

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

PAUL T. FLEETWOOD,	:	
	:	
Claimant,	:	
	:	
vs.	:	
	:	File No. 1660279.03
THE MASCHHOFFS, LLC,	:	
	:	ALTERNATE MEDICAL
Employer,	:	
	:	CARE DECISION
and	:	
	:	
SENTINEL INSURANCE COMPANY,	:	
	:	
Insurance Carrier,	:	
Defendants.	:	HEAD NOTE: 2701

**STATEMENT OF THE CASE**

On January 3, 2020, 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. Defendants filed an answer accepting that claimant sustained an injury on or about February 9, 2019, which arose out of and in the course of his employment. The alternate medical care claim came on for a telephone hearing on January 16, 2020, at 8:30 a.m. The proceedings were digitally recorded.

The record consists of claimant's exhibits 1 through 3. The record also contains defendants' exhibits A through D. Mr. Fleetwood was present throughout the hearing; however, he did not provide any testimony. Counsel for both parties provided argument.

**ISSUE**

The issue presented for resolution is whether claimant is entitled to alternate medical care consisting of neuropsychological testing performed by a provider of claimant's choosing. Claimant also seeks an order directing defendants to authorize a referral to physical therapy for his neck pain.

### FINDINGS OF FACT

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

Paul Fleetwood, claimant, sustained injuries to the neck, head, and body as a whole when he slipped and fell on ice while working for the defendant employer on February 9, 2019. Defendants authorized treatment through Kelly Dawley, ARNP and Anil Dhuna, M.D.

This is claimant's second filing for Alternate Medical Care. Claimant previously filed an alternate medical care petition on September 26, 2019, requesting a cervical MRI, and an EMG of claimant's bilateral upper extremities, as recommended by Dr. Dhuna on July 18, 2019. Additionally, claimant requested a neuropsychological evaluation as recommended by R. Broghammer, M.D. and Patrick Hitchon, M.D.

On October 9, 2019, the undersigned issued a Consent Order. The consent order provided,

Defendants agreed to authorize the requested diagnostic testing. Defendants have also agreed to authorize a neuropsychological evaluation with Daniel Tranel, Ph.D., to occur at a later date as determined by the parties.

(Consent Order, File No. 1660279.02 (October 9, 2019)).

On October 24, 2019, Ms. Dawley recommended claimant present for physical therapy and neuropsychological testing. (Exhibit 1).

On November 26, 2019, claimant's counsel produced an electronic correspondence to defendants requesting authorization of "physical therapy and memory testing in Des Moines." (Ex. 2, p. 1). The electronic correspondence did not include copies of Ms. Dawley's October 24, 2019, medical records discussing the same. Claimant's counsel drafted a follow-up electronic correspondence to defendants on December 9, 2019, providing she was still awaiting a response to the November 26, 2019, correspondence. (Ex. 2, p. 2).

Claimant's counsel produced Ms. Dawley's October 24, 2019, medical records to defendants via notice of service on December 18, 2019. (Ex. 2, p. 3). The notice of service was accompanied by a letter notifying defendants of claimant's dissatisfaction of care and intent to file an alternate medical care petition if neuropsychological testing and physical therapy were not authorized by December 23, 2019. (Id.).

Claimant's counsel contends she did not receive any response from defendants until the filing of the current petition for alternate medical care. The evidentiary record supports this contention.

In a letter dated January 13, 2020, Ms. Dawley summarized claimant's medical treatment since the date of injury and expressed concern with respect to perceived delays in the approval of treatment she has recommended. (Ex. 3).

On the same date, defendants drafted a letter to Neurology & Sleep Clinic, authorizing physical therapy as recommended by Ms. Dawley on October 24, 2019. (Ex. B). Defendants further provided, "Based on that [medical record] my clients understood that your office was scheduling that therapy and did not understand that specific authorization was needed." (Id.).

