

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CHRISTINA REBARCAK,

Claimant,

vs.

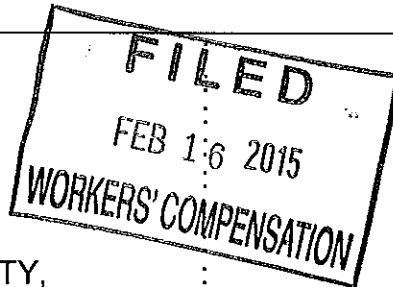
WILLIAM PENN UNIVERSITY,

Employer,

and

CINCINNATI INSURANCE COMPANY,

Insurance Carrier,  
Defendants.



File No. 5018222

ARBITRATION  
DECISION

Head Note Nos. 2500, 3301

STATEMENT OF THE CASE

Claimant filed a petition for arbitration seeking medical benefits from William Penn University and Cincinnati Insurance Company. The petition is for medical only under section 85.27.

The matter came on for hearing on January 13, 2015, before Deputy Workers' Compensation Commissioner Joseph L. Walsh in Des Moines, Iowa. The record in the case consists of claimant's exhibits 1 through 9; defense exhibits A through H, and the sworn testimony of claimant, Christina Rebarcak. The parties briefed this case and the matter was fully submitted on January 27, 2015.

ISSUE

The fighting issue in the case is whether the claimant is entitled to medical benefits under Iowa Code section 85.27, including alternate medical care with Marc Hines, M.D.

STIPULATIONS

Through the hearing report, the parties stipulated to the following:

1. The parties had an employer-employee relationship.
2. Claimant sustained an injury which arose out of and in the course of employment on June 9, 2004.

## FINDINGS OF FACT

The claimant, Christina Rebarcak lives in Lovilia, Iowa, approximately 18 miles south of Knoxville on Highway 5. She was injured while working for William Penn University (hereafter, "Penn"). Christina began working for Penn as a housekeeper in 2002. On June 9, 2004, she was assisting others move furniture from the top floor of a dormitory. She helped carry a dresser down several flights of stairs. In the process, she suffered an injury to her right shoulder and her neck. Christina testified credibly that she developed headaches in addition to the right shoulder and neck pain.

Christina subsequently underwent significant amounts of treatment from several different prominent local medical specialists. She saw Dan McGuire, M.D., who advised that there was nothing surgical for the neck. She saw Jeffrey Davick, M.D., a shoulder specialist. He treated Christina's right shoulder problems and eventually referred her on to Christian Ledet, M.D., for pain treatment. Dr. Ledet was clearly the authorized treating physician in July 2005. (Claimant's Exhibit 7, page 3) Dr. Ledet referred the claimant to Marc Hines, M.D., who Christina described as the "top neurologist in Iowa." (Cl. Ex. 7, pp. 3-4; Cl. Ex. 2, p. 1; Claimant's Testimony)

Dr. Hines treated Christina beginning in August 2005 and has continued to see her. (Cl. Ex. 2) On his very first visit, Dr. Hines noted that Christina had developed "secondary migraines as a result of these concerns in her neck and that the migraines themselves may represent a very significantly treatable component of this illness." (Cl. Ex. 2, p. 1) Christina eventually underwent a right shoulder surgery (subacromial decompression) by Dr. Davick. Her follow up treatment was provided by Dr. Hines and Dr. Ledet. "She has had a subacromial decompression with Dr. Davick. She notes improvement in the range of motion of her shoulder and some reduced pain, but continues to complain of spasm of the right neck and subsequent headache symptomatology." (Cl. Ex. 7, p. 6)

Steven Adelman, D.O., evaluated Christina in November 2006. He agreed that the claimant's headaches were likely related to her work injury, although he would not state with certainty the headaches were "migraines." (Cl. Ex. 8, p. 2) He also generally confirmed the treatment Dr. Hines had provided.

In June 2007, Christina was evaluated by Jacqueline Stoken, D.O., for an independent medical evaluation (IME). At that time, Dr. Stoken diagnosed posttraumatic headaches and chronic neck and shoulder pain. (Cl. Ex. 3, p. 7) Christina was also evaluated by Marichris Zahnle, M.D., in September 26, 2007. (Defendants' Ex. B) Dr. Zahnle noted that "from the time of injury of 09/04 up to the time of her shoulder surgery, the patient has also been complaining of headaches." (Def. Ex. B, p. 13) She noted the headaches and neck pain were her primary problem at that time. (Def. Ex. B, p. 13) Dr. Zahnle went on to opine that the headaches "cannot be directly explained by her original work injury of 09/04." (Def. Ex. B, p. 15)

