BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

GRACIELA DEMALDONADO, Claimant, vs. WATERLOO COMMUNITY SCHOOL, DISTRICT Employer, and UNITED WISCONSIN INSURANCE, COMPANY Insurance Carrier, Defendants.	File No. 5059882.02 ALTERNATE MEDICAL CARE DECISION Head Note: 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 claimant, Graciela de Maldonado. Claimant appeared through her attorney, Casey Steadman. Defendants appeared through their attorney, Laura Ostrander.

The alternate medical care claim came on for hearing on March 24, 2021. 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 evidentiary record consists of Claimant's exhibits 1-3 and Defendants' Exhibits A and B. There was no testimony during the telephonic hearing. Counsel for the parties offered arguments. During the course of the hearing, defendants accepted liability for the June 14, 2017, work injury and for the conditions that for which claimant is seeking treatment.

It should be noted that the undersigned issued an arbitration decision in the underlying case on February 16, 2015. The arbitration decision was affirmed by the

Iowa Workers' Compensation Commissioner on February 16, 2015. No further appeal is pending.

ISSUE

The issue for resolution is whether the claimant is entitled to alternate medical care.

FINDINGS OF FACT

Claimant, Graciela de Maldonado, sustained an injury to her back, bilateral knees, bilateral lower extremities, depression, anxiety, hips, mental, pain syndrome, whole body. Claimant's petition seeks treatment for bilateral knees, back and myofascial complaints, and mental health treatment. Defendants accepted liability for the June 14, 2017, injury and current causal connection of the treatment being sought. At the start of the hearing, the undersigned was advised that the parties had reached an agreement regarding treatment for mental health, and this was no longer the subject of this alternate medical care proceeding.

First, Ms. de Maldonado is seeking treatment for her bilateral knees. Defendants' position is that they have authorized Dr. Bollier for treatment of both knees and the petition should be denied. Claimant contends treatment with Dr. Bollier has been compromised because he is obeying instructions from the adjuster, he admits that he is not recommending necessary care, and his records do not accurately reflect the visits. (Petition for Alternate Medical Care, p. 2)

Ms. de Maldonado saw Dr. Bollier on September 14, 2020. Prior to the appointment, counsel for the parties agreed that the appointment would be for an assessment of both knees. However, during the appointment Dr. Bollier advised Ms. de Maldonado that the workers' compensation carrier only wanted him to see her for her right knee. Dr. Bollier also indicated that even if he orders treatment, the carrier will not approve it.[1] (Cl. Ex. 1, pp. 2-3)

I find Dr. Bollier's own words indicate that his ability to treat Ms. de Maldonado is affected by the workers' compensation carrier. He advised Ms. de Maldonado that the adjuster instructed him that he could only examine her right knee. Dr. Bollier also indicated that he is hesitant to even recommend treatment because he knows that the treatment will be denied by the workers' compensation carrier. I find that the workers' compensation carrier has interfered with the judgment of Dr. Bollier, the authorized treating physician. As such, I find the care with Dr. Bollier that is being offered by defendants is not reasonable.

[1] Evidently, Ms. de Maldonado secretly recorded the audio of her appointment with Dr. Bollier. I do not know what the policy regarding recording devices is in Dr. Bollier's office; however, recording devices are typically not allowed in doctor's examination rooms. Moving forward, it might be wise for Ms. de Maldonado to ask a doctor's office for permission to record.

