BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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| SAMANTHA SWISER,<br><br>Claimant,<br><br>vs.<br><br>NORDSTROM, INC.,<br><br>Employer,<br>Self-Insured,<br>Defendant. | FILED<br>MAY 01 2019<br>WORKERS' COMPENSATION | File No. 5068043<br><br>ALTERNATE MEDICAL<br><br>CARE DECISION<br><br>Head Note: 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, Samantha Swiser.

This alternate medical care claim came on for hearing on May 1, 2019. 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 a petition for judicial review under Iowa Code section 17A.19.

The record in this case consists of Defendant's Exhibit A through D.

## ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of transfer of care for her carpal tunnel syndrome back to Meiying Kuo, M.D.

## FINDINGS OF FACT

On November 20, 2018, claimant was evaluated by Dr. Kuo. Claimant was assessed as having a mild bilateral carpal tunnel syndrome. Claimant had improvement in symptoms following injections eight months prior. Claimant did not believe her symptoms were severe enough to warrant surgery. Claimant was told to return as needed. (Exhibit A)

On February 26, 2019, claimant was evaluated by Timothy Fowler, M.D. for evaluation of a right carpal tunnel syndrome. Claimant had been evaluated by Dr. Fowler in January of 2019. A recent EMG and Nerve Conduction Study (NCS) showed a carpal tunnel syndrome on the right. Treatment options were discussed. Claimant

chose surgery as a treatment option. Surgery was to be scheduled at claimant's convenience. (Ex. B)

In professional statements, both claimant's and defendant's counsel indicated claimant was initially sent to Dr. Fowler for a second opinion regarding her carpal tunnel syndrome.

In emails exchanged between claimant's and defendant's counsel, on April 15, 2019, claimant indicated she did not want to treat with Dr. Fowler and that she was satisfied with the care provided by Dr. Kuo. (Ex. C)

In an April 17, 2019, email defendant's counsel indicated claimant had surgery scheduled for April 17, 2019, and cancelled surgery that day. Claimant asked for her surgery to be moved to July of 2019.

## CONCLUSION 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. 6.14(6).

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. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 16, 1975).

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 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).

Claimant last treated with Dr. Kuo in November of 2018. At that last visit, claimant indicated she did not want surgery. Claimant was told to return to Dr. Kuo as needed.

Sometime in January of 2019, claimant was seen by Dr. Fowler for a second opinion. As a part of that process, Dr. Fowler recommended claimant undergo diagnostic testing. Claimant had that testing. Testing showed claimant had carpal tunnel syndrome on the right. Claimant returned to Dr. Fowler in February of 2019. Treatment options were discussed and claimant chose to undergo surgery. The record suggests claimant scheduled that surgery, after her second evaluation with Dr. Fowler.

Claimant saw Dr. Fowler on two occasions. Dr. Fowler recommended diagnostic testing. Claimant had that testing as recommended. Treatment options were discussed with Dr. Fowler. Claimant chose surgery. Claimant scheduled that surgery.

It is true that an employer's right to select the provider of medical treatment to an injured worker does not include the right to determine how an injured worker should be diagnosed, evaluated, treated, or other matters of professional medical judgment. Assman v. Blue Star Foods, File No. 866389 (Declaratory ruling, May 19, 1988).

That is not the scenario in this case. Claimant was assessed by both Drs. Kuo and Fowler as having carpal tunnel syndrome. In November of 2018, while treating with Dr. Kuo, claimant chose to not have surgery. In February of 2019, while treating with Dr. Fowler, claimant made the choice to have surgery. There is nothing in the record indicating the employer or insurer made decisions regarding how claimant was diagnosed or how claimant was to be treated.

Given these facts, claimant has failed to carry her burden of proof the care provided and offered with Dr. Fowler is unreasonable. Given this record claimant has failed to carry her burden of proof she is entitled to the requested alternative medical care. Claimant's petition is denied.

ORDER

THEREFORE, it is ordered, that claimant's petition for alternate medical care is denied.

Signed and filed this 15th day of May, 2019.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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