

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ANTONIA NAAB,  Claimant,  vs.   DUBUQUE COUNTY, SUNCREST MANNER,  Employer,  IOWA MUNICIPALITIES WORKERS' COMPENSATION ASSOCIATION,  Insurance Carrier,  Defendants.	File No. 20008814.01          ALTERNATE CARE DECISION          Headnotes: 2701
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## STATEMENT OF THE CASE

On March 22, 2022, Antonia Naab filed an application for alternate care under Iowa Code section 85.27 and agency rule 876 IAC 4.48. The defendants, employer Dubuque County and insurance carrier Iowa Municipalities Workers' Compensation Association (IMWCA), answered. The defendants accept liability for Naab's back injury of June 24, 2022, but dispute her entitlement to the requested alternate care.

The undersigned presided over an alternate care hearing held by telephone and recorded on April 1, 2022. That recording constitutes the official record of the proceeding under agency rule 876 IAC 4.48(12). Naab participated personally and through attorney Mark Sullivan. The defendants participated through attorney Jane Lorentzen. The record consists of:

- Claimant's Exhibit 1;
- Defendants' Exhibits A through C;
- Hearing testimony by Naab.

# ISSUE

The issue under consideration is whether Naab is entitled to alternate care in the form of a transfer of care to Dr. Jonathan Citow.

## FINDINGS OF FACT

Naab sustained a back injury while working as a CNA for the County on June 24, 2020. The defendants chose Dr. Chad Abernathey to provide care. He performed two surgeries, both a left L4-5 laminectomy and discectomy, to address a disc herniation and nerve root impingement. (Ex. A, p. 1; Testimony) Neither of these procedures were successful. (Ex. A; Testimony) Consequently, Dr. Abernathey referred Naab to Dr. Howard at the University of Iowa Hospitals and Clinics (UIHC), just under a two-hour drive from Naab's residence. (Testimony)

Matthew Howard III, M.D., is the chair of the neurosurgery department at UIHC. (Ex. C) Before hearing, Naab saw Dr. Howard on one occasion, July 13, 2021. (Ex. A) He reviewed her most recent magnetic resonance imaging (MRI) and conducted a physical examination with a nurse practitioner in the room. (Ex. A; Testimony) Dr. Howard felt conservative care was the best course for her care and referred her to the UIHC pain clinic. (Ex. A; Testimony)

Naab felt she and Dr. Howard did not have a good rapport. She described him as elderly. Naab testified his hand was shaking while dictating notes during his examination of her. (Testimony)

On July 30, 2021, Amy Pearson, M.D., saw Naab. (Ex. B; Testimony) Dr. Pearson recommended water therapy, but Naab did not participate in it because there were no openings in water therapy at the YMCA in Dubuque. Pedersen began a new job in September of 2021 and her workday starts at 8:00 a.m. The YMCA only offered one time of the day in Dubuque at 7:00 a.m. That was incompatible with her work schedule, which began at 8:00 a.m. Naab was unable to find any other swim therapy option in the Dubuque area. (Testimony; Ex. B, p. 2)

Naab purchased the vitamins Dr. Pearson recommended. She has taken the vitamins as directed. At the time of hearing, Naab had not experienced any benefit from the vitamins. Gabapentin made her "extremely tired," so she stopped taking it. Cymbalta provides her some pain relief. (Testimony; Ex. B, p. 2)

On November 24, 2021, Dr. Pearson administered an injection at the pain clinic. (Ex. B, p. 1; Testimony) The injection did not alleviate her pain. (Ex. B, p. 2; Testimony) Naab's symptoms were better before the injection than at the time of hearing. (Ex. B, p. 2; Testimony)

Dr. Pearson saw Naab for a follow-up on February of 2022. (Testimony; Ex. B) Naab informed Dr. Pearson she had started experiencing discoloration in her left leg and foot. (Testimony; Ex. B, p. 2) Dr. Pearson noted Naab did not meet the criteria for complex regional pain syndrome (CRPS). (Ex. B, p. 3) She opined, "Based on patient's physical exam and clinical exam, there is likely SI joint involvement and musculoskeletal component with her back pain." (Ex. B, p. 3)

Dr. Pearson recommended physical therapy such as water therapy "to strengthen her core body muscles." (Ex. B, p. 3) She continued Naab's Cymbalta prescription. (Ex. B, p. 3) Dr. Pearson also referred Naab to the neurosurgery clinic "to

be re-evaluated as the disc herniation was unchanged on recent MRI image even after discectomy.” (Ex. B, p. 3) At the time of hearing, Naab had not followed up with the UIHC neurosurgery department. (Testimony)

Claimant’s counsel requested Naab’s care be transferred from UIHC to Dr. Citow in a letter dated March 15, 2022. Jessica Rutherford, a claims examiner at IMWCA, denied the request in a letter dated March 17, 2022, because “Dr. Howard is well respected among his peers and the Division as the head of Neurosurgery Department at [UIHC].” (Ex. 1) Naab then applied for alternate care with the agency.

While Naab feels she does not have a good rapport with Dr. Howard after one visit which resulted in a referral to the UIHC pain clinic for conservative care, there is an insufficient basis in the evidence from which to conclude there has been any sort of breakdown in the doctor-patient relationship, just dissatisfaction with the first examination on Naab’s part. It is common for surgeons to recommend conservative care before performing an invasive procedure. Given Naab had already undergone two surgeries, both consisting of a left L4-5 laminectomy and discectomy, Dr. Howard’s referral to the UIHC pain clinic was reasonable. Conservative care was unsuccessful, so Dr. Pearson referred Naab back to the UIHC neurosurgery department for evaluation as a candidate for surgery.

## 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 cannot 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; 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.

Dr. Abernathey was unable to successfully treat Naab's back injury after performing two surgeries, each of which consisting of a left L4-5 laminectomy and discectomy. Consequently, he referred Naab to the UIHC neurosurgery department, of which Dr. Howard is the chair. She was dissatisfied with him after one appointment.

During that appointment, Dr. Howard reviewed her MRIs and performed an examination. He decided against surgery at that time, opting for conservative care at the UIHC pain clinic. This is a common course of care, especially after a patient has undergone two unsuccessful invasive surgeries like Naab has. The conservative care did not work so Dr. Pearson referred Naab back to the UIHC neurosurgery department for further evaluation.

Naab is understandably frustrated given the length of time she has had to live with her symptoms and multiple providers being unable to provide treatment that eliminates her symptoms. But she only had one appointment with Dr. Howard. His actions during that appointment were reasonable, even if Naab is dissatisfied with them and her subsequent care at UIHC.

Under the Iowa Workers' Compensation Act, a claimant's dissatisfaction with care is insufficient to trigger the right to alternate care. In this case, the weight of the evidence shows Naab's care at UIHC has been reasonable. Naab has therefore failed to meet her burden. Her application for alternate care is therefore denied.

### **ORDER**

Under the above findings of facts and conclusions of law, it is ordered that the application for alternate care is DENIED.

On February 16, 2015, 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 a district court under the Iowa Administrative Procedure Act, Iowa Code chapter 17A.

Signed and filed this 1st day of April, 2022.

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

BEN HUMPHREY

Deputy Workers' Compensation Commissioner

The parties have been served, as follows:

Mark Sullivan (via WCES)

Jane Lorentzen (via WCES)