

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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VIRGINIA SWANK,

Claimant,

vs.

DOLGENCORP, LLC d/b/a DOLLAR  
GENERAL CORP.,

Employer,

and

ACE AMERICAN INSURANCE  
COMPANY,

Insurance Carrier,  
Defendants.

File No. 1660750.02

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, Virginia Swank. Claimant appeared telephonically and through her attorney, Corey Walker. Defendants appeared through their attorney, Lindsey Mills.

The alternate medical care claim came on for hearing on August 5, 2021. 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 record consists of claimant's exhibits 1 through 3. Claimant provided testimony. No other witnesses were called. Counsel offered oral arguments to support their positions.

## ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of authorization of treatment with Christian Ledet, M.D.

## FINDINGS OF FACT

The undersigned having considered all of the testimony and evidence in the record finds:

Defendants authorized treatment with various providers, including Wesley Rayburn, M.D., at Iowa Ortho for claimant's admitted back injury. Claimant was last evaluated at Iowa Ortho in 2020, at which time she was released and instructed to follow up as needed. She testified she was told there was no "magic pill" for her pain.

At some point after being released from Iowa Ortho's care, claimant was prescribed pain medication by her primary care provider. She testified she was told by someone, though she did not specify who, that her prescription was not being paid for or reimbursed by defendants because her claim was closed. Claimant testified it was at this point that she sought treatment on her own with Dr. Ledet.

Importantly, claimant did not notify defendants that her prescription had been denied, nor did she ever request authorization of her treatment with Dr. Ledet. In fact, prior to her petition for alternate medical care, claimant did not request authorization of any treatment from defendants.

Before hearing, defendants' counsel clarified that defendants are continuing to authorize treatment with claimant's authorized providers at Iowa Ortho, including Dr. Rayburn. Claimant, however, testified she does not want to go back to Iowa Ortho because she received "no relief" from her treatment there. She also testified Dr. Ledet told her that her prior epidural steroid injection (ESI), which was done by Dr. Rayburn at Iowa Ortho, was not performed in the correct location in her back.

Given the fact that claimant never requested any additional treatment from defendants, I find claimant's position that defendants are offering "no medical care" to be disingenuous. Defendants continue to authorize treatment with the providers at Iowa Ortho, and she was invited to return as needed.

Though claimant expressed her dissatisfaction with her treatment at Iowa Ortho and her hesitation to return, there has not been a breakdown in the patient-doctor relationship—claimant has not yet made an attempt to discuss her reservations with any of her providers at Iowa Ortho, nor has she discussed with the providers at Iowa Ortho Dr. Ledet's belief that the ESI was performed in the wrong location.

I find defendants' continued authorization of providers at Iowa Ortho is reasonable care.

## REASONING AND CONCLUSIONS OF LAW

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.

Iowa Code § 85.27(4).

Defendants' "obligation under the statute is confined to *reasonable* care for the diagnosis and treatment of work-related injuries." Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995) (emphasis in original). In other words, the "obligation under the statute turns on the question of reasonable necessity, not desirability." Id.

Similarly, an application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care she 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. See Iowa Code § 85.27(4). Thus, 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); Long, 528 N.W.2d at 124.

Ultimately, determining whether care is reasonable under the statute is a question of fact. Long, 528 N.W.2d at 123.


In this case claimant has not proven that the care offered by defendants is unreasonable. Defendants are providing care and have authorized treatment with providers at Iowa Ortho. They invited her to return to the clinic as needed. Though claimant is hesitant to return because of Dr. Ledet's opinion regarding the location of the ESI, claimant has not yet addressed this concern with her providers at Iowa Ortho. Thus, claimant has failed to satisfy her burden to prove the care offered by defendants is unreasonable.

**ORDER**

THEREFORE, IT IS ORDERED:

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

Signed and filed this 5<sup>th</sup> day of August, 2021.



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STEPHANIE J. COPLEY  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Corey Walker (via WCES)

Lindsey Mills (via WCES)