

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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AMADA ZAMORA,

Claimant,

vs.

CBS STAFFING, LLC,

Employer,

and

MIDWEST INSURANCE COMPANY,

Insurance Carrier,  
Defendants.

**FILED**  
MAY 17 2019  
WORKERS' COMPENSATION

File No. 5068055

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

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STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapters 85 and 17A. The expedited procedure of rule 876 IAC 4.48 is invoked by claimant, Amada Zamora. Claimant appeared personally and through her attorney, Christopher Spaulding. Defendants appeared through their attorney, Danielle Augustine.

The alternate medical care claim came on for hearing on May 17, 2019. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's February 16, 2015 Order, the undersigned has been delegated authority to issue a final agency decision in this alternate medical care proceeding. Therefore, this ruling is designated final agency action and any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code section 17A.

The evidentiary record consists of Claimant's Exhibit 1 and Defendants' Exhibits 1-4, and claimant's testimony during the telephonic hearing. At the outset of the hearing defendants accepted liability for the May 13, 2018 work injury and for the right shoulder condition that for which claimant is seeking treatment. However, approximately 25 minutes into the hearing defendants clarified their position. Defendants denied that the current right shoulder condition for which claimant is seeking treatment is causally related to the May 13, 2018 work injury. Because agency rule 876 IAC 4.48(7) provides that an application for alternate medical care cannot be filed if liability of the employer is disputed, the hearing was immediately stopped.

Before any benefits can be ordered, including medical benefits, compensability of the claim must be established, either by admission of liability or by adjudication. The summary provisions of Iowa Code section 85.27, as more particularly described in rule 876 IAC 4.48, are not designed to adjudicate disputed compensability of a claim.

The Iowa Supreme Court has held:

We emphasize that the commissioner's ability to decide the merits of a section 85.27(4) alternate medical care claim is limited to situations where the compensability of an injury is conceded, but the reasonableness of a particular course of treatment for the compensable injury is disputed.

....

Thus, the commissioner cannot decide the reasonableness of the alternate care claim without also necessarily deciding the ultimate disputed issue in the case: whether or not the medical condition Barnett was suffering at the time of the request was a work-related injury.

....

Once an employer takes the position in response to a claim for alternate medical care that the care sought is for a noncompensatory injury, the employer cannot assert an authorization defense in response to a subsequent claim by the employee for the expenses of the alternate medical care.

R. R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 197-198 (Iowa 2003).

Given the denial of liability, claimant's original notice and petition for alternate medical care must be dismissed. Given their denial of liability for the condition sought to be treated in the petition for alternate medical care, defendants lose their right to control the medical care claimant seeks during their period of denial and the claimant is free to choose that care. Brewer-Strong v. HNI Corp., 913 N.W.2d 235 (Iowa 2018); Bell Bros. Heating v. Gwinn, 779 N.W.2d 193 (Iowa 2010).

As a result of the denial of liability for the condition sought to be treated in this proceeding, claimant may obtain reasonable medical care from any provider for this treatment but at claimant's expense and seek reimbursement for such care using regular claim proceedings before this agency. Haack v. Von Hoffman Graphics, File No. 1268172 (App. July 31, 2002); Kindhart v. Fort Des Moines Hotel, I Iowa Industrial Comm'r Decisions No. 3, 611 (App. March 27, 1985). "[T]he employer has no right to choose the medical care when compensability is contested." Bell Bros. Heating v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010). Therefore, defendants are precluded from asserting an authorization defense as to any future treatment during their period of denial. Brewer-Strong v. HNI Corp., 913 N.W.2d 235 (Iowa 2018).

IT IS, THEREFORE, ORDERED:

Claimant's original notice and petition for alternate medical care is hereby dismissed without prejudice.

If claimant seeks to recover the charges incurred in obtaining care for the condition for which defendants denied liability, defendants are barred from asserting lack of authorization as a defense to those charges during the period of their denial.

Signed and filed this 17<sup>th</sup> day of May, 2019.



ERIN Q. PALS  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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