

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SHEILA MANUEL,

Claimant,

vs.

PER MAR SECURITY & RESEARCH  
CORP.,

Employer,

and

TRAVELERS INDEMNITY COMPANY  
OF CT,Insurance Carrier,  
Defendants.

File No. 21011180.01

ALTERNATE MEDICAL  
CARE DECISION

Head Note No.: 2701

## STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapters 85 and 17A. On August 31, 2022, claimant, Sheila Manuel, filed an application for alternate care under Iowa Code section 85.27, invoking the expedited procedure rule 876 IAC 4.48. In the petition claimant requests authorization for a spinal cord stimulator to treat a work-related back injury sustained on August 31, 2021. On September 12, 2022, defendants, Per Mar Security & Research Corp and Travelers Indemnity Company of CT, filed an answer accepting liability for the August 31, 2021 back injury.

The undersigned presided over an alternate care hearing held via telephone on September 13, 2022. Claimant appeared through her attorney Kyle Reilly. Defendants appeared through their attorney Kevin Rutan. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. The hearing record consists of:

- Claimant's exhibits 1 through 5;
- Defendants' exhibits A through D

No witnesses were called. Counsel offered oral arguments to support their positions. During the hearing, defendants verbally accepted liability for the August 31,

2021 date of injury and for claimant's back condition—the condition for which claimant seeks treatment in this proceeding.

Pursuant to the Commissioner's order dated February 16, 2015, 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.

### ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care in the form of:

- Authorization for a spinal cord stimulator trial

### FINDINGS OF FACT

On August 31, 2021, claimant sustained a work-related injury to her back. Defendants admitted liability for the back injury and authorized treatment with Brett Rosenthal, M.D. (See Defendant's Answer; Hearing Testimony) Dr. Rosenthal diagnosed claimant with low back pain with bilateral sciatica and lumbago with sciatica, right side. (Ex. D, p. 2) Claimant treated conservatively with Dr. Rosenthal, for approximately a year. (Defendant's Brief; Hearing Testimony) At some point, Dr. Rosenthal referred claimant to Thomas Klein, D.O., for pain management. (See Ex. D, p. 1) Dr. Klein performed epidural injections, and prescribed muscle relaxants and Lyrica. (Id.) The treatment did not lessen claimant's symptoms- she continued to experience pain in her low back and bilateral lower extremities. (Id.)

On July 21, 2022, claimant presented to Dr. Rosenthal with "severe pain involving her back and bilateral lower extremities."<sup>1</sup> (Ex. D, p. 1) Claimant had previously undergone diagnostic testing—a EMG and an MRI of her lumbar spine. (Id. at 2) The actual reports from these tests are not in evidence. Dr. Rosenthal's treatment note, however, indicates the EMG was negative for radiculopathy. (Id.) The MRI showed a small disc protrusion at L5-S1, but no mass-effect on the adjacent neural structures. (Id.) Dr. Rosenthal did not have an explanation for why claimant continued to experience so much pain in her bilateral lower extremities. (Id.) His treatment note reads,

The only other treatment option that if [sic] she has not yet explored the [sic] may be reasonable would be a spinal cord stimulator. I have reached out to Dr. Klein to comment on whether this is a reasonable option for her.

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<sup>1</sup> In their brief defendants assert Dr. Rosenthal placed claimant at maximum medical improvement (MMI) and assigned her a 5 percent whole-body impairment rating. (See Defendants' Brief, p. 2). Dr. Rosenthal's MMI date and impairment rating are also discussed in Dr. Boulden's report. (Ex. A, p. 2). Dr. Rosenthal's initial treatment note placing claimant at MMI was not placed into evidence in this proceeding. Thus, the undersigned makes no factual findings on this issue.

If so, she can be evaluated by him again for consideration of a spinal cord stimulator trial. If he does not feel that is an appropriate option to manage her symptoms, she will have within a reasonable degree of medical certainty reached maximum medical improvement. There are no surgical indications at this time.

(Ex. D, p. 2)

Dr. Klein evaluated the claimant on August 9, 2022. (Ex. 3) Dr. Klein's treatment note indicates she was there "to discuss spinal cord stimulator placement after her appointment with Dr. Rosenthal on 7/21/22." (Id.) Dr. Klein diagnosed claimant with lumbar radiculopathy and lumbosacral radiculopathy. (Ex. 4) He determined a spinal cord stimulator trial was reasonable. (Id.) His treatment notes states,

I agree with Dr. Rosenthal that a spinal cord stimulator is appropriate for further treatment. I will plan to proceed with a Nevro spinal cord stimulator trial procedure.

. . . .

I believe the above procedure will help decrease pain and increase function allowing [her] to be more productive in [her] daily life with less pain. Patient has exhausted conservative treatment.

(Id.) Dr. Klein stated claimant should follow-up with his office a week after the spinal cord stimulator trial to discuss whether the procedure was effective in decreasing her pain. (Id.) On August 12, 2022, Dr. Klein referred claimant for a psychological pain assessment to determine her suitability for a spinal cord stimulator. (Ex. 2)

Defendants did not authorize the assessment recommended by Dr. Klein. (Hearing Testimony; Ex. 1) Instead, defendants requested a records review from William Boulden, M.D. (Ex. A) Dr. Boulden issued his report on September 8, 2022. (Id.) Dr. Boulden did not think claimant had radicular symptoms. (Id. at 1) He diagnoses her with referred leg symptoms and recommends against proceeding with the spinal cord stimulator trial. (Id.) His report states,

At this point in time, I definitely would not recommend any type of interventional treatment, especially a spinal cord stimulator. This is based on the facts that she does not have any significant pathology, she does not truly have radicular problems since there are no positive neurological changes, she has a negative EMG, and there are no MRI findings that show nerve impingement. In my opinion, doing a spinal cord stimulator would have a high probability of failure.

