

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KORTNI LEWIS,

Claimant,

vs.

VIVANT BEHAVIORAL HEALTHCARE,  
LLC,

Employer,

and

WESCO INSURANCE CO.,

Insurance Carrier,  
Defendants.

File No. 22000452.02

ALTERNATE MEDICAL CARE  
DECISION

Headnote: 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, Kortni Lewis. Claimant appeared through her attorney, Connor Mulholland. Defendants appeared through their attorney, Lara Plaisance. Claimant's petition was filed on March 20, 2023. Defendants filed an amended answer on March 30, 2023. Defendants do not dispute liability for the condition on which the claim for alternate care is based.

The alternate medical care claim came on for hearing on March 31, 2023. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's February 16, 2015 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 Exhibits 1 through 3, and Defendants' Exhibits A through G.<sup>1</sup> Claimant testified on her own behalf. Counsel for both parties also offered oral arguments to support their positions.

<sup>1</sup> Defendants initially offered 23 pages of exhibits, but withdrew several pages and submitted revised exhibits following the hearing in order to comply with the page limitations for exhibits in an alternate care proceeding.

## ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of an order authorizing care with Anem Kohli, M.D., a neurologist.

## FINDINGS OF FACT

Claimant sustained a work-related injury on January 3, 2022, when she was helping to restrain an aggressive patient and suffered a head injury. Defendants accepted the injury and provided treatment. Claimant initially treated with Marc Molis, M.D. Her last appointment with Dr. Molis took place on September 19, 2022. (Claimant's Exhibit 1, p. 1) At that time, Dr. Molis confirmed that he had made a referral to neurology, which was scheduled for October 24, 2022. He also noted claimant had received trigger point injections through pain management that she did not find helpful, and was continuing with physical therapy. (Cl. Ex. 1, pp. 1-2) He did not recommend any additional treatment through his office.

Claimant saw Dr. Kohli for the first time on October 24, 2022. (Cl. Ex. 2, p. 1) Dr. Kohli accepted claimant as a patient and created a treatment plan. (Cl. Ex. 2, pp. 1-5) On November 21, 2022, defense counsel's paralegal contacted Dr. Kohli's office in an attempt to get medical records. (Defendants' Exhibit D) She was told Dr. Kohli's office refused to do "anything with workers' compensation" and a request for records would need to be submitted after each visit, after which it would take approximately 30 days to receive the records. On November 21, 2022, defense counsel wrote to Dr. Kohli, explaining that claimant was a workers' compensation patient, providing a signed authorization to release information, and explaining that her treatment could not be billed to her personal insurance due to the accepted workers' compensation claim. (Def. Ex. A) On November 22, 2022, defense counsel wrote to Michael Jacoby, M.D., to inquire as to whether claimant's neurology treatment could be transferred to him, due to the difficulty obtaining Dr. Kohli's records. (Def. Ex. B) Defense counsel also made claimant's attorney aware of the difficulties they were having regarding Dr. Kohli's records. (Def. Ex. C)

Claimant testified she has seen Dr. Kohli a total of four times. Her most recent visit was the day before the hearing, March 30, 2023. (Cl. Ex. 3) Dr. Kohli has prescribed different medications and provided additional injections. Claimant indicated that Dr. Kohli uses a different technique for the injections and she is finding the treatments helpful. Claimant testified that she told Dr. Kohli's office at her first visit that it was a workers' compensation injury, and provided both her personal insurance card and her workers' compensation insurance card. She testified that Dr. Kohli is not willing to provide her with work restrictions or discuss anything about her injury being work related. Dr. Kohli's office is billing claimant's personal insurance for her treatment, and defense counsel stated in oral argument that the office refuses to bill workers' compensation.

Defendants have now secured an appointment with Dr. Jacoby to take place on April 12, 2023. Dr. Jacoby has agreed to see claimant as a workers' compensation patient, and bill workers' compensation for his treatment. Claimant argues that Dr. Kohli is the authorized treating physician, and defendants have no basis for changing the treating provider. Defendants argue that while Dr. Kohli was initially authorized, they were not made aware of any additional appointments after October 24, 2022. The only way they discovered claimant had continued to see Dr. Kohli was when her treatment was mentioned in the records of Daniel Miller, D.O., another of claimant's authorized treating physicians. (Def. Ex. E) Dr. Miller has also had difficulty obtaining Dr. Kohli's records, although claimant testified they reviewed the records together at some point in his office. Defendants have not been provided with any additional records from Dr. Kohli until receipt of the March 30 record on the day prior to hearing. Defendants argue they cannot properly administer claimant's workers' compensation claim if the doctor is unwilling to participate in the process by providing treatment records timely and billing the workers' compensation insurer.

