

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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DANIJELA KURELUK,

Claimant,

vs.

BERTCH CABINET, LLC,

Employer,

and

UNION INSURANCE COMPANY  
OF PROVIDENCE,Insurance Carrier,  
Defendants.

File No. 220032170.02

ALTERNATE MEDICAL CARE  
DECISION

Headnote: 2701

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On July 11, 2023, 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. The alternate medical care claim came on for hearing before the undersigned on July 24, 2023, at 10:30 a.m. At the beginning of the hearing, defendants accepted liability for the injury date of February 14, 2022, and liability for the right index finger condition sought to be treated. The proceedings were recorded digitally and constitute the official record of the hearing.

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 record consists of Claimant's Exhibits 1 through 2 and Defendants' Exhibits A through G. All exhibits were offered without objection and received into evidence. Ms. Kureluk was the only witness to provide testimony. Counsel for both parties provided argument. The evidentiary record closed at the conclusion of the hearing.

## ISSUE

The issue presented for resolution is whether claimant is entitled to alternate medical care. Claimant seeks an order compelling defendants to authorize medical care with a physician in the Greensboro, North Carolina area.

## FINDINGS OF FACT

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

Danijela Kureluk, claimant, sustained a work-related injury on February 14, 2022. Claimant asserts the work injury affected her right index finger and mental health. Defendants admitted liability for the injury to claimant's right index finger and directed claimant's medical treatment. Defendants denied liability for the alleged mental health condition.

Following the work injury, defendants authorized medical treatment through Christopher Eagan, D.O. Dr. Eagan amputated the right index finger through the middle of the distal phalanx. (Ex. 2, p. 4) Dr. Eagan subsequently referred claimant to a hand specialist for any possible cosmetic treatment or a V-Y flap/cross finger flap procedure. (See Ex. 1, p. 1; see also Ex. G, p. 9) Defendants authorized treatment with ZeHui Han, M.D. at Iowa Ortho. (See Ex. G, p. 9)

Claimant first presented to Dr. Han, M.D. on July 28, 2022. (Ex. 2, p. 2) During the appointment, claimant complained of ongoing swelling, pain, numbness, and paresthesia in her right index finger. (Id.) Dr. Han recommended surgical intervention, "as she has likely exposed bone that needs addressed." (Ex. 2, p. 4) During his discussions with claimant, Dr. Han emphasized the importance of smoking cessation and claimant agreed to stop smoking. (Id.) Dr. Han then scheduled claimant for surgery and provided her updated work restrictions. (Id.)

After the July 28, 2022, appointment with Dr. Han, defendants notified claimant that they had work available within Dr. Han's restrictions and that they would authorize the recommended surgery. (See Ex. A, p. 1) Claimant did not return to work for the defendant employer. Instead, she traveled to Florida for a period of time, unsure of whether she was going to move there permanently. (Claimant's testimony)

Once claimant had returned to Iowa, defendants scheduled her to present to Dr. Amy Taylor for assistance with smoking cessation. (See Ex. A, p. 1) Claimant's first appointment with Dr. Taylor occurred on November 9, 2022. (See Ex. A, p. 1) While it is clear claimant attended the initial appointment with Dr. Taylor, the medical records for the same are not included in the evidentiary record. There is evidence that Dr. Taylor ordered claimant nicotine patches and lozenges at the November 9, 2022, appointment. (See Ex. B, p. 2)

Claimant was a no call/no show for her follow-up appointments with Dr. Taylor scheduled for January 25, 2023, and March 1, 2023. (Ex. B, p. 2) Nevertheless, defendants informed claimant that they would continue to authorize treatment with Dr. Taylor and Dr. Han. (Ex. C, p. 3) At this juncture, it is worth noting that Mercy Hospital apparently closed Dr. Taylor's unit in March of 2023. (See Ex. B, p. 2) Dr. Taylor expressed that she was unsure whether she would work for another facility or choose to work independently. (See Ex. B, p. 2)

Around this time, claimant requested mental health treatment. (See Ex. C, p. 3) Defendants promptly scheduled claimant for an evaluation to investigate any alleged mental health claims related to the February 14, 2022, injury. (See Ex. C, p. 3; Ex. F)

Claimant moved to the Greensboro, North Carolina area in late March or early April of 2023. (Claimant's Testimony) She does not anticipate any additional moves in the near future.

