

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LASONIA JOHNSON,

Claimant,

vs.

SETIVA HEALTH d/b/a REM IOWA,

Employer,

and

AIU INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 22013740.02

CONSENT ORDER/DISMISSAL ORDER

RE: ALTERNATE MEDICAL CARE

On December 5, 2023, claimant filed a petition for alternate medical care. Hearing was scheduled to take place on December 18, 2023. The petition alleges claimant sustained an injury to her left shoulder, neck, back, and right shoulder on October 10, 2022. Claimant is seeking authorization for evaluation and treatment of the right shoulder, and additional care for her back, including a pain management appointment.

On December 8, 2023, defendants filed an answer. Defendants admit liability for the claims relating to claimant's left shoulder and back, and deny liability for the claims relating to claimant's right shoulder and neck.

With respect to the admitted back injury, counsel for the parties advised the undersigned that they had reached an agreement regarding the requested care. Given the agreement of the parties, the hearing was determined to be unnecessary. The parties requested entry of a consent order to confirm and document the agreement.

With respect to the denied right shoulder injury, alternate care claims are limited to situations in which liability is not at issue. *R. R. Donnelly & Sons v. Barnett*, 670 N.W.2d 190, 197-198 (Iowa 2003). As such, the portion of the petition for alternate care related to claimant's right shoulder is dismissed.

"[T]he employer has no right to choose the medical care when compensability is contested." *Bell Bros. Heating and Air Conditioning v. Gwinn*, 779 N.W.2d 193, 204 (Iowa 2010). Further, when compensability is contested, "the employer cannot assert an

authorization defense in response to a subsequent claim by the employee for the expenses of the alternate medical care." R. R. Donnelly, 670 N.W.2d at 197-198.

Ultimately, therefore, defendants are precluded from asserting an authorization defense as to any future treatment during the period of denial, and defendants lose the right to control the medical care claimant seeks during this period of denial. Brewer-Strong v. HNI Corp., 913 N.W.2d 235 (Iowa 2018); Bell Bros., 779 N.W.2d at 204.

As a result, claimant may obtain reasonable medical care from any provider for treatment related to the alleged right shoulder injury, but at claimant's expense, and claimant may seek reimbursement for such care using regular claim proceedings before this agency. Haack v. Von Hoffman Graphics, File No. 1268172 (App. July 31, 2002); Kindhart v. Fort Des Moines Hotel, Iowa Industrial Comm'r Decisions No. 3, 611 (App. March 27, 1985).

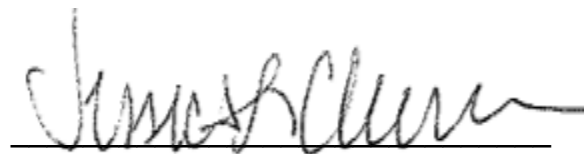
IT IS THEREFORE ORDERED:

The hearing scheduled for December 18, 2023 is cancelled.

Defendants have or will authorize additional care for claimant's back injury.

The portion of the petition for alternate care related to claimant's right shoulder is dismissed without prejudice. If claimant seeks to recover the charges incurred in obtaining care for the condition for which defendants denied liability, defendants are barred from asserting lack of authorization as a defense to those charges during the period of their denial.

Signed and filed this 14TH day of December, 2023.

A handwritten signature in dark ink, appearing to read 'Jessica L. Cleereman', is written over a horizontal line.

JESSICA L. CLEEREMAN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Dillon Besser (via WCES)

Emily Anderson (via WCES)

Edward Rose (via WCES)