BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TIFFANY PUGA-VALLEJOS, Claimant, vs. THE EVANGELICAL LUTHERAN GOOD SAMARITAN SOCIETY, Employer, and SENTRY INSURANCE, Insurance Carrier, Defendants.	File No. 20700824.02 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. The expedited procedure of rule 876 IAC 4.48 is invoked by claimant, Tiffany Puga-Vallejos. Claimant appeared personally and through her attorney, Connor Mulholland. Defendants appeared through their attorney, Valerie Landis.

The alternate medical care claim came before the undersigned for a telephone hearing on June 28, 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 1-2, which include a total of 6 pages. The record also contains defendants' exhibits A through D, which contain 9 pages. All exhibits were received without objection. Claimant testified on her own behalf. No other witnesses were called to testify. Counsel for both parties offered cogent and helpful argument at the hearing.

Claimant's original notice and petition for alternate medical care lists the date of injury as September 5, 2020. Defendants filed an Answer, admitting liability for the September 5, 2020, injury, on June 15, 2021. At hearing, claimant's counsel notified the undersigned that the petition was meant to cover both the September 5, 2020, date of injury, and the February 10, 2020, date of injury. Defendants admitted liability for

both injury dates at hearing.

ISSUE

The issue presented for resolution is whether the claimant is entitled to an order of alternate medical care for an orthopedic evaluation of her back.

FINDINGS OF FACT

The undersigned having considered all the evidence in the record finds:

Tiffany Puga-Vallegos, claimant, sustained a work-related back injury on February 10, 2020. The employer directed her medical care after this injury. Specifically, the employer directed claimant to be evaluated by Brenda Mauch, ARNP at UnityPoint Health – St. Luke's Occupational Medicine. She also participated in physical therapy, as recommended by Ms. Mauch. It is estimated that claimant participated in approximately 12 physical therapy sessions.

An MRI, taken on or about March 2, 2020, revealed L4-5, L5-S1 intervertebral disc disease with central canal narrowing at L4-5, neural foraminal narrowing at L5-S1 with contact of the left exiting nerve root, and minimal left lateral recess narrowing at L5-S1. (See Exhibit 1, page 2)

Ms. Mauch placed claimant at maximum medical improvement (MMI) and released claimant to return to work without restrictions on April 1, 2020. Ms. Mauch recommended claimant continue taking ibuprofen and Tylenol as needed. She also requested that claimant receive a back support to help with heavy lifting at work. (Ex. 1, pp. 3-4) Claimant returned to work for the defendant employer after being released by Ms. Mauch. (Claimant's testimony)

Claimant subsequently sustained a work-related back injury on September 5, 2020. Initially, claimant declined defendants' offer of medical treatment as she assumed said treatment would only consist of a referral to physical therapy, which she did not find helpful. (Claimant's testimony) Eventually, claimant requested medical treatment and defendants directed her back to St. Luke's Occupational Medicine. Claimant was evaluated by Douglas Martin, M.D., or other medical professionals at St. Luke's approximately 6 times. (Claimant's testimony; See Ex. A)

Unfortunately, claimant contracted COVID-19 on or about October 26, 2020. Claimant testified that she was sick and off work for approximately one month. She returned to work on December 4, 2020. Her employment with the defendant employer was terminated on December 16, 2020, after she was a no call/no show for three consecutive shifts. (Ex. C, p. 1) Claimant subsequently started working as a CNA for Careage Hills on December 8, 2020. (Ex. D, p. 1)

Dr. Martin recommended claimant attend additional physical therapy sessions in January 2021. The evidentiary record shows claimant had difficulty attending her

physical therapy appointments. Claimant only presented to physical therapy twice between January 14, 2021, and March 1, 2021. (See Ex. A, p. 3) According to the medical records, claimant had, "quite a bit of compliance issues" with physical therapy. (See Ex. A, p. 3)

On March 1, 2021, claimant was evaluated by Dr. Martin. She continued to report bilateral sacroiliac joint pain, but denied numbness, tingling, or any radiating pain in her lower extremities. This accuracy of Dr. Martin's report was disputed by claimant at the alternate medical care hearing. Dr. Martin assessed claimant with low back pain and sacroiliitis. (Ex. A, p. 3) Dr. Martin reminded claimant that he had originally planned for her to present to 12 sessions of physical therapy, and suggested that she still complete the same. Despite noting ongoing discomfort, Dr. Martin opined it would be appropriate to return claimant to her regular job activities without restrictions. He further provided:

> She is at maximum medical improvement. One could argue that maybe that would not necessarily occur until she is done with therapy. We also had conversations about what is reasonable if she would be noncompliant with her therapy attendance. The way that I would handle this is I would set her up for 3 times a week for the next 3 weeks and let her be in control of her situation.
>
> I think that there will be a 0% impairment rating here if there is an issue of impairment rating that would come up.