Second, claimant is seeking care for her back/myofascial complaints. Defendants authorized Ms. de Maldonado to see Dr. Jonathan Fields for her back and myofascial pain complaints. (Cl. Ex. 1, p. 5) In the underlying arbitration proceeding, at the request of the defendants, Dr. Fields reviewed Ms. de Maldonado's medical records, examined her, and issued a written independent medical examination report which was dated April 2019. In that report, Dr. Fields opined that no further treatment was required to treat her back and whole body pain. Claimant is dissatisfied with this offer of care because Dr. Fields previously stated that he did not have any treatment to offer her for her back/myofascial complaints. (Cl. Ex. 1, p. 6; Cl. Ex. 2) Ms. de Maldonado is seeking treatment with a doctor who has not previously opined he has nothing to offer her. Dr. Mathew is one doctor that is willing to treat Ms. de Maldonado for her back/myofascial complaints. (Alt. Care Petition, p. 2)

While I understand the claimant's skepticism in seeking treatment with Dr. Fields, I find that it is reasonable to allow Dr. Fields an opportunity to see and provide treatment to Ms. de Maldonado because he has not seen her since April 2019.

REASONING AND CONCLUSIONS OF LAW

Under Iowa law, the employer is required to provide care to an injured employee and is permitted to choose the care. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

> [T]he employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. . . . The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

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 R. App. P. 14(f)(5); 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). In Pirelli-Armstrong Tire Co., 562 N.W.2d at 433, the court approvingly quoted Bowles v. Los Lunas Schools, 109 N.M. 100, 781 P.2d 1178 (App. 1989):

> [T]he words "reasonable" and "adequate" appear to describe the same standard.

> [The New Mexico rule] requires the employer to provide a certain standard of care and excuses the employer from any obligation to provide other services only if that standard is met. We construe the terms "reasonable" and "adequate" as describing care that is both appropriate to the injury and sufficient to bring the worker to maximum recovery.

The commissioner is justified in ordering alternate care when employer-authorized care has not been effective and evidence shows that such care is "inferior or less extensive" care than other available care requested by the employee. Long; 528 N.W.2d at 124; Pirelli-Armstrong Tire Co.; 562 N.W.2d at 437.

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. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 16, 1975).

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).

First, we will address the treatment of the bilateral knee complaints. Based on the above findings of fact, I conclude that Dr. Bollier's own words demonstrate that his ability to treat Ms. de Maldonado is affected by the workers' compensation carrier. He advised Ms. de Maldonado that the adjuster instructed him that he could only examine her right knee. Dr. Bollier also indicated that he is hesitate to recommend treatment because he knows that the treatment will be denied by the workers' compensation carrier. I find that the actions of the workers' compensation carrier have interfered with the judgment of the authorized treating physician to treat his own patient. As such, I conclude that the care defendants are offering with Dr. Bollier is not reasonable. Defendants must offer prompt and reasonable medical care and not interfere with the medical judgment of its own treating physician. Therefore, with regard to treatment of her bilateral knees, claimant's petition for alternate care is granted.

Second, we will address the treatment for claimant's back and myofascial pain complaints. Based on the above findings of fact, I conclude that defendants' actions are reasonable. Defendants have authorized Dr. Fields to provide treatment for claimant's back and myofascial pain. While I understand the claimant's skepticism in seeing Dr. Fields, I find that it is reasonable to allow Dr. Fields an opportunity to see and provide treatment to Ms. de Maldonado because he has not seen her since April 2019. Therefore, with regard to treatment for her back and myofascial pain complaints, claimant's petition for alternate medical care is denied at this time.

ORDER

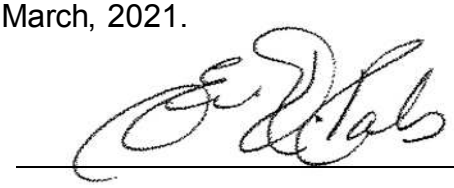
THEREFORE, IT IS ORDERED:

Claimant's petition for alternate medical care is granted in part and denied in part.

With regard to claimant's bilateral knees, defendants shall authorize treatment with an appropriate doctor, and defendants shall not interfere with the treatment from the authorized treating physician.

With regard to claimant's back and myofascial pain, the petition is denied.

Signed and filed this __25th_____ day of March, 2021.



ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Casey Steadman (via WCES)

Gary Nelson (via WCES)

Laura Ostrander (via WCES)