In an electronic correspondence, also dated January 13, 2020, defendants communicated to claimant's attorney that 1) they had contacted the Neurology & Sleep Clinic and specifically authorized physical therapy for claimant at Davis County Hospital; and 2) they were ready and willing to authorize and schedule claimant for a neuropsychological evaluation with Dr. Tranel. (Ex. A). Defendants further provided that they had contacted Dr. Tranel's office regarding the same. (Id.).

At hearing, claimant's counsel reaffirmed her client's dissatisfaction with the care being provided by defendants. More specifically, claimant is frustrated with the delays and difficulties he has experienced obtaining the care recommended by Ms. Dawley.

During the telephonic hearing, defendants essentially denied abandoning claimant's care. Counsel acknowledged Ms. Dawley's report noting her concerns with authorization of her treatment recommendations; counsel attributed this discrepancy to a miscommunication, or lack of communication, between defendants and Ms. Dawley's office. Defendants represented genuine frustration with the lack of communication from Ms. Dawley's office and its procedures for obtaining authorization. Defendants' counsel further represented that upon receipt of the alternate care petition, defendants' counsel contacted the Neurology & Sleep Clinic and authorized physical therapy as recommended in Ms. Dawley's October 24, 2019, medical record. In the same communication, defendants' counsel explained defendants were not aware specific authorization was necessary for physical therapy; rather, defendants believed Ms. Dawley's office would go forward with the scheduling of claimant's physical therapy without specific authorization.

Defendants' counsel at hearing indicated it was and remains defendants' intent to arrange for claimant to present to Dr. Tranel for neuropsychological evaluation as provided for in the October 9, 2019, Consent Order. Upon receipt of the December 18, 2019 and January 13, 2020 notice of services from claimant, defendants' counsel contacted the University of Iowa Hospitals & Clinics (UIHC) with respect to arranging an evaluation with Dr. Tranel. Counsel represented evaluation with Dr. Tranel has been authorized, but conceded an appointment had not yet been scheduled.

## REASONING AND 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. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 16, 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. 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 undersigned is concerned with defendants' pattern of unresponsiveness to requests for medical treatment. Defendants authorized care through Ms. Dawley, yet there have been delays and difficulties obtaining the care recommended by her. While the undersigned is not convinced defendants are solely responsible for the delays in care, defendants have a duty to monitor and direct care. This necessarily includes a duty to have open lines of communication with claimant's authorized medical providers. It is troubling to the undersigned that defendants did not act upon the requests of claimant's counsel until the alternate care petition was filed. A slight delay while waiting to obtain medical records can be reasonably anticipated; however, defendants did not subsequently act upon receipt of claimant's December 18, 2019, notice of service.

Despite the above-noted concerns, the evidence in the record provides defendants have now authorized the care claimant seeks. Defendants have authorized and provided all reasonable care to date, consisting of regular examinations with Ms. Dawley, diagnostic imaging, and medication management. Thus, despite the delays, I find claimant has not proven by a preponderance of the evidence that defendants have abandoned claimant's medical care or that defendants have failed to provide reasonable care.

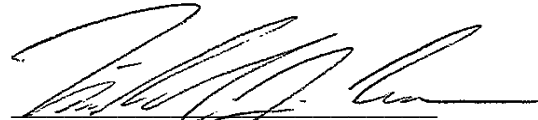
Defendants are put on notice that the outcome of any subsequent petitions for alternate medical care will be substantially different if the lines of communication with claimant's counsel and claimant's authorized treating providers do not substantially improve. Both the October 2019 and January 2020 petitions for alternate medical care could have been resolved without this agency's intervention had the parties communicated effectively.

**ORDER**

THEREFORE, IT IS ORDERED:

Claimant's petition for alternate medical care is hereby denied.

Signed and filed this 17th day of January, 2020.



MICHAEL J. LUNN  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Valerie Landis (via WCES)  
Tammy Gentry (via WCES)