

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CHRISTOPHER OLIVER,

Claimant,

vs.

LOWE'S HOME CENTERS,

Employer,  
Self-Insured,  
Defendant.File Nos. 5049413.01  
5055650.01

ALTERNATE MEDICAL CARE

DECISION

Head Note No.: 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, Christopher Oliver.

This alternate medical care claim came on for hearing on July 9, 2021. 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 by petition for judicial review under Iowa Code section 17A.19.

The record in this case consists of Claimant's Exhibits 1-2, Defendant's Exhibits A-C, and the testimony of claimant.

## ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of: (1) referral to the Midwest Pain Clinic (Midwest Pain) in Dakota Dunes, South Dakota; (2) assignment of a nurse case manager; (3) new drug prescription cards; (4) a manufacturer's representative to help with adjustment of claimant's spinal cord stimulator (SCS); and (5) continued mental health care.

In the opening statements, defendant's counsel indicated defendant would be willing to get claimant a new drug prescription card, and would consider providing claimant with a nurse case manager. As a result, those two issues will not be discussed in this decision.

## FINDINGS OF FACT

Defendant accepted liability for work injuries to claimant's low back.

Claimant testified he had two workplace injuries; one on October 7, 2012 and the other on May 18, 2014. Claimant testified he had two back surgeries for his work accidents. He said he had several surgeries for the correct implantation of a SCS.

On July 16, 2018, claimant was evaluated by David King, PA-C. Claimant was assessed as having lumbar radiculopathy and chronic pain syndrome. Claimant was recommend to have cognitive behavior therapy. (Exhibit 1a)

On June 4, 2019, claimant was seen by Lindsey Dutler, NP-C. Claimant was counselled regarding the use of anti-depressants. (Ex. 1b)

In a July 26, 2019, response to inquiries from the employer's third-party administrator, Physician Assistant King indicated claimant's use of meloxicam and tizanidine was necessary. He indicated claimant's use of ondansetron and cyclobenzaprine were not medically necessary. (Ex. 2)

On September 3, 2019, claimant was seen by Nurse Practitioner Dutler regarding insomnia due to chronic pain. Claimant was assessed as having lumbar back pain and insomnia. Claimant was recommended to continue to take medications to aid sleep. (Ex. 1c)

In an October 19, 2020, letter, the Siouxland Pain Clinic (Siouxland) indicated it was terminating the patient/physician relationship with claimant. This was because claimant's drug screen was positive for a controlled medication not prescribed by the office. Claimant was recommended to seek medical care with another provider. (Ex. A)

Claimant testified he did not receive the October of 2020 letter from Siouxland, and did not see it until shortly before hearing. Claimant testified he has not seen a provider from Siouxland since approximately March of 2020, due to the Covid-19 pandemic. Claimant said he is unsure why Siouxland would terminate his care in October of 2020 due to a positive drug screen, when he hasn't seen anyone from Siouxland since approximately March of 2020.

At the time of hearing, claimant testified the only thing he has to control his pain is use of the SCS.

In an October 22, 2020 letter, claimant's counsel indicated claimant had not been seen regularly at Siouxland. Counsel requested for claimant to have monthly appointments for pain management. (Ex. 2)

In a July 6, 2021 letter, defense counsel wrote claimant's counsel indicating Siouxland terminated claimant's care for noncompliance due to a failed drug screen. Claimant had a care appointment with Joseph Chen, M.D. for August 10, 2021, in West Des Moines. (Ex. B)

Claimant testified he does not have a car and relies on the help of others for transportation. He said he can ride in a vehicle for approximately 45 minutes before he has to get out and stretch due to back pain.

#### 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. 6.904(3)(e).

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 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).

Offering no care is the same as offering no care reasonably suited to treat the injury. Pirelli-Armstrong Tire Co. v. Reynolds; 562 N.W.2d at 437; Anderson v. Marion County Road Dept., File No. 5007973 (9/27/2004); Baker v. IBP, Inc., File No 5004435 (4/23/2004); Brueck v. Rhiner Plumbing, Heating and Cooling, File No. 5010792 (5/14/2004).

In October of 2020, claimant's counsel wrote defendant asking for authorization for claimant to treat at Midwest Pain as claimant was not able to be seen at Siouxland due to the pandemic. There is no evidence in the record defendant responded to that request until July 6, 2021. That letter set up an appointment for claimant with Dr. Chen in West Des Moines on August 10, 2021. In brief, defendant failed to respond to claimant's request for authorization to a pain clinic for approximately eight months. The only care offered is an evaluation with Dr. Chen in West Des Moines, which is approximately a three hour drive from the Sioux City area.

Claimant has not been seen by a pain specialist since March of 2020. It is unclear why his care was terminated from Siouxland in October of 2020 for a positive

drug screen when claimant had not been seen at Siouxland since March of 2020. Claimant requested authorization for treatment at another area pain clinic in October of 2020. Defendant failed to respond to the request until July of 2021. The approximate eight month delay between the request and the offer of care is found unreasonable.

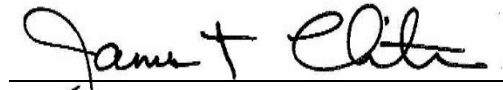
Given this record, claimant's petition for alternate medical care is granted, in part. Defendant shall authorize and pay for pain management for claimant in the Sioux City area. Defendant shall also authorize and pay for claimant's mental health treatment. The record does not indicate claimant had regular appointments with a manufacturing representative regarding the spinal cord stimulator. It is left to the parties to reach a resolution regarding periodic adjustments of the SCS.

ORDER

Claimant's petition for alternate medical care is granted, in part, and denied, in part.

Defendant shall authorize and pay for pain management for claimant in the Sioux City area. Defendant shall also authorize and pay for claimant's mental health treatment.

Signed and filed this 9<sup>th</sup> day of July, 2021.

  
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JAMES F. CHRISTENSON  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Dennis Mahr (via WCES)

Lori Scardina Utsinger (via WCES)