

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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TAMMY WHYNOTT f/k/a TAMMY  
KAUFFMAN,

Claimant,

vs.

ALLSTEEL, INC.,

Employer,  
Self-Insured,  
Defendant.

File No. 20002239.02

ALTERNATE MEDICAL CARE

DECISION

Head Note: 2701

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On November 2, 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 November 4, 2021, Defendant filed an Answer accepting that claimant sustained injuries to her neck and bilateral shoulders, which arose out of and in the course of her employment on February 11, 2020. In the same Answer, defendants deny liability for claimant's alleged back condition. As such, this alternate medical care decision will only address the neck and bilateral shoulder conditions.

This alternate medical care claim came on for hearing before the undersigned on November 15, 2021, at 8:30 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 Exhibits 1 and 2, which include a total of 14 pages, and Defendant's Exhibits A and B, which include a total of 9 pages. Defendant waived any objection to claimant exceeding the exhibit page limitation. The parties stipulated that claimant presented to Austin Ramme, M.D. for her left shoulder on at least two occasions. Ms. Whynott 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 psychologist, a pain management specialist, a second opinion consultation with a neurologist, and an orthopedic consultation for the left shoulder. Additionally, claimant would like for her care to be transferred to the University of Iowa Hospitals and Clinics.

## FINDINGS OF FACT

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

Claimant, Tammy Whynott, sustained a work-related injury to her neck and bilateral shoulders on February 11, 2020. Defendant authorized medical care for the work injury through Steindler Orthopedic Clinic. Benjamin MacLennan, M.D. serves as claimant's authorized treating surgeon with respect to the cervical spine. Dr. MacLennan performed an anterior cervical discectomy and fusion at C5-C7 in September, 2020. (See Ex. A, p. 3) Post-surgically she noted some mild improvement in her symptoms; however, she continues to experience pain in her neck, with radiating pain in her left shoulder. (Ex. 1, p. 10) A post-surgical MRI revealed ongoing compression of the left C6 and bilateral C7 nerve roots. (Ex. 1, p. 5) An April 9, 2021, EMG revealed evidence that could be consistent with subacute to chronic left C6 motor neuropathy. (Id.)

On August 27, 2021, Dr. MacLennan recommended continued nonoperative therapies, including pain management. (Ex. 1, p. 11) Defendant has offered to return claimant to Dr. Goldish for additional pain management. (Ex. B, p. 1)

On September 6, 2021, Dr. MacLennan referred claimant to a neurosurgeon for a second opinion. Interestingly, he actually provided two referrals: one to a neurosurgeon at the University of Iowa Hospitals and Clinics, and one to Chad Abernathey, M.D. (Ex. 1, p. 12; Ex. A, p. 1; see Ex. B, p. 1)

Defendant elected to schedule an evaluation with Dr. Abernathey. The evaluation took place on November 3, 2021. (Ex. 2, p. 1) According to claimant, the appointment only lasted approximately five minutes. Dr. Abernathey opined that claimant has chronic subjective pain without objective findings. (Id.) Dr. Abernathey expressed hesitancy with claimant pursuing additional surgical interventions. He estimated that further surgical intervention would carry a 50 percent chance of successfully improving her status. (Id.) Lastly, Dr. Abernathey opined that he would favor an orthopedic evaluation of her left shoulder prior to consideration of any decompressive surgical procedures. (Id.)

Daniel Goldish, M.D. serves as claimant's authorized pain management specialist. Dr. Goldish referred claimant for treatment with a pain psychologist on April 8, 2021 and May 18, 2021. (Ex. 1, pp. 2, 3, 4) Defendant has attempted to schedule claimant for treatment with a pain psychologist; however, defendant has been unsuccessful in its efforts. Defendant issued a referral to Luke Hansen, Psy.D., per Dr. Goldish's recommendation; however, Dr. Hansen was not accepting any new patients at the time. Defendant also attempted to refer claimant to UIHC on June 4, 2021; however, UIHC informed defendant on July 14, 2021, that they were not accepting new patients. Moreover, UIHC provided that they were not honoring referrals from outside providers. (See Ex. B, p. 1)

Dr. Goldish discussed the possibility of referring claimant to UIHC pain providers for subsequent medical care in the hopes of facilitating a referral to a pain psychologist. (Ex. 1, p. 6) This discussion occurred on July 6, 2021.