(Ex. C, p. 4)

Claimant was discharged from physical therapy on April 20, 2021, for non-compliance and/or a lack of communication with the provider. (Ex. B, p. 1) It is noted that claimant attended 5 physical therapy sessions between March 18, 2021, and March 31, 2021. (Id.) It is also noted that claimant cancelled an appointment on April 6, 2021, and then no call/no showed for an appointment on April 13, 2021. (Id.) As of her most recent PT session, claimant was seeing improvement; however, she was still reporting soreness in her low back. (Id.) It is noted that claimant's soreness, "seemed to be linked with the more she worked and the more she lifted based on her reports." (Id.) The parties dispute which employer claimant was referring to when she made this remark. The report further notes that claimant had significant deficits with her overall core stability. (Id.)

In a May 6, 2021, report, Dr. Martin confirmed the opinions he originally expressed in his March 1, 2021, medical record. (Ex. A, p. 1) The report provides: (1) claimant reached MMI as of March 1, 2021; (2) claimant's impairment rating is 0%; (3) claimant was released without restrictions; and (4) Dr. Martin agrees with Horn Memorial Hospital's decision to discharge claimant from physical therapy on April 20, 2021. (Id.)

Review of the evidentiary record demonstrates that none of the providers at St.

Luke's Occupational Medicine made a referral to an orthopedic surgeon. Claimant conceded this point during her testimony.

Despite the treatment offered to claimant to date, she continues to experience symptoms in her low back. Claimant testified she experiences shocking sensations and numbness in her low back. She testified the pain she experiences is unbearable and interferes with her ability to work. As a result, claimant seeks referral to and authorization of treatment with an orthopedic surgeon. (Claimant's testimony) Defendants assert they have authorized and provided reasonable and prompt medical care for claimant's condition.

REASONING AND CONCLUSIONS OF LAW

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. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening, October 16, 1975).

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); Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); 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. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). 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).

To establish a claim for alternative medical care, an employee must show that the medical care furnished by the employer is unreasonable. Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010).

In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997), the supreme court held that "when evidence is presented to the commissioner that the employer-authorized medical care has not been effective and that such care is 'inferior or less extensive' than other available care requested by the employee, . . . the commissioner is justified by section 85.27 to order the alternate care."

Claimant seeks an order authorizing treatment with an orthopedic surgeon. Claimant's rationale is logical and reasonable. Claimant continues to experience ongoing pain and discomfort in her low back. Claimant essentially asserts that Dr. Martin's pronouncement that no further care is needed is tantamount to providing no care at all and is per se unreasonable.

It is undisputed claimant continues to report low back pain and desires an orthopedic evaluation. Claimant has not obtained support for such a request. There is no evidence that any physician, authorized or independent, has recommended she present for an orthopedic evaluation. No physician has referred claimant for an orthopedic evaluation or opined that such an evaluation would be reasonable at this time. Claimant produced no evidence to establish that the care offered by defendants to date has been inferior or less extensive than other available care. Defendants have offered all reasonable medical care that has been recommended by a medical provider. No active treatment recommendations are pending. Defendants have not denied any recommended care at the present time because no further care is recommended.

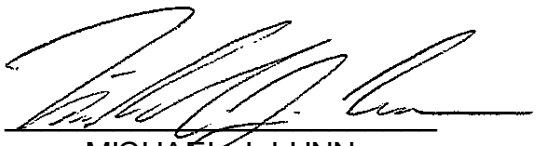
Given that claimant continues to suffer with low back complaints, Dr. Martin's failure to recommend additional treatment is undoubtedly frustrating. A referral for an orthopedic evaluation is certainly reasonable. This is particularly true given the severity of claimant's complaints; however, desirability of a certain course of action is not the legal standard utilized in alternate medical care proceedings. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). Therefore, I conclude that claimant has failed to prove that the care offered by defendants has been unreasonable. Claimant has not carried her burden and for that reason her alternate medical care petition is denied.

ORDER

THEREFORE IT IS ORDERED:

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

Signed and filed this 28th day of June, 2021



MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Connor Mulholland (via WCES)

Valerie Landis (via WCES)