

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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JOYCE HARMMEYER,

Claimant,

vs.

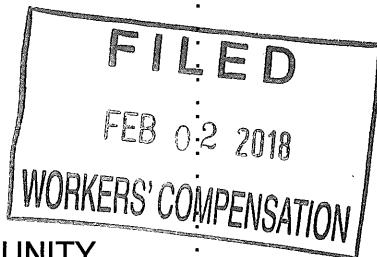
SOUTHEAST POLK COMMUNITY  
SCHOOL DISTRICT,

Employer,

and

CMI,

Insurance Carrier,  
Defendants.



File No. 5046900

ALTERNATE MEDICAL  
CARE DECISION

Head Note No.: 2701

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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, Joyce Harmeyer. Claimant appeared personally and through attorney, Nicholas Shaull. Defendants appeared through their attorney, Marc Middleton.

The alternate medical care claim came on for hearing on February 2, 2018. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's 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 the sworn testimony of Joyce Harmeyer. Administrative notice is taken of the agency file.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care. Claimant contends prescription authorization has been delayed repeatedly and seeks an order from this agency protecting the claimant.

## FINDINGS OF FACT

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

Joyce Harmeyer is a 60-year-old woman who sustained an injury which arose out of and in the course of her employment on August 23, 2012. The defendants do not contest that this injury has resulted in a medical condition in claimant's low back. Prior to the hearing today, claimant has filed three previous alternate medical care petitions in order to receive reasonable and timely medical care. The first two petitions were dismissed without prejudice after defendants authorized the care requested. The last petition resulted in a consent order on the record.

On November 17, 2017, Todd Harbach, M.D., evaluated claimant on behalf of the defendants. (Claimant's Exhibit, page 2) He recommended surgery. (Cl. Ex., p. 5) I find Dr. Harbach is the claimant's authorized treating physician.

As of the date of hearing, the surgery has not been authorized. The defendants offered no explanation at hearing as to why the care has not been authorized. Defense counsel explained that he is new to the file.

Ms. Harmeyer testified tearfully about the impact of her disabling condition on her life.

## 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. Iowa Code Section 85.27 (2013).

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See 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).

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).

An employer's statutory right is to select the providers of care and the employer may consider cost and other pertinent factors when exercising its choice. Long, at 124. An employer (typically) is not a licensed health care provider and does not possess medical expertise. Accordingly, an employer does not have the right to control the methods the providers choose to evaluate, diagnose and treat the injured employee. An employer is not entitled to control a licensed health care provider's exercise of professional judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988). An employer's failure to follow recommendations of an authorized physician in matters of treatment is commonly a failure to provide reasonable treatment. Boggs v. Cargill, Inc., File No. 1050396 (Alt. Care January 31, 1994).

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).

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).

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, I Iowa Industrial Commissioner Reports 207 (1981).

"Determining what care is reasonable under the statute is a question of fact."  
Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995).

Claimant was evaluated by the authorized treating physician in November 2017. That physician recommended surgery. The defendants did not present any evidence that the care they have offered is reasonable. Defense counsel expressed hope that treatment would be more promptly authorized in the future with his involvement and assistance. He offered to be a direct line of communication with claimant's counsel.

I find that the care offered by the defendants has been unreasonably delayed and denied. Based upon the file before me, it appears that the defendants have a pattern of failing to promptly authorize the treatment recommended by its own physicians. While I believe defense counsel has good intentions of "righting the ship" to promptly authorize care, I am quite concerned that the employer and insurance carrier do not fully understand the gravity of this situation. Ms. Harmeyer deserves to receive medical care without delay.

If this case comes before me again under similar circumstances, specifically treatment from the authorized treating physician not being promptly authorized, I will strip the defendants of any right to direct medical care. If this were to occur, claimant will be entitled to direct her own medical care at the employer's expense. The claimant has requested that the care from the authorized treating physician to be authorized. This is granted.

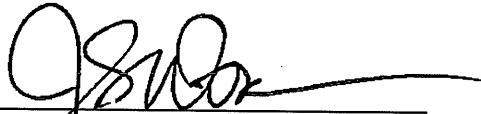
ORDER

THEREFORE, IT IS ORDERED:

The claimant's petition for alternate medical care is GRANTED. By the close of business February 5, 2018, defendants shall authorize the surgery recommended by Dr. Harbach. Dr. Harbach is deemed the authorized treating physician from this point forward. Any causally-connected care recommended by Dr. Harbach from this point forward shall be promptly authorized by defendants.

IT IS FURTHER ORDERED that if the defendants fail to comply with this Order, they may be subject to sanctions as set forth in 876 Iowa Administrative Code section 4.36, including the assessment of costs and expenses, including attorney fees necessary to enforce this Order.

Signed and filed this 2<sup>nd</sup> day of February, 2018.

  
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JOSEPH L. WALSH  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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