

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

WAIYEE DAHN,

Claimant,

vs.

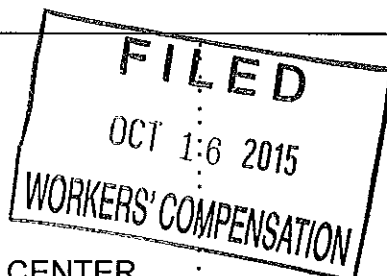
WILLOW GARDENS CARE CENTER,

Employer,

and

AMERICAN COMPENSATION  
INSURANCE CO.,

Insurance Carrier,  
Defendants.



File No. 5051811

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, Waiyee Dahn. Claimant appeared personally and through her attorney, Christoph Rupprecht. Defendants appeared through their attorney, Thomas Wolle.

The alternate medical care claim came on for hearing on October 16, 2015. 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 10 pages. Claimant's exhibits were received without objection. The record also contains defendants' exhibits A and B, which include four pages. Claimant was called to testify, and counsel both offered helpful factual and legal arguments.

ISSUE

The issue presented for resolution is whether the claimant is entitled to a compounding cream recommended by her authorized treating physician, Stanley J. Mathew, M.D.

## FINDINGS OF FACT

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

Waiyee Dahn sustained a low back injury arising out of and in the course of her employment duties at Willow Gardens Care Center on May 5, 2014. Defendants admit liability for the injury and the current condition.

Stanley J. Mathew, M.D. is the authorized treating physician for claimant's low back injury. In April 2015, Dr. Mathew recommended three additional items for treatment of claimant's low back injury. Specifically, Dr. Mathew recommended a TENS unit, a lumbosacral corset, and a compounding cream to be applied to claimant's low back. (Exhibit 1, page 1) Defendants have authorized and agree to provide the TENS unit (which claimant has already received) and the lumbosacral corset. However, defendants deny the reasonableness and necessity of the recommended compounding cream.

Defendants challenge the reasonableness and necessity of medical opinions and recommendations offered by Dr. Mathew by presenting the medical opinions of two other physicians. Specifically, defendants rely upon the medical opinions of Dr. Doug Smith, who is a staff medical director for the third-party administrator handling Ms. Dahn's claim, and an independent medical evaluator, Lloyd John Luke, M.D. Dr. Smith has never personally examined claimant and Dr. Luke performed a one-time evaluation in August 2015.

Dr. Smith offered a medical opinion on April 27, 2015, stating:

[R]eason for trial of compounded cream as patient had a change in pain meds from hydrocodone to tramadol and has not had any NSAIDs prescribed that I can see. The FDA non-approved compounded creams have no peer-reviewed non proprietary literature that would suggest benefit over any oral meds for patients that can tolerate oral medications. Recommend no m/n for compounded medications.

(Ex. 1, p. 4)

Claimant testified that Dr. Smith's understanding and assumptions were inaccurate in his April 27, 2015 opinion. Specifically, claimant testified that she had tried NSAIDs, including Naproxen and Ibuprofen, prior to that opinion being rendered. She also testified that, contrary to Dr. Smith's understanding, she had tried a TENS unit during physical therapy prior to April 27, 2015 and had experienced beneficial results from that trial.

Defendants also obtained an independent medical evaluation, performed by Dr. Luke, on August 4, 2015. Dr. Luke noted the prescriptions by Dr. Mathew for the

corset and compounding cream had not been provided. However, he did not offer treatment recommendations that included these items.

