

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JEFF BECK,

Claimant,

vs.

SPECIALTIES COMPANY, LLC/IRVING  
MATERIAL INDUSTRIES,

Employer,

and

ZURICH AMERICAN INSURANCE  
COMPANY,Insurance Carrier,  
Defendants.

File No. 19004950.01

ALTERNATE MEDICAL  
CARE DECISION

Head Note No.: 2701

On October 8, 2021, claimant filed an original notice and petition for alternate medical care under Iowa Code section 85.27, invoking the provisions of rule 876 IAC 4.48. On October 18, 2021, defendants filed an Answer accepting that claimant sustained a left shoulder injury, which arose out of and in the course of his employment on August 1, 2019. In the same Answer, defendants deny liability for claimant's alleged mental health condition. As such, this alternate medical care decision will only address the left shoulder condition.

This alternate medical care claim came on for hearing before the undersigned on October 20, 2021, at 10:30 a.m. 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 consists of Claimant's Exhibit 1, which includes a total of 10 pages, and defendants' Exhibits A and B, which also includes a total of 10 pages. Mr. Beck was the only witness to provide testimony. Counsel for both parties provided argument.

## ISSUE

The issue presented for resolution is whether claimant is entitled to alternate medical care consisting of a referral to a pain management specialist.

## FINDINGS OF FACT

Having considered all evidence and testimony in the record, the undersigned finds:

Claimant, Jeff Beck, sustained a work-related injury to his left shoulder on August 1, 2019. Defendants have provided medical treatment and authorized medical care for the work injury since the arbitration decision. Matthew J. Bollier, M.D., served as claimant's authorized treating surgeon. Dr. Bollier performed a left shoulder rotator cuff repair and open subpectoral biceps tenodesis on February 26, 2020. (Ex. 1, p. 5) Despite undergoing surgery, claimant continued to experience pain in the left shoulder; however, he was demonstrating good range of motion and strength. (Ex. 1, p. 7) A repeat MRI, dated July 27, 2020, revealed no new rotator cuff tear and an intact repair. (Ex. 1, p. 5) Dr. Bollier administered corticosteroid injections; however, the injections did not provide claimant with any relief. (Id.) Dr. Bollier explained to claimant that such a finding indicates that there are no pain generators in the shoulder joint itself. (Ex. A, p. 3) Dr. Bollier opined claimant's pain complaints are out of proportion with his physical findings. (Id.)

Dr. Bollier placed claimant at maximum medical improvement on September 25, 2020. (Ex. 1, p. 5) Dr. Bollier's medical records note that claimant declined to take any pain medication or comply with a home exercise program to improve his shoulder function. (Id.)

At the request of Dr. Bollier, claimant presented for a functional capacity evaluation on October 7, 2020. (See Ex. 1, p. 4) Claimant demonstrated capabilities and functional tolerances to function within the heavy physical demand level. (Ex. 1, p. 4)

On February 12, 2021, Dr. Bollier observed that claimant was tender along the trapezius muscle belly, which he felt was consistent with claimant's complaints of myofascial pain. (Ex. 1, p. 8) Dr. Bollier discussed treatment options with claimant, which included NSAIDS, heat, and massage. (Id.) Dr. Bollier noted that claimant could complete this treatment options on his own. (Id.) Following his examination, Dr. Bollier opined, "His current pain is not indicative of left shoulder structural pathology and review of MRI following surgery did not show new rotator cuff tears." Dr. Bollier recommended that claimant take a short course of ibuprofen and Tylenol to aid in the inflammation and discomfort he was experiencing. (Id.) Lastly, Dr. Bollier opined that no follow-up treatment, including any updated MRIs or physical therapy, was needed. (Id.)

Claimant presented to Dr. Gorsche on August 5, 2021, with ongoing complaints of shoulder pain, cramping in the biceps muscle, and numbness in the thumb, index, and long fingers. (Ex. 1, p. 9) Dr. Gorsche noted that he could order nerve conduction studies to see if he could find a cause for claimant's numbness; however, he did not feel that such studies would be related to his shoulder issues. (Id.) Dr. Gorsche concluded

his report by stating, “At this point, this is something he is just going to have to live with.” (Id.)

