

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOSEPH WIL,

Claimant,

vs.

MONOGRAM PREPARED MEATS,

Employer,

and

LIBERTY MUTUAL,

Insurance Carrier,  
Defendants.

File No. 23700473.01

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 Joseph Wil. He appeared personally and through attorney, Jennifer Zupp. Defendants appeared through their attorney, James Nubel.

The alternate medical care claim came on for hearing on June 13, 2023. 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 claimant's exhibits 1 and 2, which were received without objection, as well as Mr. Wil's sworn testimony. The defendants do not dispute liability for the March 29, 2023, work injury.

## ISSUE

The issue presented for resolution is whether the claimant is entitled to return to the treating physician.

## FINDINGS OF FACT

Joseph Wil sustained an injury which arose out of and in the course of his employment to his right wrist for Monogram Prepared Meats on or about March 29, 2023. Mr. Wil testified live and under oath at hearing. He testified with a thick accent and may have had some difficulty understanding questions at times. Some of his testimony was challenging to understand. In any event, I find his testimony to be credible.

Initially care was not authorized by the defendants. Mr. Wil sought treatment with the emergency department at Crawford County Memorial Hospital on March 30, 2023. "He performs repetitive tasks and has recently changes [sic] duties. He indicates that previously he packaged bacon and loaded it into boxes, more recently he has been assembling the boxes." (Claimant's Exhibit 1, page 1) He was diagnosed with tenosynovitis of the right forearm and instructed to use non-steroidal anti-inflammatories, as well as Voltaren gel. He was further instructed to follow up in the hospital's clinic. (Cl. Ex. 1, p. 3)

As instructed, he followed up with the treatment providers at Crawford County Hospital and ended up seeing Patrick Luft, M.D., a family medicine specialist, on the following day. Dr. Luft documented his injury and symptoms and noted that ibuprofen had not helped the pain. (Cl. Ex. 1, p. 4) Dr. Luft diagnosed de quervian tenosynovitis and provided a Toradol shot and a prescription for prednisone. (Cl. Ex. 1, p. 5) He also wrote a medical excuse for work.

When Mr. Wil returned to work, he was terminated. At hearing, through cross examination questions, defendants asserted that he was terminated for points, which I understand to mean an alleged attendance violation. It is unclear in this record why no care was authorized by defendants.

Mr. Wil testified that he has a drivers' license but no vehicle. He testified that he is able to walk from his home to the hospital/clinic in about 20 minutes. He acknowledged he is bad at estimating distance. He testified he prefers to have the ability to walk to his appointments. Mr. Wil followed up with Dr. Luft again on April 5, 2023. (Cl. Ex. 1, p. 6) Dr. Luft adjusted his medications again. Mr. Wil testified that he trusts Dr. Luft and wishes to return to him.

On May 2, 2023, Mr. Wil's attorney wrote an email to a representative of the insurance carrier. Counsel set forth a history of his injury and the treatment he received. (Cl. Ex. 2) She provided the medical documentation she had and requested that care be authorized. There is no evidence in the record the carrier ever responded to this email. Counsel sent a follow up email listed as high priority on May 25, 2023. Again, there is no evidence in the record of any response to this.

Claimant filed an alternate medical care petition on June 1, 2023. The defendants answered this petition on June 12, 2023, the day before hearing. For the first time, defendants admitted responsibility for the injury and offered to provide care with Douglas Martin, M.D. According to defense counsel's representations, an appointment is set for June 19, 2023. Claimant's counsel contends in supplemental brief Dr. Martin's office is over 80 miles from Mr. Wil's home. Defense counsel clarified on the record that the defendants are willing to arrange an appointment closer to Mr. Wil's home with a traveling provider at CNOS (Dr. Martin's clinic), but the defendants sought to get the earliest appointment possible which is the only reason it was scheduled in Sioux City with Dr. Martin. Defense counsel also asserted or suggested that transportation would be provided to Mr. Wil. For her part, claimant's counsel did not object to a CNOS appointment in the local vicinity per se.

At hearing Mr. Wil testified that his right wrist and forearm symptoms have improved somewhat. He testified he still has pain, however, "it is not the same pain as before." (Hearing testimony) He testified that he has secured or possibly is close to securing some type of new employment and wishes to follow up with Dr. Luft quickly so he can start a new job. He testified that he currently has an appointment arranged with Dr. Luft for June 15, 2023.

#### 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 Dec. January 31, 1994).

This agency has a long history of finding that requiring an injured worker to travel more than 100 miles (round trip) is unduly inconvenient. Trade Professionals, Inc. v. Shriver, 661 N.W.2d 119 (Iowa 2003).

Mr. Wil argues that he has established care with a local provider and should be allowed to continue care with that provider at defendants' expense. He further argues that the defendants should not be allowed to send him to a provider more than 80 miles away from his home (over 160 miles round-trip).

The defendants argue that they have a right to direct Mr. Wil's medical treatment and desire for him to be seen by a specialist, rather than a family medicine physician. At hearing, defense counsel urged that the defendants are taking responsibility for this injury and just wish to direct the care as is their statutory right.

In this case, I find that the defendants' delay of care is unreasonable. The record is slightly unclear as to when Mr. Wil provided notice of the injury. His attorney reported that he informed a supervisor early on. On May 2, 2023, the defendants were undoubtedly aware of this fact, based upon counsel's email. (Cl. Ex. 2) Based upon the record before me, the defendants never answered this email or her follow-up email until they filed their answer on June 12, 2023. In their answer, they admitted the injury and offered follow-up care in Sioux City, over 80 miles from Mr. Wil's home. It appears Mr. Wil has not been seen by any physician since his last visit with Dr. Luft on April 5, 2023. The simple fact of this case is that the defendants have never offered Mr. Wil any medical treatment until the day before hearing, even though they were aware of his need for treatment since at least May 2, 2023.

An employer's right to direct medical care is a cornerstone to the integrity of Iowa's Workers' Compensation laws. This right though is also a legal responsibility. The employer is legally responsible to timely direct the medical care of an injured worker. When an employer fails to do this, the system is at risk of failing.

In this case, even if the delay of care was determined to be reasonable, I find that the defendants' offer of care at hearing (i.e., either traveling over 80 miles to Sioux City or waiting for a visiting physician to have availability in the local area) is also unreasonable, based upon both distance inconvenience and/or further delay. The facts demonstrate Mr. Wil has already established meaningful, beneficial care with a local provider. To the extent that Mr. Wil needs to be seen by a specialist, which may or may


not happen, is it advised that a traveling physician from CNOS would be reasonable. Dr. Luft, however, is designated as the authorized treating physician by this decision.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is GRANTED. Defendants shall immediately authorize a follow-up appointment with Dr. Luft, including any follow-up care recommended.

Signed and filed this 14th day of June, 2023.

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JOSEPH L. WALSH  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

Copies to:

Jennifer Marie Zupp (via WCES)

James Nubel (via WCES)