On September 16, 2015, claimant returned for evaluation by Dr. Mathew. Dr. Mathew again recommended the TENS unit, lumbar corset and compounding cream. (Ex. 1, p. 6) Defendants obtained a review and response from Dr. Smith on September 21, 2015, who reiterated his April 23, 2015 opinion that the corset was not medically necessary. However, in this later report, Dr. Smith indicated that the TENS unit was a reasonable medical option. (Ex. 1, p. 7)

Defendants also asked Dr. Luke to specifically comment on the recommendations for a TENS unit, a corset and a compounding cream. In a report dated October 2, 2015, Dr. Luke opines, "I would think that Ms. Dahn could benefit from use of a TENS unit. However I do not believe a corset or compounding cream will add to Ms. Dahn's chronic comfort level." (Ex. A)

Despite the medical opinions from Dr. Smith and Dr. Luke that the corset recommended by Dr. Mathew is not medically reasonable and necessary, defendants have agreed to authorize and provide the corset. Nevertheless, defendants deny that the compounding cream recommended by Dr. Mathew is medically reasonable and necessary. No explanation was offered by defendants why they contradict the medical opinions of Dr. Smith and Dr. Luke on the issue of the reasonableness and necessity of the corset while relying upon their opinions to deny the recommended compounding cream.

It is found that defendants are attempting to "pick and choose" which medical recommendations they desire to authorize and that defendants have not fully relied upon the medical opinions of any of the physicians in this record. The authorized physician, Dr. Mathew, has the best knowledge of claimant's condition and has evaluated claimant multiple times. Dr. Mathew's knowledge and understanding of claimant's condition and past treatment is superior to that of Dr. Smith, who did not possess all of the relevant information when offering his opinions in April 2015. Dr. Luke evaluated claimant only once. Defendants do not entirely follow his recommendations and have specifically contradicted his recommendations by agreeing to authorize the corset.

Of the three physicians' opinions contained within this evidentiary record, I find the opinions of Dr. Mathew to be most informed and most credible. Therefore, I find that claimant has proven the recommended compounding cream is medically reasonable and necessary.

I also find the recommendations offered by Dr. Mathew to be superior and more extensive than the recommendations offered by the other physicians. Dr. Smith does not offer an alternative treatment regimen, rather he simply opines that the current recommendations are not necessary. Dr. Luke recommends "muscular challenge and

strength," which is consistent with the use of the TENS unit. (Ex. A) However, he does not offer an alternative to the use of the corset and compounding cream. Dr. Mathew is clearly recommending non-invasive treatments that are more extensive to those recommended by either Dr. Smith or Dr. Luke.

#### 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).

An employer's right to select the provider of medical treatment to an 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).

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 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).

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."

Having found the opinions of Dr. Mathew to be the most credible and convincing medical opinions in this record and having found his treatment recommendations, including the compounding cream, to be reasonable, I conclude that claimant has proven entitlement to an order directing defendants to authorize and pay for the recommended compounding cream. Having also found that Dr. Mathew's treatment recommendation, including the compounding cream, is more extensive and superior to the treatment recommendations offered by Dr. Smith and Dr. Luke, I again conclude that claimant has proven entitlement to an order directing defendants to authorize and pay for the recommended compounding cream.

ORDER

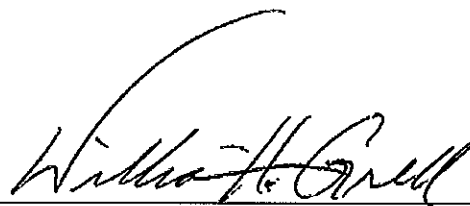
THEREFORE IT IS ORDERED:

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

Defendants shall authorize and pay for the compounding cream, as recommended and prescribed by Dr. Stanley J. Mathew.

Failure to comply with this order may result in the imposition of sanctions pursuant to 876 IAC 4.36.

Signed and filed this 11<sup>th</sup> day of October, 2015.



WILLIAM H. GRELL  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

Copies to:

Christoph Rupprecht  
William G. Nicholson  
Attorneys at Law  
PO BOX 637  
Cedar Rapids, IA 52406-0637  
[christoph@rushnicholson.com](mailto:christoph@rushnicholson.com)  
[wnich@rushnicholson.com](mailto:wnich@rushnicholson.com)

DAHN V. WILLOW GARDENS CARE CENTER  
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Thomas D. Wolle  
Attorney at Law  
PO Box 1943  
Cedar Rapids IA 52406-1943  
[twolle@simmonsperrine.com](mailto:twolle@simmonsperrine.com)

WHG/kjw