Counsel for claimant sent a letter to defendants, requesting additional treatment from a pain management specialist on September 16, 2021. (Ex. 1, p. 3). Claimant cites to Dr. Gorsche’s opinion that he has nothing more to offer, and the FCE’s notation that claimant continues to experience significant chronic pain. (Id.) There is no indication that any medical professional has referred claimant to a pain management specialist. To date, defendants have not authorized any additional care.

### 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).

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); Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); 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. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). 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).

To establish a claim for alternative medical care, an employee must show that the medical care furnished by the employer is unreasonable. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010).

In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997), the supreme court held that “when evidence is presented to the commissioner 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 commissioner is justified by section 85.27 to order the alternate care.”

Claimant seeks an order authorizing a referral to a pain management specialist. Claimant continues to experience ongoing pain and discomfort in his left shoulder. Claimant indirectly asserts that the pronouncements by Drs. Bollier and Gorsche that no further care is needed is tantamount to defendants providing no care at all. Claimant's rationale is logical and reasonable.

It is undisputed that claimant continues to report left shoulder symptoms and desires additional treatment by means of an evaluation by a pain management specialist. However, claimant has not taken any steps to obtain evidentiary support for such a request. There are no outstanding referrals or treatment recommendations. No physician has recommended claimant present for any additional treatment. The only medical opinions in the evidentiary record are those of Drs. Bollier and Gorsche who provide no further treatment is recommended or necessary. The evidentiary record does not contain a rebuttal report criticizing the opinions of Drs. Bollier and Gorsche, or recommending additional treatment.

In this case, claimant produced no evidence to establish that the care offered by defendants to date has been inferior or less extensive than other available care. The evidentiary record establishes that claimant continues to have symptoms; however, the current evidentiary record also establishes through unrebutted medical evidence that no further medical care is being recommended at this time.

Claimant asserts the conservative treatment he has received since undergoing surgery has not been beneficial or effective. Unfortunately, ineffectiveness alone does not render medical treatment inferior when no superior alternative has been recommended by a medical professional. Moreover, Dr. Bollier has recommended treatment options that claimant can – but has chosen not to – do on his own, such as taking NSAIDS, following a home exercise program, heat, and massage.

The most recent medical opinion in the evidentiary record is from Dr. Gorsche. Dr. Gorsche, like Dr. Bollier, concluded that no additional treatment is warranted at this time. There is no medical opinion in the evidentiary record in response to Dr. Gorsche's conclusion. There is no specific treatment that is currently recommended that defendants are refusing or failing to provide. Claimant has not identified alternate or additional treatment, recommended by a physician, that can be attempted to treat claimant's shoulder condition. Claimant is simply requesting a referral to a pain management specialist, to which defendants are not statutorily obligated to entertain without supporting medical evidence. Defendants are not disputing liability, nor are they refusing to authorize any pending care recommendations.

Defendants have authorized all reasonable medical care recommended by medical providers. Defendants have authorized follow-up visits when requested. No active treatment recommendations are pending. Defendants have not denied any recommended care at the present time because no further care is recommended. There is no evidence the authorized and evaluating physicians are inadequately treating

claimant. The authorized treating physician has simply declined to recommend further treatment.

Given that claimant continues to suffer with left shoulder complaints, Dr. Bollier and Dr. Gorsche's failure to recommend additional treatment is undoubtedly frustrating; and a referral for an evaluation by a pain management specialist is certainly reasonable. However, desirability of a certain course of action is not the legal standard utilized in alternate medical care proceedings. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). Therefore, I conclude that claimant has failed to prove that the care offered by defendants has been unreasonable. Claimant has not carried his burden and for that reason his alternate care petition is denied.

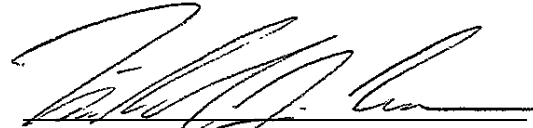
Given the defendants' obligation to continuously investigate a claim, the claimant is encouraged to file a subsequent petition for alternate medical care if/when he obtains a favorable opinion recommending additional treatment.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's petition for alternate medical care is DENIED.

Signed and filed this 22<sup>nd</sup> day of October, 2021.



MICHAEL J. LUNN  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served as follows:

Thomas Wertz (via WCES)

Jason Kidd (via WCES)