

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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PAMELA OSTWINKLE,

Claimant,

vs.

EDGEWOOD-COLESBURG  
COMMUNITY SCHOOL DISTRICT,

Employer,

and

EMPLOYERS MUTUAL CAS. CO.,

Insurance Carrier,  
Defendants.

File No. 5058106.03

ALTERNATE MEDICAL CARE  
DECISION

Headnote: 2701

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This is a contested case proceeding under Iowa Code chapters 85 and 17A. The expedited procedures of rule 876 IAC 4.48, the "alternate medical care" rule, are invoked by claimant, Pamela Ostwinkle.

This alternate medical care claim came on for hearing on July 21, 2022. The proceedings were recorded digitally and constitute the official record of the hearing. By an order filed by the Workers' Compensation Commissioner, this decision is designated final agency action. Any appeal would be by petition for judicial review under Iowa Code section 17A.19.

The record in this case consists of Claimant's Exhibits 1-5, Defendants' Exhibits A-B, and the testimony of claimant and Kristi Bremhorst.

## ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of a cervical injection at Regional Medical Center in Manchester, Iowa.

## FINDINGS OF FACT

Defendants accept liability for a work-related accident on November 6, 2015.

On April 7, 2022, claimant underwent a cervical interlaminar epidural steroid injection (ESI) at the C7-T1 level. The injection was performed by William Barnhill, CRNA. (Exhibit 1)

On May 5, 2022, claimant returned to nurse anesthetist Barnhill for follow-up for neck pain. Claimant had significant improvement following the ESI four weeks prior. Nurse anesthetist Barnhill indicated in the future plan section of the record: "We will recommend she follow-up as needed. I did talk to her at length about spacing any cervical epidurals and I did explain since she is getting good relief I would recommend an additional 1. Wait at least 3 to 6 months." (Ex. 2)

On July 18, 2022, claimant's counsel wrote defense counsel, asking defendants to authorize another cervical injection, rather than tentatively approving one as of August 5, 2022. (Ex. 3)

On July 19, 2022, defense counsel responded and indicated there was confusion regarding the date claimant could have an injection. Defendants recommended claimant produce an order from the provider for another ESI. (Ex. 4)

In a July 20, 2022, note, claimant's counsel responded and contended defendants were not offering reasonable medical care when they put the burden on claimant to obtain medical opinions from authorized providers. (Ex. 5)

Claimant testified she had been told by nurse anesthetist Barnhill and other providers that the injections needed to be spaced out three to six months to be effective.

Claimant said that after her April 7, 2022, injection she had relief within a half hour. She said she has tried to space the injections apart as long as possible given her pain. She said that last month she began to have shooting pain in her arm from pain.

Claimant testified she has been instructed by providers she needs to have authorization from the insurer before care can be provided. Claimant testified she has had difficulty in the past getting the insurer to authorize some care. She said that in March of this year she filed an alternate medical care petition. She said that petition was dismissed after an agreement for care was reached.

Claimant testified, two days before the hearing, she went to nurse anesthetist Barnhill's office and spoke to a nurse in an effort to have a request for an injection sent to the insurer. She said that at the time of hearing, no one from the office has gotten back to her.

Claimant testified she has received five ESIs in the past, all of which have been authorized and paid for by defendant insurer.

Claimant testified she cannot make an appointment with nurse anesthetist Barnhill without authorization from the insurer. She said that she is unable to get a

recommendation of care from nurse anesthetist Barnhill without authorization from the insurer for an office visit.

Kristi Bremhorst testified she is a claims supervisor with defendant insurer. In that capacity she is familiar with claimant's workers' compensation file. Ms. Bremhorst said typically a provider will contact EMC to seek authorization for care. She testified she contacted nurse anesthetist Barnhill's office the evening of July 20, 2022, in an attempt to clarify the issue of an injection for claimant.

### CONCLUSION 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.

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 Rule of Appellate Procedure 6.904(3)(e); 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). In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997), the 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.

The commissioner is justified in ordering alternate care when employer-authorized care has not been effective, and evidence shows that such care is "inferior or less extensive" care than other available care requested by the employee. Long, 528 N.W.2d at 124; Pirelli-Armstrong Tire Co., 562 N.W.2d at 437.

The issue in this situation is when did nurse anesthetist Barnhill recommend another cervical injection for claimant. Is the next injection to be given three months from the last injection of April 7, 2022, or is it to be given three months from claimant's last office visit of May 5, 2022?

Claimant testified she's been instructed by nurse anesthetist Barnhill and other providers, that cervical injections should be given three to six months apart from the last injection. This would suggest claimant's most recent injection should have been sometime on or after mid-July of 2022.

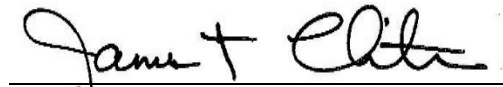
However, I agree with defendants that, given the May 5, 2022, note, it is unclear whether the cervical injection, in this case, is to be given in July or August of 2022. Given this ambiguity and confusion regarding dates, I do not believe defendants' request for clarification is unreasonable.

However, this petition was filed approximately two weeks ago. Ms. Bremhorst testified that it was not until the evening before the hearing defendants made an attempt to contact nurse anesthetist Barnhill's office for clarification. I find that the delay in the investigation of this matter is unreasonable. I also find it unreasonable for defendants to place the burden on claimant to get a medical opinion when claimant requires authorization to see a provider.

#### ORDER

Therefore, it is ordered that defendants, within five days of this decision, shall contact nurse anesthetist Barnhill to clarify when claimant shall receive her next cervical injection. Based on that recommendation, defendants shall authorize the care recommended by nurse anesthetist Barnhill.

Signed and filed this 21<sup>st</sup> day of July, 2022.

  
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JAMES F. CHRISTENSON  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Dirk Hamel (via WCES)

Jane Lorentzen (via WCES)