BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

GRACIELA DE MALDONADO, Claimant, vs. WATERLOO COMMUNITY SCHOOL DISTRICT, Employer, and UNITED WISCONSIN INSURANCE COMPANY, Insurance Carrier, Defendants.	File No. 5059882.04 ALTERNATE MEDICAL CARE DECISION Head Note: 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, Graciela de Maldonado. Claimant appeared through her attorney, Casey Steadman. Defendants appeared through their attorney, Laura Ostrander.

The alternate medical care claim came on for hearing on September 21, 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 evidentiary record consists of Claimant's Exhibits 1-6 and Defendants' Exhibits A-B. During the course of the hearing defendants accepted liability for the June 14, 2017 work injury and for the conditions for which claimant is seeking treatment.

It should be noted that the undersigned issued an arbitration decision in this matter on December 27, 2019. Since that time, three petitions, including the pending petition for alternate care, have been filed.

ISSUE

The issue for resolution is whether the claimant is entitled to alternate medical care.

FINDINGS OF FACT

Claimant, Graciela de Maldonado, sustained an injury to her back, bilateral knees, bilateral lower extremities, hips, pain syndrome, and whole body. Claimant is dissatisfied with the care offered by the defendants. Claimant seeks a referral to pain management with Dr. Stanley Mathew or another pain management specialist; a determination that the care offered by defendants is not suitable treatment; or a finding that defendants have abandoned care for ongoing interference. During the course of the hearing defendants accepted liability for the June 14, 2017 work injury and for the conditions for which claimant is seeking treatment. Defendants are offering additional physical therapy and a neuropsychological evaluation.

Stanley Mathew, M.D., a physiatrist and pain specialist, has opined that Ms. de Maldonado's whole body pain is neurological and not psychiatric. He believes Ms. de Maldonado would benefit from ongoing pain medication management supervised by a physiatrist and pain specialist. Dr. Mathew believes that Ms. de Maldonado could expect to see a reduction in her pain symptoms and an increased quality of life with pain management. Dr. Mathew's office is willing to offer pain medication management to Ms. de Maldonado. (Cl. Ex. 1, pp. 1-2; Cl. Ex. 2, p. 3)

Claimant's counsel deposed Dr. Fields. In April 2021, Dr. Fields discussed a physiatrist referral. He testified he had a discussion with Ms. de Maldonado and her daughter about the nature of her pain and trying to take a more all-encompassing holistic approach. He discussed a physiatrist because in his experience patients with chronic pain symptoms and situations like hers where it is unclear what the exact diagnosis is, he feels physiatrists are helpful. Dr. Fields is aware of Dr. Mathew's diagnoses, treatment recommendations, and Dr. Mathew's willingness to treat Ms. de Maldonado. Dr. Fields' opinion is that a referral to a neuropsychiatrist is appropriate. Dr. Fields admitted that a pain specialist would have more training in treating pain symptoms than someone in Dr. Fields' medical field. Additionally, Dr. Fields testified that Ms. de Maldonado has had over 120 physical therapy visits since her 2017 work injury, and he feels that it is enough. (Cl. Ex. 2)

On August 17, 2021, Ms. de Maldonado attended an appointment with Nicholas Bingham, M.D. Prior to the appointment the defendants stated that Dr. Bingham would see her for her "alleged ongoing bilateral knee and back symptoms." (Cl. Ex. 3, p.1) The defendants did not provide an interpreter, so Ms. de Maldonado's daughter translated the appointment. According to Ms. de Maldonado, Dr. Bingham performed an examination of her knees, but refused to examine her back. Dr. Bingham informed Ms. de Maldonado that he was authorized to examine only her knees. Dr. Bingham told Ms. de Maldonado that he could not diagnose her knee complaints and could not recommend any treatment. According to Ms. de Maldonado, "Dr. Bingham stated that

while I could not be diagnosed, I was 'already receiving free checks from workers' compensation.'" (Cl. Ex. 3, p. 1) Dr. Bingham offered to give her another course of physical therapy if she wanted. Ms. de Maldonado told him that she just had physical therapy with Dr. Fields, and it resulted in more pain, headaches, and increased blood pressure. After receiving that information, Dr. Bingham withdrew his suggestion. (Cl. Ex. 3)

The clinical notes from Dr. Fields' August 17, 2021 appointment are in evidence. Dr. Bingham's notes are consistent with Ms. de Maldonado's account of the appointment. The chief complaint is listed as bilateral knee pain; there is no mention of back pain anywhere in the notes. Additionally, the doctor does not make note of a detailed back examination. His diagnoses do not mention anything with regard to the back. Dr. Bingham notes that he offered physical therapy, but because Ms. de Maldonado declined, he is releasing her from his care. (Cl. Ex. 4)

Defendants have referred Ms. de Maldonado to several occupational doctors without benefit and those doctors are no longer providing her with any treatment. (Cl. Ex. 6) At this point, the treatment offered by defendants is physical therapy and a referral to Daniel Tranel, Ph.D.