(Id.) Dr. Boulden recommended claimant proceed with German stabilization exercises, which is an aggressive back rehabilitation exercise program. (Id.) He also

recommended a psychological assessment to see if she has psychosomatic issues. (Id. at 2)

On September 9, 2022, counsel for defendants sent an email to claimant's counsel, denying Dr. Klein's request for a spinal cord stimulator trial. (Ex. B, p. 1) The email also indicated defendants approved the future care recommended by Dr. Boulden. (Id.) Defendants made an appointment for claimant at Athletico on September 15, 2022, to begin German stabilization exercises, as well as an appointment with Dr. Arias on October 4, 2022 for a psychological evaluation. (Id.)

On September 12, 2022, Dr. Rosenthal issued a referral for the German exercise rehabilitation program, as recommended in Dr. Boulden's report. (Ex. C) At the hearing, defendants counsel stated that Dr. Boulden's opinion was sent to Dr. Rosenthal for review. (Hearing Testimony) According to counsel, Dr. Rosenthal was asked if he agreed with Dr. Boulden's treatment recommendations, and if he would approve the German exercise program per Dr. Boulden's recommendations. (Id.) Dr. Rosenthal's response was to send the referral received on September 12, 2022. (Id.; Ex. C) Dr. Rosenthal's referral does not mention or address his spinal cord stimulator trial recommendation. (See Ex. C)

#### CONCLUSIONS OF LAW

Under Iowa law, an employer who has accepted compensability for a workplace injury has a right to control the care provided to the injured employee. Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 769 (Iowa 2016). The relevant statute provides as follows:

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. 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). 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.

An employer's right to select the provider of medical treatment for the injured worker does not include the right to determine how an injured worker should be diagnosed, evaluated, treated, or other matters of professional medical judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988). An employer is not entitled to interfere with the medical judgment of its own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening Decision June 17, 1986). When a designated physician refers a patient to another physician, that physician acts as the defendant employer's agent. Permission for the referral from defendant is not necessary. Kittrell v. Allen Memorial Hospital, Thirty-fourth Biennial Report of the Industrial Commissioner, 164 (Arb. November 1, 1979) (aff'd by industrial commissioner). See also Limoges v. Meier Auto Salvage, Iowa Industrial Commissioner Reports 207 (1981).

On July 21, 2022, Dr. Rosenthal opined that a spinal cord stimulator could help with claimant's ongoing back and lower extremity pain. (Ex. D, p. 1) Dr. Rosenthal then referred claimant to Dr. Klein to opine "on whether this is a reasonable option for her." (Id. at 2) Dr. Rosenthal's treatment note reads "If so, she can be evaluated by him again for consideration of a spinal cord stimulator trial." (Id.) Dr. Klein saw claimant on August 9, 2022. (Ex. 3) He determined a spinal cord stimulator was reasonable and appropriate treatment for claimant's ongoing symptoms. (Id.) Then, per Dr. Rosenthal's instructions, Dr. Klein ordered a psychological pain assessment, the next step to determine whether claimant is a candidate for a spinal cord stimulator. (Ex. 2)

Dr. Rosenthal is claimant's authorized treating physician. (Hearing Testimony) He opined that a spinal cord stimulator could improve claimant's ongoing back and leg symptoms. He sent claimant to Dr. Klein, a pain management specialist, to confirm whether this course of treatment was reasonable and appropriate for claimant's symptoms. Dr. Klein has confirmed that it is reasonable and appropriate. Given this, per Dr. Rosenthal's July 21, 2022 treatment note, claimant should now be evaluated for a spinal cord stimulator trial.

At hearing, defendants produced a referral from Dr. Rosenthal ordering the German stabilization exercises recommended by Dr. Boulden. Defendants have authorized and scheduled this treatment. Defendants argue this authorized care is reasonable because it was ordered by an authorized treating physician and if "Dr. Rosenthal thought the care recommended by Dr. Boulden was unreasonable, he would

not have agreed to order it.” (Defendants’ Brief, p. 3) Defendants’ argument misses the point of this alternate care action. Dr. Rosenthal recommended claimant be evaluated for a spinal cord stimulator trial. The referral for German stabilization exercises does not mention or address this recommendation. (See Ex. C) Thus, there is nothing in the record indicating Dr. Rosenthal modified or rescinded his recommendation for the spinal cord stimulator trial evaluation. The defendants are not allowed to encroach upon Dr. Rosenthal’s treatment recommendations. The care defendants are offering is not reasonable.

Dr. Rosenthal is the authorized treating physician. He recommended claimant be evaluated for a spinal cord stimulator trial. Claimant is entitled to the recommended care.

ORDER

THEREFORE, IT IS ORDERED:

Within ten (10) days of the filing of this decision, defendants shall authorize and schedule the psychological pain assessment Dr. Klein ordered on August 12, 2022 so that claimant can be evaluated for a spinal cord stimulator trial.

Costs, if any, are assessed to defendants.

Signed and filed this 15<sup>th</sup> day of September, 2022.

A handwritten signature in black ink, reading "Amanda Rutherford". The signature is fluid and cursive, with the first name "Amanda" being more prominent than the last name "Rutherford".

AMANDA R. RUTHERFORD  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Kyle Reilly (via WCES)

Kevin Rutan (via WCES)