BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MIRIAM RODAS, Claimant, vs. SUMMIT PRODUCTS, Employer, FIRSTCOMP INS. CO., Insurance Carrier, Defendants.	File No. 22003841.01 ALTERNATE CARE DECISION

STATEMENT OF THE CASE

On July 28, 2022, Miriam Rodas filed an application for alternate care under Iowa Code section 85.27 and agency rule 876 IAC 4.48 relating to an alleged work injury to her mouth in the form of authorization to see an occupational medicine specialist to manage medication. The defendants, employer Summit Products and insurance carrier Firstcomp Insurance Co., filed an answer in which they accepted liability for the alleged mouth injury. At hearing, Rodas also requested an order requiring the defendants to schedule an appointment with a neurologist as quickly as possible. The defendants contend no treating physician has recommended Rodas see an occupational medicine specialist and they have already arranged care with a neurologist, whose office has yet to schedule the authorized appointment with Rodas.

The undersigned presided over an alternate care hearing that was held by telephone and recorded on April 9, 2022. That recording constitutes the official record of the proceeding under agency rule 876 IAC 4.48(12). Rodas participated personally and through attorney Andrew M. Giller. The defendants participated through attorney L. Tyler Laflin. The record consists of:

- Claimant's Exhibits 1 through 3;
- Defendants' Exhibits A and B; and
- Hearing testimony by Rodas.

ISSUE

The issue under consideration is whether Rodas is entitled to alternate care in the form of:

1) Authorization of care with an occupational medicine specialist; and

2) Prompt scheduling of an appointment with a neurologist.

FINDINGS OF FACT

On March 7, 2022, Rodas sustained an injury to her mouth that required multiple surgeries by an orthodontist and may require another surgery. Her pain has continued despite these procedures. Her orthodontist believes the pain may be nerve-related and referred Rodas to her personal physician so she could get a referral to a neurologist before undergoing any additional surgery. (Testimony; Ex. 1, p. 1)

Rodas attempted to see her personal physician, but he has retired. She saw Sherry Vesely, A.R.N.P., who prescribed carbamazepine, the label for which warned of possible dizziness. (Ex. 2, p. 2; Ex. 4, pp. 1–2) The medication caused Rodas to feel dizzy. She attempted to work but was sent home because of the dizziness caused by her medication. Vesely was unwilling to give Rodas a note excusing her from work due to the dizziness caused by the carbamazepine. (Testimony)

Rodas took the carbamazepine as instructed. She ran out of the medication and was still experiencing pain. Rodas took the remainder of some pain medication her orthodontist prescribed after one of her surgeries, which alleviated her pain and allowed her to return to work.

Claimant's counsel emailed the claims examiner assigned to Rodas's claim, Karen Lugo, and informed her that the pain medication was making Rodas dizzy, it was not safe for her to work given her dizziness, and she needed to be placed on temporary total disability until she completed the medicine or sent to an occupational medicine specialist to better manage her medication. (Ex. 3, p. 3) Lugo rejected the request because three doctors cleared Rodas to work. (Ex. 3, p. 2) The record makes it unclear the doctors to whom Lugo was referring and whether they were all aware of the medication she was prescribed.

At the time of hearing, Rodas had used all of the medication doctors had prescribed for her for the pain relating to the work injury. The pain was ongoing. She had no more medicine to take for it and did not have an appointment scheduled with a doctor to address it even though the defendants had authorized care with a neurologist at Mercy pursuant to her orthodontist's referral. Mercy schedules its appointments with patients, not the defendants, and had not scheduled an appointment with Rodas as of the time of hearing. (Testimony)

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 agency "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.

Rodas is out of pain medication to alleviate her ongoing symptoms. Her orthodontist recommended she see a neurologist about her ongoing pain to make sure it is not nerve related. The defendants have acted on this referral by authorizing care with a neurologist at Mercy. However, Rodas does not have an appointment scheduled for additional care despite her ongoing symptoms because Mercy has not acted and Vesely does not want to get involved with workers' compensation. The fighting issue is whether the defendants have acted reasonably in response to the referral for Rodas to see a neurologist about her ongoing pain.

Under the circumstances, the defendants have acted reasonably. There is no indication in the record that Mercy's failure to schedule the authorized appointment is due to any action or inaction by the defendants. The delay in care has been caused by Mercy. While such a delay could become unreasonable, the facts at present do not support such a conclusion.

Rodas also seeks care with an occupational medicine or pain management specialist to manager her pain medication. No treating physician has recommended care with either type of specialist. Instead, her treating orthodontist recommended a referral to a neurologist because of her ongoing pain. The defendants have authorized this care. At this point in time, the physicians authorized to treat Rodas for her work

injury have opined that seeing a neurologist for her ongoing pain is the appropriate care. The defendants arranging for this recommended care instead of another type of specialist is reasonable in the current case.

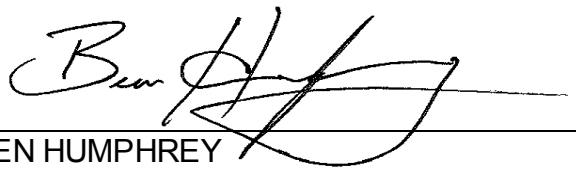
With respect to Vesely, the record is unclear what made her uncomfortable about Rodas's ongoing care. Vesely was willing to prescribe pain medication to address Rodas's symptoms from the work injury with authorization from the defendants. It appears most likely she balked at taking Rodas off work after she experienced dizziness from the medication. There is an insufficient basis in the record from which to conclude Vesely has refused to manage Rodas's pain medication. Under the current record, the defendants maintaining Vesely as an authorized provider is reasonable.

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 9th day of August, 2022.



BEN HUMPHREY
Deputy Workers' Compensation Commissioner

The parties have been served, as follows:

Andrew M. Giller (via WCES)

L. Tyler Laflin (via WCES)