

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ADAM YOUNG,  
Claimant,

vs.

PREMIUM PLANT SERVICES, INC.,  
Employer,

and

EVEREST NATIONAL INS. CO.,  
Insurance Carrier,  
Defendants.

File No. 22700533.01

ALTERNATE MEDICAL  
CARE DECISION

Head Note No.: 2701

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, Adam Young. Claimant appeared personally and through his attorney, Gary Nelson. Defendants did not file an appearance or answer, nor appear for the hearing.

Claimant's original notice and petition was filed on June 2, 2022. The petition includes a signed proof of service upon the employer. Additionally, Claimant's Exhibit 1 contains a certified mail receipt for the employer. Claimant's attorney has communicated via email with the employer and insurance carrier regarding the request for alternate care and hearing as well. (Claimant's Exhibit 2, pp. 1-2) Notice of hearing was given by this agency to the employer and insurance carrier, via U.S. Mail on June 2, 2022. Nevertheless, defendants have not entered an appearance or responded in any way to the pending petition for alternate medical care.

The alternate medical care claim came on for hearing on June 14, 2022. 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 through 5, and claimant's sworn testimony. There is no denial of liability on file with the agency. Given defendants' failure to appear for hearing or otherwise defend that alternate medical care hearing, they are

found to be in default. All allegations of the claimant's petition for alternate medical care are accepted as accurate.

### ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of authorization of care. Specifically, claimant requests to return to his primary care physician, Michael D. McKenna, M.D., for a referral to a spine specialist or other appropriate physician to treat his low back injury.

### FINDINGS OF FACT

Claimant testified that his job at Premium Plant Services involves cleaning ethanol plants with high pressure washers. On October 27, 2020, he injured his low back while working. He reported his injury the same day to his safety coordinator, Kristi Knepper. The defendants sent him to see a Nurse Practitioner. In May of 2022, the Nurse Practitioner advised claimant that she recommended he see a spine specialist. Claimant made his employer and the insurance carrier aware of the recommendation, but no referral or appointment was made. As such, claimant eventually saw his primary care physician, Michael D. McKenna, M.D., on his own.

On May 24, 2022, Dr. McKenna authored a letter indicating that claimant should remain off work until he has further evaluation and management recommendations through his workers' compensation specialist. (Cl. Ex. 3) Dr. McKenna noted that claimant has been struggling with persistent low back pain. He had recently returned to light duty work and had a significant exacerbation of pain. Dr. McKenna advised claimant was unable to work, even in a light duty capacity, due to his current level of discomfort and activity limitations.

Both claimant and his attorney made requests to the employer and insurance carrier for additional authorized treatment as recommended by the initial Nurse Practitioner and Dr. McKenna. (Cl. Ex. 2; 4; 5) As noted above, defendants did not appear at hearing or file an answer. As of the date of hearing, no additional care has been authorized. Claimant testified that he would like to return to Dr. McKenna for a referral to an appropriate specialist in order to treat his ongoing back pain.

I find that defendants are not currently authorizing any care for claimant's injury. As a result, I find that defendants are not offering reasonable medical care suited to treat the claimant's work injuries.

### 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 Iowa Supreme Court has held the employer has the right to choose the provider of care, except when the employer has denied liability for the injury,

or has abandoned care. Iowa Code § 85.27(4); Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010).

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 Rule of Appellate Procedure 14(f)(5); Gwinn, 779 N.W.2d at 209; 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).

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, June 17, 1986).

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."

Defendants' failure to offer prompt medical care is unreasonable, and constitutes an abandonment of defendants' obligation to provide claimant medical care under Iowa Code section 85.27. Once an abandonment of care has occurred, the claimant is free to seek care on her own at defendant's cost. See West Side Transport v. Cordell, 601 N.W.2d 691 (Iowa 1999) (the court upheld the holding that the defendant employer had "lost the right to choose the care" and that "allow and order other care" language is broad enough to include treatment by a doctor of the employee's choosing).

I found defendants are not offering reasonable medical care suited to treat the claimant's work injuries. Therefore, claimant has established entitlement to an order directing defendants to authorize treatment with Dr. McKenna, including authorization of any referrals Dr. McKenna makes for specialized care to treat claimant's low back injury.

#### ORDER

THEREFORE, IT IS ORDERED:

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

Defendants shall immediately authorize Michael D. McKenna, M.D., to provide reasonable care and referrals for claimant's low back injury.

Signed and filed this 14<sup>th</sup> day of June, 2022.



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JESSICA L. CLEEREMAN  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Gary Nelson (via WCES)

Premium Plant Services, Inc. (via regular and certified mail)  
1336 E 31<sup>st</sup> St.  
Hibbings, MN 55746

Everest National Ins. Co. (via regular and certified mail)  
Warren Corporate Center  
100 Everest Way  
Warren, NJ 07059