The parties entered into an Agreement for Settlement on October 29, 2007. (Cl. Ex. 9) The parties specifically agreed to settle on an open file with open medical on the basis of a 40 percent industrial disability. Paragraph 8 specified Christina, "is entitled to medical care for the injury, including care in the future." (Cl. Ex. 9, p. 2) The original attachments to the Agreement for Settlement were not included on claimant's exhibit 9. Administrative notice was taken of the original Agreement for Settlement. There was no specific statement of what conditions were accepted or not accepted as part of the Agreement. Various medical records were attached but nothing which clearly resolved whether the defendants were accepting responsibility for ongoing treatment for the headaches. The parties did not define the parameters of the open medical file in the Agreement for Settlement.

After the Agreement for Settlement in October 2007, Christina continued to work for Penn and she began receiving treatment for her headaches through Dr. Hines. (Cl. Ex. 2, pp. 10-40) In 2011, Penn laid off Christina, apparently as part of some type of reorganization. Her health insurance was terminated.

In August 2012, an Independent Peer Review was performed by Dean K. Wampler, M.D. Dr. Wampler never examined Christina or even spoke to her. Dr. Wampler questioned whether a "work accident" had ever occurred. He stated, "her injury history had changed yet again. She described a 'work accident' moving a dresser down a flight of stairs. The doctor's assessment concluded that she had sustained a cervical strain with 'radicular dysfunction.'" (Def. Ex. A, p. 5) He repeatedly questioned Christina's accident. "Ms. Rebarcak described a rather dramatic incident where she was moving desks, dressers and beds down three flights of stairs at work." (Def. Ex. A, pp. 5-6) When asked to provide what diagnosis Christina has related to her stipulated work injury, Dr. Wampler responded esoterically, "I am not sure that I can provide a diagnosis for Ms. Rebarcak's current pains that is directly related to work activities. (Def. Ex. A, p. 7)

In his report, Dr. Wampler pontificated for eight paragraphs, essentially questioning Christina's credibility and integrity. Many of his statements are speculative and baseless. Some of the statements are best characterized as far afield. "People sometimes develop a personal concept about what *might* have started an unusual or mysterious pain." (Def. Ex. A, p. 8) "*Presuming this incident occurred*; it would represent a temporary aggravation to her underlying condition." (Def. Ex. A, p. 8; *emphasis added*) Christina's work injury was admitted. Her injury was admitted from the very beginning. It was admitted in an Agreement for Settlement and it was admitted in the petition. There is literally no evidence in this record which calls into question the occurrence of Christina's injury other than Dr. Wampler's unexplained comments. He never even spoke to Christina. I do not find Dr. Wampler's report credible in the least as he did not even seem to understand the most basic context of the case.

At the time of hearing, Christina testified that her pain in her neck and head has gotten worse. Dr. Hines provided sworn deposition testimony on November 15, 2013.

### CONCLUSIONS OF LAW

All of the issues in this case revolve around claimant's entitlement to medical benefits under section 85.27.

Where an award for payments or agreement for settlement for benefits has been made, an employee may bring an action seeking a determination and order as to the employee's entitlement to medical treatment pursuant to section 85.27 at any time. Iowa Code section 85.26(2).

The parties reached an Agreement for Settlement of Christina's 2004 work injury in October 2007. The parties agreed she had suffered a 40 percent industrial disability and lifetime medical benefits. The parties did not limit, or in any way define, the parameters of the lifetime medical benefits. The defendants did authorize medical treatment for the headaches and neck pain with Dr. Hines immediately following the settlement. In fact, the Agreement for Settlement was filed on October 29, 2007 and Christina was authorized to follow up with Dr. Hines in January 2008. He treated her from January 2008 through August 2012, when the care was denied. (Cl. Ex. 1, Hines Deposition p. 12)

The primary issue is whether the admitted 2004 work injury is a cause of the claimant's medical bills outlined in claimant's exhibit 4.

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

The expert opinions as to the medical impairment in this case are conflicted. I find that Dr. Hines has provided the most plausible, credible and well-defended medical opinions in this file. In particular, his sworn deposition testimony is compelling and credible. For the reasons stated in the findings of fact, I find the opinions of Dr. Wampler are not credible.

Dr. Hines is the staff neurologist at Covenant Medical Center. During his testimony Dr. Hines testified to his diagnosis:

A. Well, she did have cervicogenic headache – that is, that neck pain was influencing her headache – but there was definitely a migraine component. I mean, she had light and noise sensitivity, a pounding headache that made her nauseous and vomit, and while she had a constant headache and neck pain, these fluctuated, and so she would get these much more severe headaches. And with the severity and those characteristics, it currently met with the criteria for migraine. Furthermore – I didn't know that on August 24, but later we found that she did respond to Imitrex, which is pretty much exclusively a medicine that migraine responds to, and to Topamax, although she didn't do well with Topamax side effects.

