

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LISA KRUSER,

Claimant,

vs.

AREA RESIDENTIAL CARE,

Employer,

and

WEST BEND MUTUAL INSURANCE,

Insurance Carrier,  
Defendants.

File No. 5061914.04

ALTERNATE MEDICAL CARE

DECISION

Head Note: 2701

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, Lisa Kruser.

This alternate medical care claim came on for hearing on October 11, 2023. 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 Exhibit 1 and the testimony of claimant.

## ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of mental health counseling and treatment with Jennifer Gremmell, T-LMHC.

## FINDINGS OF FACT

Defendants accepted liability for a work-related injury to claimant occurring on May 23, 2016. On that date claimant was punched in the face by a resident at the Area Residential Care Center (ARC) which broke claimant's nose. A prior decision before

this agency found claimant's work injury and surgeries aggravated a pre-existing mental health condition. In that decision defendants were ordered to authorize and pay for mental health counseling for claimant. Kruser v. Area Residential Care, File No. 5061914.02 (App. Dec. May 6, 2022)

In a February 1, 2023, email, claimant's counsel requested defendants to authorize claimant to be sent to A Mindful Journey for counseling. (Exhibit 1, page 10)

In a March 3, 2023, email, defendants' counsel indicated defendants were authorizing claimant for 25 counseling visits with Hillcrest Family Services (Hillcrest). (Ex. 1, p. 9)

In an April 7, 2023, email, claimant's counsel indicated claimant had tried counseling at Hillcrest and it did not go well. Claimant did not want to return to Hillcrest. Claimant requested Southwest Behavioral Health in Platteville, Wisconsin or A Mindful Journey in Dubuque, Iowa for counseling. (Ex. 1, p. 7)

In a May 24, 2023, email, defendants indicated Southwest declined to take claimant as a client. (Ex. 1, p. 5)

In a July 12, 2023, email, defendants indicated they contacted several counseling services who declined taking new patients. A nurse case manager had reached out to claimant regarding registering for services at Hillcrest. (Ex. 1, pp. 3-4)

In a July 23, 2023, email, defendants' counsel again inquired about claimant having counseling services at Hillcrest. (Ex. 1, pp. 2-3)

In a July 28, 2023, email, claimant's counsel indicated claimant was not interested in having services with Hillcrest. Claimant's counsel's office would be in touch regarding counseling for claimant. (Ex. 1., p. 2)

In a July 28, 2023, email, defendants' counsel indicated he understood claimant did not like the counselor she saw at Hillcrest, but recommended claimant see a different counselor. (Ex. 1, p. 1)

In an August 17, 2023, email claimant's counsel indicated claimant did not want services with Hillcrest and asked for authorization with Crossroads Counseling. (Ex. 1, p.1)

Claimant indicated she wanted to see a mental health counselor at Crossroads Counseling. She said the counselor she saw at Hillcrest did not offer her any help. She said that many of the other clients at Hillcrest were developmentally disabled. She said that because she was hit in the face by a developmentally disabled client at ARC, being in a facility with developmentally disabled people made her feel unsafe.

Claimant testified she last received counseling at Hillcrest in 2019. She testified that, in depositions for her 2021 arbitration hearing and in the hearing itself, she did not identify safety as a reason she did not want counseling at Hillcrest. Claimant did testify in her 2021 arbitration hearing she was unhappy with counseling at Hillcrest. She did not indicate safety was an issue at Hillcrest in the August 10, 2021, arbitration hearing or in her prehearing depositions. (Arbitration Hearing Transcript, pages 29, 36-37, 72-73; Defendants' Arbitration Exhibits 1 and 2)

### CONCLUSION OF LAW

The party who would suffer loss if an issue were not established ordinarily has the burden of proving that issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.904(3).

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.

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).

Alternate care includes alternate physicians when there is a breakdown in a physician/patient relationship. Seibert v. State of Iowa, File No. 938579 (September 14, 1994); Neuaone v. John Morrell & Co., File No. 1022976 (January 27, 1994); Williams v. High Rise Const., File No. 1025415 (February 23, 1993); Walech v. FDL Foods, Inc., File No. 1020245 (September 3, 1992) (aff'd Dist Ct June 21, 1993).

Claimant does not want to return to mental health counseling at Hillcrest. She testified in the alternate medical care hearing she did not want to return as her therapist was not helpful and did little for improvement of her mental health. At the alternate medical care hearing claimant also testified she felt unsafe at Hillcrest given her prior injury.

Claimant's depositions taken for her 2021 arbitration hearing do not identify safety concerns as a reason for not returning to Hillcrest for therapy. Claimant's testimony in her 2021 arbitration hearing does not identify safety concerns as a reason for not returning to Hillcrest for therapy. Emails between counsel from February of 2023 to August of 2023 do not identify safety concerns as a reason for not returning to Hillcrest for therapy. (Ex. 1)


There is nothing in claimant's depositions or her testimony at the August 2021 arbitration hearing indicating claimant was fearful of having counseling at Hillcrest. There is nothing in the six months of emails between counsel indicating safety was a reason for claimant not returning to Hillcrest for counseling. Given this record, claimant's testimony in the alternate medical care hearing regarding her safety at Hillcrest is not convincing.

I do appreciate claimant did not have success or feel benefit from her 2019 mental health therapy with a Hillcrest therapist. However, defendants have offered claimant to treat with a different Hillcrest mental health therapist. The record indicates defendants have had difficulty placing claimant with other mental health counseling. The last counseling claimant had at Hillcrest was in 2019. Claimant's testimony regarding safety concerns at Hillcrest is found not convincing at this time. Given this record, claimant has failed to carry her burden of proof the care offered by defendants, of a different mental health therapist at Hillcrest, is unreasonable.

THEREFORE, IT IS ORDERED:

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

Signed and filed this 11<sup>TH</sup> day of October, 2023.

  
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JAMES F. CHRISTENSON  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Zeke McCartney (via WCES)

Adam Bates (via WCES)