Austin Ramme, M.D. was previously authorized to assess claimant's left shoulder.

### 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. 6.904(3)(e); Bell Bros. Heating & 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. Bell Bros. Heating & Air Conditioning v. 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 directing defendant to refer claimant's care to the University of Iowa Hospitals and Clinics for various evaluations. More specifically, claimant seeks a referral to a pain psychologist, a pain management specialist, a second opinion consultation with a neurologist, and an orthopedic consultation for her left shoulder. Claimant requests that her care be transferred to the University of Iowa

Hospitals and Clinics as it is a tertiary care center. She also asserts it would be convenient to have all of her physicians located in a single location. Lastly, claimant desires a transfer of care to UIHC as an attempt to determine if there is something that is potentially available to treat her ongoing symptoms and conditions. In support of her request, claimant highlights the recommendations of Drs. MacLennan, Goldish, and Abernathey.

I will first address claimant's request for a second opinion evaluation with a neurologist at UIHC. Dr. MacLennan serves as one of claimant's authorized treating physicians. Dr. MacLennan is a spine specialist at Steindler Orthopedic Clinic. He recommended that claimant present for a second opinion regarding her cervical spine with a neurosurgeon. For an unknown reason, Dr. MacLennan provided two referrals: a nonspecific referral to a neurosurgeon at UIHC, and a referral to Dr. Abernathey. It can reasonably be assumed that Dr. MacLennan did not intend for claimant to present to two different neurosurgeons for a second opinion. I interpret Dr. MacLennan's multiple referrals for the same evaluation to indicate an indifference as to who provided the second opinion. Given that defendant has the right to direct care under Iowa Code section 85.27, defendant chose to send claimant to Dr. Abernathey instead of a neurosurgeon at UIHC.

On the one hand, agency precedent has long held that defendants may not interfere with medical judgment and that a referral from a physician does not require permission of the defendants. However, it is difficult to say that defendant interfered with the medical judgment of Dr. MacLennan in this scenario. Defendant fulfilled Dr. MacLennan's recommendation when they referred claimant to Dr. Abernathey for a second opinion. I do not find defendant's referral to Dr. Abernathey as opposed to a neurosurgeon at UIHC to be an instance of defendant interfering with the medical opinions of an authorized treating physician.

Although I understand why it might be desirable to claimant, I find that the requested third-opinion at UIHC is not reasonably necessary given the evidence and circumstances presented. I find defendant provided a reasonable second opinion evaluation through a qualified neurosurgeon, Dr. Abernathey.

Next, I will address claimant's request for a referral to pain psychologist and pain management physician. Dr. Goldish serves as one of claimant's authorized treating physicians. Dr. MacLennan referred claimant to Dr. Goldish, a pain management specialist at Steindler Orthopedic Clinic. Defendant fulfilled Dr. MacLennan's recommendation for pain management when it referred claimant to Dr. Goldish.

Dr. Goldish recommended that claimant present for treatment with a pain psychologist back in April 2021. To date, claimant has not presented to a pain psychologist. Claimant asserts defendant's failure to authorize a pain psychologist in the Iowa City or surrounding area is unreasonable.

Defendant contends it has not abandoned care. Rather, defendant asserts it has been diligently searching for a pain psychologist. Defendant does not dispute that claimant is entitled to a referral to a pain psychologist; in fact, defendant has attempted to schedule claimant for an appointment with two different providers. Unfortunately,

defendant has not been able to find a pain psychologist in the area that is accepting new patients at this time. Dr. Goldish confirms the same in his medical records. Defendant attempted to refer claimant to Dr. Hansen, a pain psychologist. Unfortunately, Dr. Hansen is not taking any new patients at this time. Additionally, UIHC relayed that they are not accepting any out of network referrals at this time. So while it is clear a delay in claimant receiving medical treatment with a pain psychologist has occurred, it is difficult to attribute such delay to the defendant as it is clear defendant has attempted to fulfill Dr. Goldish's referral.