(Cl. Ex. 1, Hines Dep. pp. 4-5)

Dr. Hines opined that the care he has provided has been reasonable and beneficial for the treatment of her headaches which he relates to the work injury. (Cl. Ex. 1, Hines Dep. p. 10) Moreover, Dr. Hines opined that claimant's neck pain triggers her headaches which are referred to a cervicogenic, or cervically-influenced headaches which can be migraines. (Cl. Ex. 1, Hines Dep. p. 43) Dr. Hines further opined that the additional treatment he recommends is caused by the June 2004 work injury:

Q. All right. And is the recommended care for her, in your opinion, still related to the original injury of June, 2004?

A. Yes, I think you actually trace the sequence rather well. Another point Dr. Adelman made was, he felt that the headache diagnosis was made later, but that's exactly what Dr. Ledet was pointing out, was that we had all been focusing on her shoulder, got her shoulder injury treated with surgery, but as we keep looking, you go, okay, wait a minute. The headaches are the most prominent problem. Yes, we've been treating the neck and we have to keep treating the neck, it is part of the whole picture, but the headaches were always present. It was just they were being overshadowed by the shoulder and neck. Originally treatment improved that, but then the headaches became more prominent. It wasn't that they weren't there.

Anyway, so, yes, the origin of this is that original injury, which I suspect

was to the shoulder primarily, but, unfortunately, setting off some muscle problems in the neck, and that has been a chronic difficulty. There are some elements of change in the neck. For instance, we've been able to track that she's getting increasing osteophytic production in the cervical area that seems rather rapid, but – you can never say that with complete accuracy, but you can say, yeah, it seems very rapid, that probably that's part of the injury, that she injured her neck, as well.

(Cl. Ex. 1, Hines Dep. pp. 11-12)

Q. And do you believe that continued treatment for Ms. Rebarcek for her headaches is causally related to and needed because of the work injury?

A. Yes, I – yes, that was my opinion and it still is.

(Cl. Ex. 1, Hines Dep. p. 48)

Treatment Dr. Hines recommends includes medication, trigger point injections and the occasional epidural. (Cl. Ex. 1, Hines Dep. pp. 9-10)

The expert opinion of Dr. Hines is more compelling than the other expert opinions in this case. For these reasons I find that the medical treatment recommended and provided by Dr. Hines is causally connected to the work injury. Claimant is entitled to an order of reimbursement only if he has paid treatment costs; otherwise, to an order directing the responsible defendants to make payments directly to the provider. See, Krohn v. State, 420 N.W.2d 463 (Iowa 1988). Defendants should also pay any lawful late payment fees imposed by providers. Laughlin v. IBP, Inc., File No. 1020226 (App., February 27, 1995).

The next issue is alternate medical care.

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. Iowa Code Section 85.27 (2013).

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See 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. Id. 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).

An employer's statutory right is to select the providers of care and the employer may consider cost and other pertinent factors when exercising its choice. Long, at 124. An employer (typically) is not a licensed health care provider and does not possess medical expertise. Accordingly, an employer does not have the right to control the methods the providers choose to evaluate, diagnose and treat the injured employee. An employer is not entitled to control a licensed health care provider's exercise of professional judgment. Assman v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988). An employer's failure to follow recommendations of an authorized physician in matters of treatment is commonly a failure to provide reasonable treatment. Boggs v. Cargill, Inc., File No. 1050396 (Alt. Care January 31, 1994).

The defendants have offered no medical care to the claimant since August 2012, when Dr. Wampler provided an adverse opinion. The care and treatment should return to Dr. Hines at this time. He has been the authorized physician in the past and his treatment has been beneficial.

ORDER

THEREFORE IT IS ORDERED:

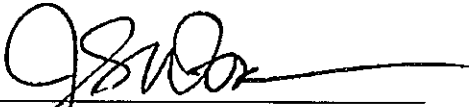
Defendants shall pay for the past treatment as outlined in claimant's exhibit 4.

Defendants shall authorize ongoing reasonable and necessary treatment with Dr. Hines.

Defendants shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).

Costs are taxed to defendants.

Signed and filed this 16<sup>th</sup> day of February, 2015.

  
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JOSEPH L. WALSH  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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JLW/kjw

**Right to Appeal:** This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.