

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DANIEL CALDARA, Claimant, vs. FOODLINER, INC., Employer, TRAVELERS INDEMNITY CO. OF CT, Insurance Carrier, Defendants.	No. 22004045.01 ALTERNATE CARE DECISION Headnote: 2701
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STATEMENT OF THE CASE

On October 16, 2023, claimant Daniel Caldara filed a petition concerning application for alternate care under Iowa Code section 85.27 and Iowa Administrative Code rule 876—4.48. Caldara served the defendants, employer Foodliner, Inc. (Foodliner) and insurance carrier Travelers Indemnity Co. of CT (Travelers), by certified mail and subsequently filed the receipts reflecting delivery of the petition to each defendant. The agency issued a notice of hearing on October 18, 2023, and sent it to the defendants via U.S. Mail that same day. On October 26, 2023, claimant's counsel emailed to Maxwell Huss, a claims representative assigned to Caldara's case, a PDF copy of the petition and notice of hearing. However, the defendants did not file an answer and no one appeared on their behalf in the case.

The undersigned presided over an alternate care hearing held by telephone and recorded on October 27, 2023. That recording constitutes the official record of the proceeding under Iowa Administrative Code rule 876—4.48(12). Caldara participated personally and through attorney Benjamin R. Roth. The defendants did not participate. The record consists of:

- Claimant's Exhibits 1 through 5; and
- Caldara's testimony, which the undersigned found credible.

ISSUE

The issue under consideration is whether Caldara is entitled to alternate care in the form of authorization to get a second opinion from a neurosurgeon at the University

of Iowa Hospitals & Clinics (UIHC), as recommended by authorized treating physician Dr. Frank Hawkins.

FINDINGS OF FACT

On February 14, 2022, Caldara sustained an injury arising out of and in the course of his employment with Foodliner. Caldara has alleged injuries to his back and mental health. (Petition) At issue in the current case is care for his back injury that causes him pain in his low back that radiates into his right leg. The defendants have accepted liability and directed care for Caldara's back injury, as is their right and responsibility under Iowa Code section 85.27. (Petition; Testimony; Ex. 1)

The defendants initially arranged care with an occupational medicine specialist, which resulted in physical therapy. Caldara experienced minimal benefit from physical therapy after several weeks. He requested authorization to treat with a chiropractor, which the defendants refused, so he obtained such care on his own and at his own expense, but with little benefit. (Testimony)

The occupational medicine clinic ultimately referred Caldara to a neurosurgeon. The defendants arranged care with Dr. Rosen, a neurosurgeon, who ordered magnetic resonance imaging (MRI). (Testimony) The MRI showed:

- Diffuse disk bulge with bilateral subarticular stenosis, right worse than left, possibly displacing the right L5 takeoff;
- Moderate-to-marked right-sided neural foraminal stenosis and moderate left;
- Some facet hypertrophy with mild effusions; and
- Facet hypertrophy with effusions at L5-S1, but no appreciable central or neural foraminal stenosis at this level. (Ex. 1)

After the MRI, Caldara received two steroid injections to his back from Dr. Hawkins, a pain clinician, but they provided little relief from his symptoms. (Testimony; Ex. 1)

Caldara underwent surgery by Dr. Buchanan on a bulging disc at L4-L5 on February 10, 2023. He was heavily medicated after the procedure. About 90 days post-operation, Caldara's pain was similar to what it was before the surgery. Dr. Buchanan referred Caldara to Dr. Hawkins for facet injections that provided minimal relief. (Testimony)

Dr. Hawkins recommended a referral to a neurosurgeon at UIHC because of Caldara's ongoing pain. (Testimony; Ex. 2) Christina Rolfes, the clinic administrator at the Allen Center for Pain Medicine where Dr. Hawkins practices, emailed a case worker on Caldara's case about their unsuccessful efforts to get Caldara an appointment scheduled at UIHC. (Ex. 4) Huss, the claims representative the defendants have

assigned to Caldara's case, refused to authorize a second opinion with a neurosurgeon at UIHC, stating that Caldara first had to return to receive care at the occupational medicine clinic. (Ex. 3) Caldara communicated his dissatisfaction with their refusal to authorize the referral recommended by Dr. Hawkins, an authorized treating physician, but the defendants maintained their refusal. (Ex. 3) This caused Caldara to file the petition now under consideration. (Petition)

The evidence establishes that in refusing to authorize care with a neurosurgeon at UIHC in accordance with the referral by Dr. Hawkins, the defendants have attempted to substitute their judgment for that of an authorized treating physician. Instead of honoring the referral made by Dr. Hawkins, in his professional medical judgment, Huss refused and informed Caldara that he had to go back to the occupational medicine clinic instead. There is no indication in the record that an authorized treating physician referred Caldara back to the occupational medicine clinic that initially referred him to a neurosurgeon; rather, it is more likely than not that Huss decided this course of care was appropriate independent of any doctor's assessment. Therefore, the defendants' refusal to authorize care in accordance with Dr. Hawkins's referral is unreasonable.

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.

Longstanding agency precedent holds that under Iowa Code section 85.27, "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.” See, e.g., Malget v. John Deere Waterloo Works, No. 5048441, 2017 WL 663655, *18 (Iowa Workers’ Comp. Comm’r, Feb. 14, 2017) (App. Decision) (citing Assman v. Blue Star Foods, No. 866389 (Declaratory Ruling, May 18, 1988)).

Here, no treating physician exercising professional medical judgment has referred Caldara for additional care from an occupational medicine specialist. Dr. Hawkins, an authorized treating physician, referred Caldara to a neurosurgeon at UIHC in his professional medical judgment. Huss substituted his judgment for that of Dr. Hawkins when he refused to honor the referral and stated Caldara had to return to the occupational medicine clinic instead. Through this action, the defendants have unreasonably interfered with the course of care determined appropriate by an authorized treating physician in his professional medical judgment.

Moreover, when evidence is presented 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, the agency is justified by section 85.27 to order the alternate care. Long, 528 N.W.2d at 124; Reynolds, 562 N.W.2d at 437. In this case, the occupational medicine clinic early in the course of Caldara’s treatment determined that he needed the care of a specialist in the form of a neurosurgeon and made that referral. Since then, Caldara has received care from neurosurgeons and Dr. Hawkins, a pain clinician. Going back to the occupational medicine clinic is not only contrary to the referral Dr. Hawkins made in his professional medical judgment, it would also force Caldara to take a step back in the course of treatment by receiving care from a provider that has already proven ineffective and is therefore inferior and less extensive than care with a specialist in the form of a neurosurgeon at UIHC, as recommended by Dr. Hawkins.

ORDER

Under the above findings of facts and conclusions of law, it is ordered:

- 1) Caldara’s application for alternate care is GRANTED.
- 2) The defendants shall promptly arrange for Caldara to receive care from a neurosurgeon at UIHC.

On July 21, 2023, 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 an appropriate district court under the Iowa Administrative Procedure Act, Iowa Code chapter 17A.

Signed and filed this 27th day of October, 2023.

A handwritten signature in black ink, appearing to read "Ben Humphrey", written over a horizontal line.

BENJAMIN G. HUMPHREY
Deputy Workers' Compensation Commissioner

Served via the Workers' Compensation Electronic System (WCES):

Benjamin R. Roth, Attorney for Claimant

Served via certified U.S. Mail, return receipt requested:

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