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

Iowa Code section 85.27(4) provides, in relevant part:

For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. . . . The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he or she 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. See Iowa Code § 85.27(4). Thus, 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, 528 N.W.2d at 124.

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. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988). Defendants are not entitled to interfere with the medical judgment of their own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening, June 17, 1986).

The right to choose the care means the right to choose the provider, not the treatment modalities recommended by the provider. The employer must provide the treatment, testing, imaging or other treatment modalities recommended by its own authorized treating physician, even if another consulting physician disagrees with those recommendations. Haack v. Von Hoffman Graphics, File No. 1268172, p. 9 (App. July 31, 2002) [MRI and x-rays]; Cahill v. S & H Fabricating & Engineering, File No. 1138063 (Alt. Care, May 30, 1997) (work hardening program); Hawxby v. Hallett Materials, File No. 1112821 (Alt. Care, February 20, 1996); Leitzen v. Collis, Inc., File No. 1084677 (Alt. Care, September 9, 1996). The right to choose the care does not authorize the employer to interfere with the medical judgment of its own treating physician. Boggs v. Cargill, Inc., File No. 1050396 (Alt. Care, January 31, 1994).

This agency has a long history of denying attempts by defendants to change the course of a claimant's authorized treatment without some basis for the change. Generally, defendants are not allowed to disturb claimant's entitlement to medical care by changing the authorized treating physician. Burkett v. Com Force, File No. 1199960 (Arb. July 16, 2001). An employer/insurance carrier cannot transfer care from an authorized doctor to another doctor unless there is a "rational justification" for the transfer. LaRue v. Blake Byrket Trucking, File No. 1265132 (Alt. Care, August 7, 2000). The defendant is required to follow the medical recommendations of an authorized physician despite the fact that time has passed. McFarland v. Amana Society Builders, File No. 5008275 (Alt. Care, May 20, 2003) (holding defendants had to honor authorized physician's referral to pain management clinic even though it was made two years prior). If a claimant has an established treatment regimen, it is unreasonable to interfere with the rapport between the claimant and the treating providers by transferring care without a specific basis or reason. Tucker v. Colony Heating & Air Cond., File No. 1648828.04 (Alt. Care, July 13, 2021).

Ultimately, determining whether care is reasonable under the statute is a question of fact. Long, 528 N.W.2d at 123. In this case, I find the defendants do have a rational justification to change claimant's authorized treating neurologist from Dr. Kohli to Dr. Jacoby. Dr. Kohli has indicated no desire to participate in claimant's care through the workers' compensation system. She refuses to bill workers' compensation, provide medical records in a timely fashion, or discuss work restrictions. By billing claimant's personal insurance for a workers' compensation injury, defendants may be subjected to a subrogation claim. Defendants cannot effectively manage claimant's care, as is their

duty under Iowa law, without access to the medical records and treatment plan, knowledge of the upcoming appointments, and the ability to review and pay medical bills timely. Additionally, claimant's other authorized treating physicians need access to Dr. Kohli's records in order to coordinate their treatment effectively.


The undersigned cannot prevent claimant from continuing to treat with Dr. Kohli at her own expense. The employer's statutory right to choose medical care for the employee's compensable injuries does not prohibit the employee from seeking his or her own medical care, at his or her own expense, when the employer denies compensability for the injury or the employee "abandons the protections of section 85.27 or otherwise obtains his or her own medical care independent of the statutory scheme." Bell Bros. Heating and Air Cond. v Gwinn, 779 N.W.2d 193, 204 (Iowa 2010). However, defendants will not be forced to authorize treatment with a physician who is refusing to participate in the workers' compensation system. Defendants are offering reasonable care by authorizing Dr. Jacoby. As such, claimant is not entitled to alternate care at this time.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's petition for alternate medical care is denied.

Signed and filed this 31<sup>ST</sup> day of March, 2023.

A handwritten signature in black ink, appearing to read "Jessica L. Cleereman", written over a horizontal line.

JESSICA L. CLEEREMAN  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Connor Mulholland (via WCES)

Lara Plaisance (via WCES)