

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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JENNIFER BELL-GOBB,

Claimant,

vs.

HANDICAP DEVELOPMENT  
CENTER (HDC),

Employer,

and

UNITED HEARTLAND INS. CO.,

Insurance Carrier,  
Defendants.

File No. 1661209.05

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

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## STATEMENT OF THE CASE

On November 11, 2020, claimant filed a petition for alternate medical care pursuant to Iowa Code 85.27(4) and 876 Iowa Administrative Code 4.48. The defendants failed to file an answer, nor did the defendants file an appearance.

The undersigned presided over the hearing held via telephone and recorded digitally on November 23, 2020. That recording constitutes the official record of the proceeding under 876 Iowa Administrative Code 4.48(12). Claimant participated personally, and through her attorney, Nicholas Shaul. The defendants participated through their attorney, Ed Rose. The evidentiary record consists of ten pages of exhibits from the claimant. The defendants offered no exhibits.

On February 16, 2015, the Iowa Workers' Compensation Commissioner issued an order delegating authority to Deputy Workers' Compensation Commissioners, such as the undersigned, to issue final agency decisions on applications for alternate care. Consequently, this decision constitutes final agency action, and there is no appeal to the commissioner. Judicial review in a District Court pursuant to Iowa Code 17A is the avenue for an appeal.

## ISSUE

The issue under consideration is whether claimant is entitled to alternate care under Iowa Code 85.27(4) in the form of a referral to orthopedic doctor, John Hoffman, M.D. for a total knee replacement.

## FINDINGS OF FACT

Claimant, Jennifer Bell-Gobb, sustained a work injury to her left knee on November 26, 2018. The work incident arose out of, and in the course of her employment with Handicap Development Center. Defendants accepted liability for the November 26, 2018, left knee injury in their answer, and verbally at hearing.

During the course of her post-incident treatment, Ms. Bell-Gobb visited authorized treating physician Matthew Bollier, M.D. Her last visit with Dr. Bollier occurred on January 24, 2020. (Testimony). The claimant testified that she attempted to see Dr. Bollier in August of 2020, but he refused to see her. (Testimony). Further, Dr. Bollier's office informed Ms. Bell-Gobb that there was nothing further that Dr. Bollier could offer her and that she should live with the pain. (Testimony).

On February 13, 2020, Ms. Bell-Gobb returned to the University of Iowa Hospitals and Clinics for an ultrasound guided corticosteroid injection to the left knee by Lisa Woodroffe, M.D. (Cl. Ex.). The claimant tolerated the procedure well. (Cl. Ex.).

On February 27, 2020, counsel for the claimant wrote a letter to Dr. Bollier. (Cl. Ex.). Dr. Bollier signed the letter indicating that he agreed with the version of events laid out in the letter by the claimant's counsel. (Cl. Ex.). The letter noted that Ms. Bell-Gobb reported continued struggles with knee pain and difficulties performing her job as recently as January 24, 2020. (Cl. Ex.). Dr. Bollier's plan at the conclusion of the January 24, 2020, visit included a knee replacement in the future related to the work injury. (Cl. Ex.). Dr. Bollier noted that the claimant's problem was difficult due to her youth and degree of damage to the cartilage damage in her medial femoral condyle. (Cl. Ex.).

On October 27, 2020, counsel for the claimant wrote a letter to John Hoffman, M.D. (Cl. Ex.). Dr. Hoffman signed the letter indicating agreement with the content of the letter on November 2, 2020. (Cl. Ex.). Dr. Hoffman agreed that Ms. Bell-Gobb's degenerative changes were work related secondary to a full-thickness cartilage defect at the medial femoral condyle seen during a previous surgery. (Cl. Ex.). Dr. Hoffman recommended a total left knee replacement as the only option remaining because Ms. Bell-Gobb's left knee was bone on bone. (Cl. Ex.). Dr. Hoffman indicated that this procedure proceed once Ms. Bell-Gobb reduced her body mass index (BMI) to 45, or her weight below 287 pounds. (Cl. Ex.). Ms. Bell-Gobb testified that she previously weighed 350 pounds and now weighs 333 pounds after changing her diet. (Testimony). Prior to surgery, Dr. Hoffman prescribed meloxicam and injections of Euflexxa. (Cl. Ex.). Euflexxa is a lubricating injection to reduce pain in the knee. (Cl. Ex.). Claimant's counsel served this report on the defendants' counsel on November 4, 2020. (Cl. Ex.).

In an undated letter, to defendants' counsel, Dr. Bollier indicated that he reviewed Dr. Hoffman's records of his visits with Ms. Bell-Gobb. (Cl. Ex.). He agreed that the claimant's left knee arthritis progressed rather rapidly based upon new imaging studies. (Cl. Ex.). Dr. Bollier noted that Ms. Bell-Gobb had a large acute-appearing cartilage defect in her medial femoral condyle at the time of a surgery in February of 2019. (Cl. Ex.). Dr. Bollier opined that this was a significant factor in the development of arthritis. (Cl. Ex.). Dr. Bollier noted that in an ideal world, Ms. Bell-Gobb would wait several years before considering a knee replacement, and would lower her BMI. (Cl. Ex.). However, Dr. Bollier conceded that he agreed with Dr. Hoffman's assessment and plan including waiting to perform a knee replacement until her BMI is under 45. (Cl. Ex.).