At this time, I cannot find that defendant has abandoned care. Generally speaking, a six-month delay is unreasonable. That being said, defendant has attempted to secure treatment with a pain psychologist. The options for pain psychologists within the area appear to be limited. This scarcity is likely amplified by the fact we are in the middle of a pandemic. Some leniency is afforded to defendant given the noted attempts to secure treatment with a pain psychologist. Importantly, defendant attempted to refer claimant to a pain psychologist at UIHC, as requested by claimant in this alternate medical care proceeding. The referral was declined by UIHC; it was not denied by defendant.

That being said, Dr. Goldish's referral must be authorized in a timely manner. Defendant shall promptly authorize any care and treatment recommended by the authorized providers, including treatment with a pain psychologist. If an order from this agency authorizing care will not override UIHC's policy regarding out-of-network referrals, defendant may have to look into alternatives such as transporting claimant to Des Moines or the Quad Cities for treatment with a pain psychologist. Alternatively, defendant could look into telehealth appointments with a pain psychologist. Failure to promptly authorize care can be detrimental to claimant's treatment. With any further delays in the authorization and scheduling of such treatment the defendant risks the danger of a determination by this agency that they have abandoned care.

Next, claimant is requesting an orthopedic evaluation of her left shoulder. As previously discussed, Dr. Abernathey evaluated claimant for a second opinion. In his report, Dr. Abernathey essentially recommended that claimant undergo an orthopedic evaluation of her left shoulder prior to considering any additional surgical intervention on her cervical spine. Defendant asserts it is unlikely Dr. Abernathey was aware claimant had already had an orthopedic evaluation of her left shoulder with Dr. Ramme. It should be noted that defendant was not aware claimant was seeking a referral for an orthopedic evaluation of her left shoulder prior to the alternate medical care hearing. Nevertheless, defendant offered to return claimant for an updated evaluation with Dr. Ramme.

While I agree claimant is entitled to an updated orthopedic evaluation of her shoulder, defendant has done nothing to lose its right to direct medical care at this time. Defendant has agreed to provide, or has previously provided, all of the care requested by claimant. Defendant may select an appropriate physician to conduct an updated evaluation of claimant's shoulder so long as the choice is reasonable and otherwise comports with Iowa law. If delays were to continue in arranging an appointment for a

pain psychologist, the delays may become unreasonable. As of the time of hearing, however, the delays which have occurred have not been proven to be unreasonable.

Claimant introduces no evidence of specific medical treatment that could or would be performed at UIHC that is superior to or more extensive than the medical treatment offered through Steindler Orthopedic Clinic. I find Ms. Whynott has received reasonable and appropriate medical care through qualified physicians at Steindler Orthopedic Clinic. I also find that claimant has not proven that the care offered by defendant is inferior or less extensive than other available care being requested by claimant. 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 defendant has been unreasonable. Claimant has not carried her burden and for that reason, this alternate care petition is denied.

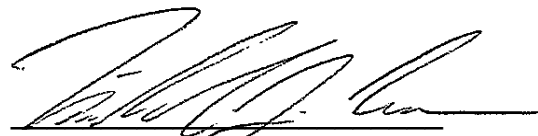
ORDER

THEREFORE, IT IS ORDERED:

Claimant's petition for alternate medical care is denied.

Claimant's request that this agency order defendant to transfer her care to UIHC is denied. However, defendant is ordered to promptly provide the treatment recommended by the authorized providers. This treatment includes, but is not limited to, an orthopedic evaluation of claimant's left shoulder and treatment with a pain psychologist. Failure to provide the recommended treatment in a prompt manner could result in a determination that the defendant has abandoned care.

Signed and filed this 18<sup>th</sup> day of November, 2021.

A handwritten signature in black ink, appearing to read "Michael J. Lunn", is written over a horizontal line.

MICHAEL J. LUNN  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Edward Cervantes (via WCES)

Edward Rose (via WCES)