

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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BRIAN DENEMARK,	:	
	:	File No. 20001051.03
Claimant,	:	
	:	ALTERNATE MEDICAL
vs.	:	
	:	CARE DECISION
ARCHER DANIELS MIDLAND COMPANY,	:	
	:	
Employer,	:	
Self-Insured,	:	
Defendant.	:	HEAD NOTE NO.: 2701

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Claimant Brian Denemark filed an Original Notice and Petition Concerning Application for Alternate Care (“Application for Alternate Care”) on January 13, 2021, alleging he sustained an injury to his left upper extremity, TFCC of the left wrist, and alleging he was dissatisfied with the care provided by the defendant, Archer Daniels Midland Company (“ADM”), because Dr. Kuo’s surgery recommendation on August 18, 2020 for October 5, 2020 had been delayed by the adjuster, and the surgery recommended and scheduled by Dr. Lawler at the University of Iowa Hospitals and Clinics (“UIHC”) on January 12, 2021 had been cancelled due to defense conduct. Denemark requested an order for surgery with Dr. Lawler and timely, uninterrupted follow-up care as determined to be medically necessary, and the ability to self-select and self-direct care to avoid further delays, denials, and interference with prompt receipt of care. ADM filed an answer admitting liability for the condition.

On January 26, 2021, a hearing was held on the Application for Alternate Care by telephone conference call. Attorney Dennis Currell represented Denemark. Denemark appeared and testified. Attorney Peter Thill represented ADM. Exhibits 1 through 8 and A and B were admitted into the record. The proceeding was recorded digitally by iPhone and the digital record is the official record of the proceeding.

The undersigned has been delegated with the authority to issue final agency action in this matter. Appeal of this decision, if any, is to the district court pursuant to Iowa Code section 17A.19.

**FINDINGS OF FACT**

Denemark injured his left wrist while working for ADM. A hearing was held in November 2020 concerning the care Denemark was receiving. Denemark sought to direct his own care. He did not request an order that the surgery recommended by

Meiying Kuo, M.D., be scheduled, that ADM be ordered to schedule a cardiology appointment or other pre-surgical appointment, or that an appointment be scheduled for pain management. I denied the application for alternate medical care, finding Denmark had failed to prove ongoing interference, that ADM had abandoned care or that the care offered by ADM was ineffective, inferior, or less extensive than the care requested by Denmark. I did not find he is entitled to direct his own care.

After the decision was issued in November 2020, ADM scheduled an appointment with Ericka Lawler, M.D., at the University of Iowa Hospitals and Clinics ("UIHC") on December 3, 2020. Dr. Lawler recommended surgery, which was scheduled for December 29, 2020. ADM provided Denmark with transportation to and from the December 3, 2020 appointment. Dr. Lawler's office informed Denmark he would need to undergo a Covid-19 test prior to surgery.

On December 16, 2020, Denmark called Dr. Lawler's office and reported he was undergoing a dental procedure on December 29, 2020. His surgery was cancelled due to the procedure and rescheduled for January 12, 2021. Dr. Lawler's office told Denmark he would need to undergo a Covid-19 test on January 11, 2021, at 8:30 a.m.

Denmark requested transportation to and from the Covid-19 test on January 11, 2021, and to and from the surgery. He also requested a representative from ADM be present during his surgery because the UIHC required someone to be present on his behalf. ADM agreed to provide the transportation to and from the test and surgery, and to provide a person to sit with Denmark during surgery.

Prior to January 11, 2021, no one from ADM contacted Denmark regarding transportation. There was a discrepancy regarding Denmark's address and the transportation was not arranged. Denmark did not go to the test on his own at 8:30 a.m. Denmark arranged for his grandmother in Monticello to watch his dog. He drove to Monticello to drop off his dog and was driving to Iowa City for the Covid-19 test when he received a call from the UIHC that afternoon informing him it was too late to get the results back from the Covid-19 test for the surgery. The surgery was cancelled and rescheduled for January 29, 2021, with a Covid-19 test the day before.

During the hearing ADM's counsel agreed ADM would provide transportation to and from the Covid-19 test scheduled for January 28, 2021. Denmark's friend, Sunny McVey, will attend his surgery, so he will not need a representative from ADM to sit with him on January 29, 2021. ADM agreed to provide Denmark and McVey with transportation to and from the UIHC on January 29, 2021. Denmark will be picked up at 200 29th Avenue, S.W., Cedar Rapids, Iowa 52404 for the test and for the surgery. ADM also agreed to follow all treatment recommendations made by Dr. Lawler. Denmark requested he be allowed to self-direct his care.

### CONCLUSIONS OF LAW

Under Iowa Code section 85.27 (2019), an employer is required to furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under Iowa Code chapters 85 and 85A. The employer has the right to choose the provider of care, except when the employer has denied liability for the injury. Id.

“The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee.” Id. § 85.27(4). If the employee is dissatisfied with the care, the employee should communicate the basis for the dissatisfaction to the employer. Id. If the employer and employee cannot agree on alternate care, the commissioner “may, upon application and reasonable proofs of necessity therefore, allow and order other care.” Id.

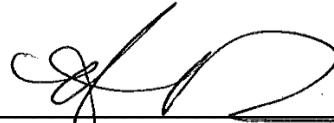
The employee bears the burden of proving the care authorized by the employer is unreasonable. R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 196 (Iowa 2003). “The employer’s obligation under the statute turns on the question of reasonable necessity, not desirability.” Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995). The care authorized by the employer is unreasonable if it is ineffective, inferior, or less extensive than the care requested by the employee. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997). The determination of whether care is reasonable is a question of fact. Long, 528 N.W.2d at 123.

ADM followed the treatment recommendations from Dr. Lawler and scheduled the surgery she recommended in December 2020. The surgery was cancelled because Denmark underwent a dental procedure and the surgery was rescheduled for January 12, 2021. The UIHC requires surgery patients to undergo pre-surgery Covid-19 testing. A Covid-19 test was arranged on January 11, 2021. ADM agreed to provide Denmark with transportation to and from the Covid-19 test and surgery. Unfortunately, the transportation was not arranged and Denmark did not receive Covid-19 testing on January 11, 2021, and the surgery on January 12, 2021, was cancelled and rescheduled for January 29, 2021, with a Covid-19 test on January 28, 2021. I do not find Denmark has proven ADM has engaged in ongoing interference in this case, that ADM has abandoned care, or that that care offered by ADM is ineffective, inferior, or less extensive than the care requested by Denmark. I do not find Denmark is entitled to direct his own care. ADM is agreeable to the entry of an order to provide transportation to and from the Covid-19 test and surgery on January 28, 2021 and January 29, 2021, and to also provide transportation to McVey, who will be sitting with Denmark during the surgery on January 29, 2021, and to follow all treatment recommendations from Dr. Lawler following surgery.

**ORDER**

Claimant's request to be able to self-direct his care is denied. Defendant shall provide transportation to and from the Covid-19 testing to Denmark on January 28, 2021, and to and from the UIHC to Denmark and McVey on January 29, 2021. Defendant shall follow all treatment recommendations made by Dr. Lawler following surgery.

Signed and filed this 26<sup>th</sup> day of January, 2021.



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HEATHER L. PALMER  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served as follows:

Dennis Currell (via WCES)

Peter Thill (via WCES)