BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KASANDRA CEJVANOVIC, Claimant, vs. OLIVE GARDEN, Employer, and XL INSURANCE AMERICA, INC., Insurance Carrier, Defendants.	File No. 5066584.03 REHEARING DECISION

The undersigned granted rehearing under rule 876 IAC in order to consider a medical opinion by Stanley Mathew, M.D., the defendants, Olive Garden and XL Insurance America, Inc., did not timely share with the claimant, Kasandra Cejvanovic, before the hearing on Cejvanovic's application for alternate care. The untimely sharing of Dr. Mathew's opinion prevented Cejvanovic from offering the opinion as evidence at that hearing. Cejvanovic filed as Claimant's Exhibit 4 Dr. Mathew's opinion, which is admitted into evidence and will be considered, along with the parties' other evidence, in this rehearing decision.

The findings of fact section of this rehearing decision supplements the findings of fact in the alternate care decision. The conclusions of law and order sections in the alternate care decision is hereby rescinded and replaced by the conclusions of law and order sections in this rehearing decision.

The record consists of:

1) Claimant's Exhibits 1 through 4; and

2) Defendants' Exhibits A and B.

ISSUE

The issue on rehearing is whether Cejvanovic is entitled to alternate care under Iowa Code section 85.27 in the form of ongoing care with Dr. Stanley.

FINDINGS OF FACT

After receiving the independent medical examination (IME) report by Robert L. Broghammer, M.D., defendants shared it with Dr. Mathew for his review. (Cl. Ex. 4) Dr. Mathew stressed that his opinions come from his standpoint as a practitioner in the

areas of physical medicine, rehabilitation, and pain management, as opposed to Dr. Broghammer's, which are from an occupational medicine standpoint. (Cl. Ex. 4) Dr. Mathew opines as follows:

> In regard to Dr. Broghammer's opinions that [were] stated in question 1[,] I disagree respectfully that her head injury has nothing to do with her ongoing symptoms. She has never sought medical care regarding chronic pain until the event that occurred on May 21, 2018 while at work.
>
> In regard to a cervical dystonia and torticollis Dr. Broghammer has found no evidence of this during his exam[;] this is likely due to the fact that [the] patient received . . . the treatment in my office. She's had multiple sessions of injection therapies and Botox, which have helped her symptomatology.
>
> In question 2 Dr. Broghammer disagrees with Ms. Cejvanovic's ongoing symptoms being related to her work injury. She has classic post concussive syndrome with the development of chronic pain. I am unable to find any other cause for her chronic pain syndrome except her accident that occurred on May 21, 2018.

(Cl. Ex. 4)

Dr. Mathew then concludes, "Cejvanovic continues to have chronic neck pain, headaches, which have disabled her considerably requiring her to seek medical care regularly for these symptoms, pain and diagnoses she does require chronic pain management, including injection therapy, medication management and [oversight] of a home exercise program."

Dr. Mathew has treated Cejvanovic for her condition for an extended period of time; whereas Dr. Broghammer examined her twice for IMEs. Further, the care at issue here is physical medicine, rehabilitation, and pain management, which Dr. Mathew focuses on in his practice. This makes Dr. Mathew's opinion regarding ongoing care, in particular for pain management, more compelling. Dr. Mathew's assessment that the pain management care he has provided has helped assuage Cejvanovic's symptoms, which is why Dr. Broghammer's physical evaluation of her showed no symptomology is particularly persuasive.

CONCLUSIONS OF LAW

"Iowa Code section 85.27(4) affords an employer who does not contest the compensability of a workplace injury a qualified statutory right to control the medical care provided to an injured employee." Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 769 (Iowa 2016) (citing R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 195, 197 (Iowa 2003)). Under the law, the employer must "furnish reasonable medical services and supplies *and* reasonable and necessary appliances to treat an injured employee." Stone Container Corp. v. Castle, 657 N.W.2d 485, 490 (Iowa 2003) (emphasis in original). Such employer-provided care "must be offered promptly and be

reasonably suited to treat the injury without undue inconvenience to the employee." Iowa Code § 85.27(4).

An injured employee dissatisfied with the employer-furnished care (or lack thereof) may share the employee's discontent with the employer and if the parties cannot reach an agreement on alternate care, "the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care." Id. "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); Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 436 (Iowa 1997). As the party seeking relief in the form of alternate care, the employee bears the burden of proving that the authorized care is unreasonable. Id. at 124; Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 209; Reynolds, 562 N.W.2d at 436; Long, 528 N.W.2d at 124. Because "the employer's obligation under the statute turns on the question of reasonable necessity, not desirability," an injured employee's dissatisfaction with employer-provided care, standing alone, is not enough to find such care unreasonable. Id.

Because Dr. Mathew's opinion regarding ongoing care is more persuasive than Dr. Broghammer's, Cejvanovic has met her burden of proof. The defendants' denial of Dr. Mathew's recommended ongoing care is unreasonable under the law. Cejvanovic is entitled to the alternate care she requested in her petition.

ORDER

IT IS THEREFORE ORDERED:

1) Cejvanovic's application is GRANTED.

2) The defendants shall provide the alternate care Cejvanovic requested in her petition.

On February 16, 2015, the Iowa workers' compensation commissioner issued an order delegating authority to deputy workers' compensation commissioners, such as the undersigned, to issue final agency decisions on applications for alternate care. Consequently, there is no appeal of this decision to the commissioner, only judicial review in a district court under the Iowa Administrative Procedure Act, Iowa Code chapter 17A.

Signed and filed this 27th day of January, 2021.

BENJAMIN G. HUMPHREY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Gary B. Nelson (via WCES)

Bill M. Lamson (via WCES)