The claimant sought care with John Hoffman, M.D. because she felt like she had no other choice since Dr. Bollier advised her that he had nothing else to offer her. (Testimony). Ms. Bell-Gobb is happy with the treatment offered by Dr. Hoffman. (Testimony). Dr. Hoffman took the time to listen to her complaints and discussed ways for her to lose weight so that she could eventually have a knee replacement. (Testimony). Using Dr. Hoffman's recommendations, Ms. Bell-Gobb lost 17 pounds over the last 6 weeks. (Testimony). The claimant testified that she felt abandoned by Dr. Bollier since he told her to live with the pain and would not do the knee replacement surgery immediately. (Testimony). She also expressed a lack of desire to see Dr. Bollier again. (Testimony). During the course of the hearing, the defendants acknowledged that Dr. Bollier no longer performs knee replacements, and another doctor would need to be chosen by the defendants.

#### CONCLUSIONS OF LAW

Iowa Code 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.

See Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

"Iowa Code section 85.27(4) affords an employer who does not contest the compensability of a workplace injury a qualified statutory right to control the medical care provided to an injured employee." Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 769 (Iowa 2016) (citing R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190,

195, 197 (Iowa 2003)). “In enacting the right-to-choose provision in section 85.27(4), our legislature sought to balance the interests of injured employees against the competing interests of their employers.” Ramirez, 878 N.W.2d at 770-71 (citing Bell Bros., 779 N.W.2d at 202, 207; IBP, Inc. v. Harker, 633 N.W.2d 322, 326-27 (Iowa 2001)).

Under the law, the employer must furnish “reasonable medical services and supplies *and* reasonable and necessary appliances to treat an injured employee.” Stone Container Corp. v. Castle, 657 N.W.2d 485, 490 (Iowa 2003) (emphasis in original)). Such employer-provided care “must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee.” Iowa Code 85.27(4).

An injured employee dissatisfied with the employer-furnished care (or lack thereof) may share the employee’s discontent with the employer and if the parties cannot reach an agreement on alternate care, “the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.” Id. “Determining what care is reasonable under the statute is a question of fact.” Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995); Pirelli-Armstrong Tire Co., 562 N.W.2d at 436. As the party seeking relief in the form of alternate care, the employee bears the burden of proving that the authorized care is unreasonable. Id. at 124; Gwinn, 779 N.W.2d at 209; Pirelli-Armstrong Tire Co., 562 N.W.2d at 436. Because “the employer’s obligation under the statute turns on the question of reasonable necessity, not desirability,” an injured employee’s dissatisfaction with employer-provided care, standing alone, is not enough to find such care unreasonable. Id.

Prior to the presentation of evidence in this case, the defendants agreed to authorize Dr. Hoffman’s treatment plan as follows: 1. Authorize a prescription for meloxicam; 2. Authorize Euflexxa injections into the left knee; and, 3. Authorize a left knee replacement contingent on the claimant losing weight pursuant to the recommendation of Dr. Hoffman and Dr. Bollier. The claimant reported that Dr. Bollier’s office already called authorizing a prescription for meloxicam. The issue is that the claimant desires that the knee replacement be performed by Dr. Hoffman rather than a doctor chosen by the defendants.

The claimant previously requested transfer of care to Dr. Hoffman in an alternate care proceeding. The undersigned denied the claimant’s request in that case, which is agency file number 1661209.04.

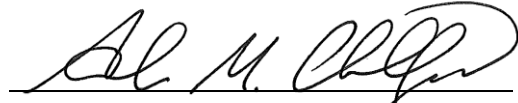
In this case, the claimant expresses a desire, again, for her care to be transferred to Dr. Hoffman for the pending knee replacement surgery. The claimant did not carry her burden to show that the defendants abandoned her care. The claimant previously requested care with Dr. Hoffman, and filed an alternate care petition in file number 1661209.04. The defendants, operating under the ruling in that case, did not authorize Dr. Hoffman as a treating physician. This is not an abandonment of care. In this case, the defendants agreed to authorize treatment recommendations made by Dr. Hoffman

and agreed with by Dr. Bollier. The defendants retain the right to control the medical care provided to an injured employee.

IT IS THEREFORE ORDERED:

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

Signed and filed this 23<sup>rd</sup> day of November, 2020.

A handwritten signature in black ink, appearing to read "Al M. Phillips", is written over a horizontal line.

ANDREW M. PHILLIPS  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Nicholas Shaul (via WCES)

Edward J. Rose (via WCES)