First, we will address the offer of physical therapy. Presumably, defendants have offered the physical therapy based on the recommendation of Dr. Bingham. Once Ms. de Maldonado declined the physical therapy, Dr. Bingham released her from his care. Ms. de Maldonado had just completed physical therapy with Dr. Fields, and it caused her more pain. It is not clear if Dr. Bingham was aware of Ms. de Maldonado's recent physical therapy. It should be noted that in his deposition Dr. Fields testified that the over 120 physical therapy visits that Ms. de Maldonado has attended were probably enough. Because it is not clear if any doctor is even recommending physical therapy and because Dr. Fields, a doctor selected and hired by defendants, agrees that over 120 prior physical therapy visits are enough, I find that the treatment offered by defendants is not effective and is inferior to the care sought by Ms. de Maldonado. I further find that an offer of additional physical therapy is not reasonable at this time.

Second, we will address the offer of an appointment with Daniel Tranel, Ph.D., a clinical psychologist, not a medical doctor. (Cl. Ex. 2, p. 4) Dr. Fields testified, "[i]n my medical opinion, the right decision at this point would be a referral to a neuropsychiatrist." (Cl. Ex. 2, depo. p. 23, ll. 20-22) Defendants are not offering an appointment with a neuropsychiatrist. Rather, defendants are offering an appointment with a clinical psychologist. I find the treatment offered by defendants is not reasonable.

Claimant seeks to have treatment with Dr. Mathew, who is a physiatrist and pain specialist. Dr. Mathew has more training in treating pain symptoms than Dr. Fields. (Cl. Ex. 2, p. 4) He believes Ms. de Maldonado would benefit from ongoing pain medication management supervised by a physiatrist and pain specialist. Dr. Mathew believes that Ms. de Maldonado could expect to see a reduction in pain symptoms and an increased quality of life with pain management. Dr. Mathew's office is willing to offer pain medication management to Ms. de Maldonado. (Cl. Ex. 1, pp. 1-2; Cl. Ex. 2, p. 3) I

find that the care offered by defendants is inferior to the treatment sought by the claimant.

REASONING AND CONCLUSIONS OF LAW

Under Iowa law, the employer is required to provide care to an injured employee and is permitted to choose the care. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

> [T]he 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.

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 v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). Determining what care is reasonable under the statute is a question of fact. Id. 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). In Pirelli-Armstrong Tire Co., 562 N.W.2d at 433, the court approvingly quoted Bowles v. Los Lunas Schools, 109 N.M. 100, 781 P.2d 1178 (App. 1989):

> [T]he words "reasonable" and "adequate" appear to describe the same standard.
>
> [The New Mexico rule] requires the employer to provide a certain standard of care and excuses the employer from any obligation to provide other services only if that standard is met. We construe the terms "reasonable" and "adequate" as describing care that is both appropriate to the injury and sufficient to bring the worker to maximum recovery.

The commissioner is justified in ordering alternate care when employer-authorized care has not been effective and evidence shows that such care is "inferior or less extensive" care than other available care requested by the employee. Long; 528 N.W.2d at 124; Pirelli-Armstrong Tire Co.; 562 N.W.2d at 437.

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).

Reasonable care includes care necessary to diagnose the condition and defendants are 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).

Based on the above findings of fact, I conclude that the care offered by defendants is not reasonable. First, defendants have offered physical therapy. Ms. de Maldonado has declined this offer. Ms. de Maldonado has already attended over 120 physical therapy visits. Even Dr. Fields has concluded those visits are enough. I conclude that the physical therapy offered by the defendants is inferior to the treatment sought by the claimant. Second, defendants have offered an appointment with a clinical psychologist. There is no evidence in this case that any medical provider has recommended Ms. de Maldonado see a clinical psychologist. Dr. Fields recommended a neuropsychiatrist, but that is different than what defendants have offered. I conclude defendants' offer to send Ms. de Maldonado to Daniel Tranel, Ph.D. is not reasonable. I further conclude that defendants' offer is inferior to the treatment claimant is seeking. Thus, I conclude that claimant's petition for alternate care is granted in part.

Claimant contends that the defendants have abandoned care for ongoing interference. It is noted that there have now been two occasions that claimant was told an authorized provider was authorized to examine more parts of her body than the doctor understood he had authority to treat. Defendants have denied this occurred. However, the first doctor was recorded stating that he was not authorized to treat both knees, he only had authority to treat the right knee. (See Agency File No. 5059882.02) On the second occasion, claimant was told the doctor had authority to examine and treat her back; yet the doctor's notes indicate otherwise. (Cl. Ex. 4) At this time, I conclude that defendants' conduct has not yet reached the level to grant the request regarding ongoing interference. However, defendants are cautioned that reasonable care includes care necessary to diagnose the condition and defendants are not entitled to interfere with the medical judgment of its own treating physician. Therefore, claimant's petition for alternate medical care is denied in part.

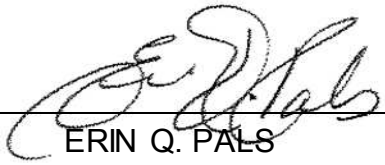
ORDER

THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care is granted in part and denied in part.

Defendants shall authorize pain management treatment with Dr. Stanley Mathew.

Signed and filed this ____23rd____ day of September, 2021.



ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Casey Steadman (via WCES)

Laura Ostrander (via WCES)