

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JANNA VANDERSLUIJS,

Claimant,

vs.

LUTHERAN SERVICES OF IOWA,

Employer,

and

ARGENT-WEST BEND,

Insurance Carrier,  
Defendants.

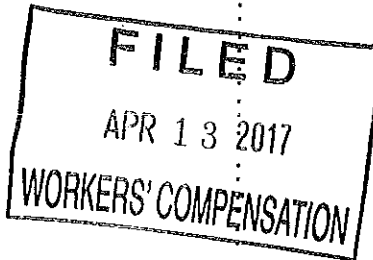
File Nos. 5058595, 5058596  
5058597, 5058598

ALTERNATE MEDICAL

CARE ORDER AND

PARTIAL DISMISSAL

Head Note No.: 2701



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, Janna Vandersluis. Claimant appeared personally and through her attorney, Ron Pohlman. Defendants appeared through their attorney, Charles Blades.

The alternate medical care claim came on for hearing on April 13, 2017. 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.

Counsel for the parties discussed the specifics of this case with the undersigned before going on the record and it was concluded that a formal evidentiary record was not required. Defendants consent to and authorize ongoing treatment through Tina Jacobsen, M.A., as well as Lawrence Ling, CSW-PIP. However, defendants deny liability for claimant's request for authorization of a neurologist in Sioux Falls, South Dakota.

ISSUE

The issues presented for resolution are whether claimant is entitled to relief on her petition for alternate medical care for treatment through Tina Jacobsen, M.A. and Lawrence Ling, CSW-PIP and whether claimant is entitled to an order authorizing treatment with a neurologist in Sioux Falls, South Dakota.

## 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).

Defendants admit liability for ongoing care through Tina Jacobsen, M.A., and Lawrence Ling, CSW-PIP. Defendants intend to and continue to authorize and direct medical care through these providers. Given their admission of liability and authorization of the requested providers, the petition for alternate medical care should be granted with respect to further care through Ms. Jacobsen and Mr. Ling.

However, defendants deny liability for the requested treatment through a neurologist. 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 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 defendants' refusal to admit liability for treatment with a neurologist, claimant's original notice and petition for alternate medical care must be dismissed. Given their refusal to admit liability for treatment with a neurologist, 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. Bell Bros. Heating v. Gwinn, 779 N.W.2d 193 (Iowa 2010).

As a result of the refusal to admit liability for treatment with a neurologist, 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, 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 through a neurologist during their period of denial.

ORDER

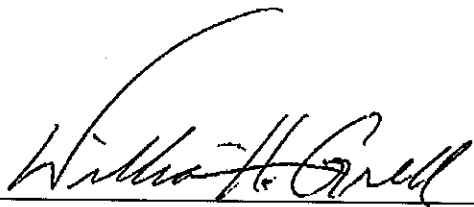
THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is granted with respect to claimant's request for ongoing and future care through Tina Jacobsen, M.A. and Lawrence Ling, CSW-PIP.

Claimant's original notice and petition for alternate medical care is hereby dismissed without prejudice with respect to her request for further treatment through a neurologist in the Sioux Falls, South Dakota area.

If claimant seeks to recover the charges incurred in obtaining care through a neurologist 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 13<sup>th</sup> day of April, 2017.

  
WILLIAM H. GRELL  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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