." Reynolds, 562 N.W.2d at 437. Further, Iowa Code section 85.27(4) requires that employer-controlled care must be "offered promptly." Offering no care is the same as offering no care reasonable suited to treat the injury. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 436 (Iowa 1997).

Here, Dr. Knudson found Janssen to have reached MMI and released him from care. But Janssen continued to experience symptoms. He felt he needed additional care. Ultimately, Janssen obtained counsel.

On March 2, 2021, Janssen's attorney contacted United Sugars and requested additional care. That same day, the request was denied. Janssen's counsel again made the request on March 31, 2021. United Sugars denied it a second time. There is an insufficient basis in the record from which to conclude whether United Sugars rejected Janssen's request for additional care due to ongoing symptoms after consulting with a physician. Based on the evidence, it appears United Sugars rejected Janssen's request without consulting with Dr. Knudson or another physician.

After the second refusal to provide additional care, Janssen set up an appointment with Dr. Nepola. Through counsel, Janssen asked for a second opinion on the question of whether additional care might help alleviate his symptoms. United Sugars offered additional care to Janssen shortly before the scheduled appointment with Dr. Nepola, which he rejected.

As detailed above, Janssen first requested additional care through counsel on March 2, 2021. United Sugars rejected the request that same day. Then United Sugars rejected Janssen's second request on March 31, 2021. Thus, United Sugars created a delay of at least one month in Janssen getting treatment for his ongoing symptoms by refusing to authorize additional care without consulting with a physician.

The two denials of care were unreasonable, as was the delay they created in Janssen's care. Because of the unreasonable denials and delay they caused, it was reasonable for Janssen to make arrangements for an appointment with Dr. Nepola and to opt to keep that appointment instead of experience additional delays even after United Sugars communicated that it had changed its position and would authorize additional care.

Dr. Nepola's appointment was focused on a narrow question. Based on the examination, Dr. Nepola has identified a reasonable course of treatment to attempt to treat Janssen's ongoing symptoms. It is therefore appropriate to grant Janssen's application for alternate care under the Iowa Workers' Compensation Act.

ORDER

IT IS THEREFORE ORDERED:

1) Janssen's application is GRANTED.
2) United Sugars shall make arrangements for additional treatment with Dr. Nepola.

On February 16, 2015, the Iowa workers' compensation commissioner issued an order delegating authority to deputy workers' compensation commissioners, such as the undersigned, to issue final agency decisions on applications for alternate care. Consequently, there is no appeal of this decision to the commissioner, only judicial review in a district court under the Iowa Administrative Procedure Act, Iowa Code chapter 17A.

Signed and filed this 14th day of June, 2021.

BENJAMIN G. HUMPHREY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Mindi Vervaecke (via WCES)

Anne Clark (via WCES)