

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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WENDY FORGET,

Claimant,

vs.

POLK COUNTY,

Employer,  
Self-Insured,  
Defendant.

File No. 22700804.02

ALTERNATE MEDICAL CARE

DECISION

Head Note: 2701

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This is a contested case proceeding under Iowa Code chapters 85 and 17A. The expedited procedures of rule 876 IAC 4.48, the "alternate medical care" rule, are invoked by claimant, Wendy Forget.

This alternate medical care claim came on for hearing on September 13, 2022. The proceedings were recorded digitally and constitute the official record of the hearing. By an order filed by the Workers' Compensation Commissioner, this decision is designated final agency action. Any appeal would be by petition for judicial review under Iowa Code section 17A.19.

The record in this case consists of Claimant's Exhibit 1, and Defendant's Exhibits A-C, and the testimony of claimant.

## ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of authorization for ongoing medical care with Chris Jensen, M.D.

## FINDINGS OF FACT

Defendant accepted liability for a work-related injury on June 29, 2022.

Claimant testified she tested positive for COVID-19 in late June of 2022. She testified her employer sent her to treat with Robert Kruse, M.D. Claimant said she treated with Dr. Kruse on July 11, 2022, July 15, 2022, July 20, 2022, July 22, 2022, and August 3, 2022. Claimant said she was unable to drive herself to the first appointment with Dr. Kruse. She said that following the July 11, 2022, appointment,

she returned to driving. She said that after the July 11, 2022, appointment there were times she could not drive due to her symptoms.

On July 20, 2022, claimant had a CT angiography of her chest. Claimant complained of shortness of breath and chest pain. The scan showed no evidence of a pulmonary embolism. (Exhibit A)

On July 22, 2022, defendant had claimant put under surveillance. Claimant was surveilled driving her car to a Casey's convenience store, walking with grocery bags, and smoking. Claimant was also seen sitting in her backyard talking to another person. (Ex. B)

On August 3, 2022, claimant was evaluated by Dr. Kruse. Claimant reported fatigue, chest pain, shortness of breath and diarrhea that began after she tested positive for COVID-19. Claimant also reported chest congestion and vomiting. Claimant indicated her symptoms were unchanged. A pulse oximetry showed a normal blood oxygen saturation level of 99 percent. Claimant's lungs were clear. Other than the positive test from late June of 2022, claimant had no objective signs of continuing to have COVID. (Exhibit 1, pages 4, 8-9)

Dr. Kruse was provided with surveillance of claimant. Dr. Kruse opined surveillance showed claimant having a "... different physical capacity than what she described." Dr. Kruse found no objective reason to keep claimant off work and recommended she return to work without restrictions. (Ex. 1, pp. 4, 9-10)

Claimant testified that when she was discharged by Dr. Kruse, she still had symptoms. She said her symptoms have worsened since August 3, 2022.

Claimant testified she was evaluated by Dr. Jensen on August 4, 2022. She said Dr. Jensen is her primary care physician. She said that at the first visit Dr. Jensen recommended claimant not return to work.

Claimant testified she let her employer know she is treating with Dr. Jensen. She said her employer is aware of Dr. Jensen's recommendations to take her off from work.

In an August 4, 2022, note, Dr. Jensen requested claimant be kept off work for the next two weeks. (Ex. 1, p. 5)

In an August 18, 2022, note, Dr. Jensen recommended claimant be excused from work for three months. (Ex. 1, p. 6)

In an August 22, 2022, note, Dr. Jensen recommended claimant be excused from work for three months. Claimant had difficulty with COVID and mental health issues. (Ex. 1, p. 7)

In an August 25, 2022, letter, claimant's counsel requested defendant authorize treatment for claimant with Dr. Jensen. (Ex. 1, pp. 2-3)

In an August 29, 2022, letter Dr. Jensen indicated claimant had a "number of complications" after her illness with COVID. They included shortness of breath, inability to climb stairs, vomiting and an inability to eat. Dr. Jensen opined claimant could not work. (Ex. 1, p. 1)

Claimant did not testify Dr. Jensen had performed any type of testing regarding her COVID-19 symptoms. She said Dr. Jensen "listened to me" and prescribed the use of albuterol and another inhaler. She said Dr. Jensen has also recommend she see a pulmonologist.

In a September 2, 2022, letter, Dr. Kruse indicated claimant had no objective findings for chest pain, shortness of breath, fatigue or being unable to eat. Claimant had indicated to Dr. Kruse she could not drive, and yet claimant was seen in surveillance driving a car. Claimant had no significant weight loss. A CT angiography showed no evidence of a pulmonary embolism. A pulse oximetry showed a normal blood oxygen saturation level of 99 percent. Claimant's lungs were clear on her August 3, 2022, exam. (Ex. C)

Dr. Kruse indicated he reviewed video surveillance of claimant which directly conflicted with claimant's subjective complaints. He opined claimant did not require further medical treatment and could return to work without restrictions. (Ex. C)

Claimant testified Dr. Jensen is aware she underwent a CT scan. She does not believe Dr. Jensen has seen the results of the scan. She said she does not believe Dr. Jensen has reviewed Dr. Kruse's records concerning her treatment. She testified she did not believe she could return to work as she has difficulty breathing. She said she has lost 15 pounds since first being diagnosed with COVID.

#### CONCLUSION OF LAW

Iowa Code section 85.27(4) provides, in relevant part:

For purposes of this section, the 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. 6.904(3)(e) ; 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. v. Reynolds, 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.

Claimant tested positive for COVID-19 in late June of 2022. Defendant authorized treatment with Dr. Kruse. Claimant received treatment with Dr. Kruse approximately five times. Claimant underwent diagnostic testing that included a CT angiography and pulse oximetry testing. The CT scan showed no pulmonary embolism. Pulse oximetry testing showed a normal blood oxygen saturation.

Dr. Kruse's notes indicate claimant complained of fatigue, weight loss, shortness of breath, vomiting and an inability to eat. Dr. Kruse's notes indicate claimant told him she was unable to drive. Dr. Kruse opined surveillance was not consistent with claimant's subjective complaints. Dr. Kruse also indicated claimant showed no weight loss. Dr. Kruse returned claimant to work without restrictions.

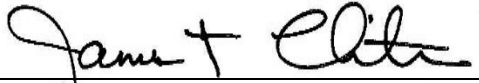
Dr. Jensen took claimant off work for two weeks on August 4, 2022. Two weeks later Dr. Jensen took claimant off work for three months. There is no explanation in the record why Dr. Jensen drastically changed his recommendations and took claimant off work for three months. There is no evidence in the record Dr. Jensen has performed any testing on claimant. The record suggests Dr. Jensen has not seen the results of any testing performed on claimant. The record suggests Dr. Jensen had not reviewed Dr. Kruse's medical records before making his recommendations.

Given the record as detailed above, claimant has failed to carry her burden of proof the care given by the defendant, in this case, is unreasonable. Because claimant has failed to carry her burden of proof the care given by defendant is unreasonable, claimant's petition for alternate medical care is denied.

#### ORDER

Claimant's petition for alternate medical care is denied.

Signed and filed this 13<sup>th</sup> day of September, 2022.



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JAMES F. CHRISTENSON  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

MaKayla Augustine (via WCES)

Meghan Gavin (via WCES)

Julie Bussanmas (via WCES)