

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

PAM DEARDORFF,

Claimant,

vs.

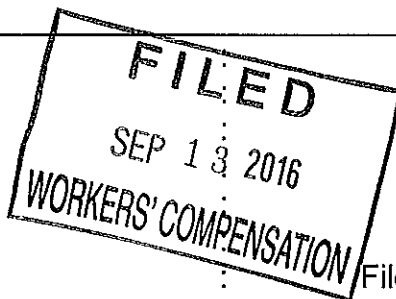
GITS MANUFACTURING CO.,

Employer,

and

TRAVELERS PROPERTY CASUALTY,

Insurance Carrier,  
Defendants.



File No. 5042390, 5042931

ALTERNATE MEDICAL

CARE DECISION

Head Note No.: 2701

STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapters 17A and 85. The expedited procedure of rule 876 IAC 4.48, the "alternate medical care" rule, is requested by claimant, Pam Deardorff. Claimant filed a petition on September 1, 2016, requesting treatment for his low back pain.

Defendant filed an answer on September 7, 2016. Defendant admitted liability for the low back pain condition sought to be treated by this proceeding. It should also be noted that on August 11, 2014, the agency found claimant to have sustained a permanent back condition arising out of her work. This finding was affirmed on inter-agency appeal on September 10, 2015. The agency's finding was appealed to Iowa District Court, Polk County. On May 19, 2016, the District Court upheld the agency's findings in full. This decision is on appeal to the appellate courts.

The alternate medical care claim came on for hearing on September 13, 2016. The proceedings were recorded digitally, and constitute the official record of the hearing. By an order filed February 16, 2015 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 evidentiary record consists of claimant's exhibit 1-5, defendant's exhibits A, and the testimony of the claimant.

## ISSUE

The issue presented for resolution is whether claimant is entitled to alternate medical care in the form of authorization for treatment with Dr. Linda Robinson.

## FINDINGS OF FACT

The undersigned having considered all of the testimony and evidence in the record finds:

On September 23, 2010, claimant suffered an injury to her low back. Defendants denied responsibility. The matter proceeded to hearing on April 17, 2014. During the hearing, claimant testified she was receiving treatment for her chronic back pain from Dr. Maen Haddadin at CHI Health Alegent Creighton Clinic in Corning, Iowa.

The August 11, 2014, Arbitration Decision found that claimant had proved her low back pain was causally connected to her work and therefore the defendants were responsible for ongoing medical treatment for claimant's low back condition.

Following the Arbitration Decision, claimant attempted to refill a prescription for Hydrocodone and Oxycodone which she takes as palliative treatment of her low back pain. The pharmacy required her to use her health insurance as workers' compensation was denied. When claimant inquired about entitlement to this care, defendants replied that the claimant was on appeal and that Dr. Smith had felt that any further medical treatment was related to the claimant's underlying degenerative condition.

The denial continued through August 2016 when defendants offered to send claimant to an occupational medicine specialist in Clive, Iowa, approximately 85 miles from the residence of the claimant.

Claimant testified that she is happy with the current care provided by Linda Robinson, D.O., who took over claimant's case when Dr. Haddadin moved out of the area. The Alegent Clinic in Corning is approximately 26 miles from claimant's residence.

Due to her ongoing back condition, traveling long distances is difficult for her. Claimant expressed dissatisfaction with the proffered care and proceeded forward with the alternate care petition.

## CONCLUSIONS 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. 6.14(6).

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. Townsehd Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 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 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).

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 1975).

Alternate care included alternate physicians when there is a breakdown in a physician/patient relationship. Seibert v. State of Iowa, File No. 938579 (September 14, 1994); Nueone v. John Morrell & Co., File No. 1022976 (January 27, 1994); Williams v. High Rise Const., File No. 1025415 (February 24, 1993); Wallech v. FDL, File No. 1020245 (September 3, 1992) (aff'd Dist Ct June 21, 1993).

Defendants repeatedly denied care for the claimant continuing even after an arbitration decision determined claimant's low back condition was causally related to her work. Despite losing repeated appeals, defendants continued to deny care.

Defendants assertion that no alternate medical care petition was filed earlier does not excuse them from following the orders of the agency or the District Court.

Because the defendants denied liability, claimant sought other care. Defendants were aware of this via discovery, the claimant's testimony via deposition, the claimant's testimony at hearing, and via correspondence after the hearing with the claimant's counsel. Defendants continued to disclaim responsibility and failed to take any action to provide care for the claimant up until August 28, 2016, when defendants' counsel averred that they were in the process of setting up an appointment with Dr. Miller, a physician located over 85 miles away from the claimant.

It is determined defendant did not promptly offer reasonable medical treatment to claimant.

It is disingenuous for defendant to deny liability for a condition and then question claimant's choice to secure prompt treatment of his complaints. Defendant elected to deny liability throughout the discovery process, at hearing, following the hearing, and during appeals. As a result, defendant bears the risk of claimant securing prompt medical treatment and establishing a physician-patient relationship with another provider. I find it unreasonable to require claimant to interrupt her established course of care with Dr. Robinson and the Alegent Clinic where she has been seen for over two years.


It is determined defendant failed to provide prompt treatment of claimant's low back condition and that they have abandoned the right to direct care by continuing to deny liability.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's request for alternate care in the form of authorization of Dr. Robinson as a treating physician for claimant's low back condition is granted.

Signed and filed this 13<sup>th</sup> day of September, 2016.

  
JENNIFER S. GERRISH-LAMPE  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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