Dr. Han penned a letter to defendants on May 16, 2023. (Exhibit E) In the letter, Dr. Han provided a brief summary of the care he provided claimant and answered several questions posed by defense counsel. (Ex. E, pp. 5-6) The letter provides:

We originally planned to do the thenar flap coverage for this condition, but because the patient was having a continuing problem with smoking, we were not able to do any kind of flap procedures. Eventually the patient moved out of the state of Iowa, and as you requested, we are going to stop the treatment for this patient, and I am going to put the patient on maximum medical improvement.

(Ex. E, p. 5)

Dr. Han opined that because of claimant's smoking history, there is no further treatment needed at this time. (Id.) He further opined that claimant did not require any temporary or permanent work restrictions. (Id.)

Claimant subsequently requested additional medical care for her right index finger. (Ex. 1, p. 1; see Ex. G, p. 10) In a letter, dated July 5, 2023, defendants relayed that they would not be authorizing any additional medical treatment for claimant's right index finger because she was non-compliant with the previously authorized smoking cessation counseling program and no physician is currently recommending any additional medical treatment at this time. (Ex. G, p. 10)

At hearing, defendants provided that they will authorize treatment relating to smoking cessation.

#### REASONING AND 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 14(f)(5); Bell Bros. Heating and 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).

In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997), the Iowa Supreme Court approvingly quoted Bowles v. Los Lunas Schools, 109 N.M. 100, 781 P.2d 1178 (App. 1989):

[T]he words "reasonable" and "adequate" appear to describe the same standard.

[The New Mexico rule] requires the employer to provide a certain standard of care and excuses the employer from any obligation to provide other services only if that standard is met. We construe the terms "reasonable" and "adequate" as describing care that is both appropriate to the injury and sufficient to bring the worker to maximum recovery.

As mentioned, the claimant carries the burden of proving the care being provided or offered by the defendants is not reasonable. The claimant in this instance offered no medical evidence to establish that Dr. Han's requirement that claimant stop smoking before he would perform surgery is unreasonable. As discussed by claimant's counsel, there may be other surgeons who would perform surgery without such a requirement; however, claimant did not submit evidence of the same. Again, the claimant presented no medical evidence that the care being offered is unreasonable.

Given claimant's ongoing complaints, her request for treatment is certainly reasonable. However, 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).

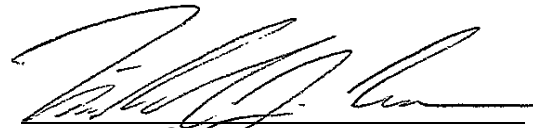
Following Dr. Eagan's recommendation that claimant present to a hand specialist, defendants promptly authorized an evaluation with Dr. Han. After evaluating claimant's condition, Dr. Han provided that he would perform surgery on claimant's right index finger if claimant was able to quit smoking. Defendants notified claimant that they would be authorizing the surgery recommended by Dr. Han and offered to assist claimant in her attempt to quit smoking. To this end, defendants authorized Dr. Taylor for smoking cessation treatment and counseling. Additionally, defendants promptly initiated a good faith effort to investigate claimant's alleged mental health condition once they were notified of claimant's request for medical treatment regarding the same. I find the defendants have offered reasonable and prompt medical care to date.

Defendants are not denying liability at this point in time. They are willing to authorize care for smoking cessation through a provider of their choosing. I find that the claimant's petition for alternate medical care does not state sufficient grounds at this time for the relief requested.

ORDER

The claimant's petition for alternate medical care is denied at this time.

Signed and filed this 25<sup>th</sup> day of July, 2023.

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:

Joseph Lyons (via WCES)

Jennifer Clendenin (via WCES)