IN THE IOWA DISTRICT COURT FOR POLK COUNTY

WATERLOO COMMUNITY SCHOOL DISTRICT, and UNITED WISCONSIN INSURANCE COMPANY **Petitioners,** **v.** **GRACIELA DE MALDONADO,** **Respondent.**	**Case No. CVCV062582** **RULING ON PETITION FOR JUDICIAL REVIEW**

Before the Court is the petitioners' September 29, 2021, Petition for Judicial Review. The Court held a hearing on March 4, 2022. Having reviewed the parties' briefs, and the relevant statutes and case law, the Court enters the following order.

BACKGROUND FACTS AND PROCEEDINGS

At this time, the parties' dispute centers on the sufficiency of the continued medical care offered by the petitioners, Waterloo Community School District and United Wisconsin Insurance Company ("the District") to the respondent Graciela de Maldonado ("de Maldonado"). For purposes of the application for alternate medical care, the District accepted liability for the injury and the medical treatment at issue. (Tr. p. 1). The District is offering de Maldonado a neuropsychological referral and additional physical therapy. (Ex. 2; Ex. 4; Ex. B). De Maldonado seeks a pain management referral. (Tr. p. 2; Ex 1). The facts enumerated herein are those directly relevant to de Maldonado's continued medical care.

De Maldonado sustained a workplace injury to her back and knees on June 14, 2017. (Ex. 1). As part of her course of treatment, De Maldonado completed 120 physical therapy sessions. (Ex. 2). These physical therapy sessions did not alleviate de Maldonado's pain, and instead, increased it. (Ex. 3). Despite all previous treatment interventions, de Maldonado continues to have

pain. (Ex. A; Ex. 4). Jonathan Fields, M.D., has been treating de Maldonado for her work place injury. (Ex. 2). In 2021, Dr. Fields referred de Maldonado to Daniel Tranel, Ph.D., for a "neuropsych" evaluation to determine if her pain was physical or psychiatric. (Ex. 2; Ex B). De Maldonado declined to attend the evaluation and instead requested to have her treatment transferred to Stanley Mathew, M.D., a pain management specialist. (Ex 6). Dr. Mathew found that de Maldonado's pain was neurological not psychiatric, and he offered to provide pain management services to her. (Ex. 1). According to Dr. Mathew, de Maldonado's pain would decrease and she would see an increase in her quality of life with pain management services. (Ex 1).

On August 17, 2021, de Maldonado presented at the office of Nichols Bingham, M.D. (Ex. 4). Dr. Bingham's record from the August 17, 2021, appointment indicates he "had offered additional physical therapy." (Ex. 4). De Maldonado declined to participate in any additional physical therapy sessions. (Ex. 4). As such, Dr. Bingham released Respondent from his care. (Ex. 4).

The District denied de Maldonado's request for pain management services, and she filed a Petition for Alternate Medical Care (AMC) on September 9, 2021, with Iowa Workforce Development (the Agency). On September 23, 2021, the Agency granted de Maldonado's request and order the District to authorize care with Dr. Mathew. The District appealed the Agency's decision to this Court.

Additional facts will be discussed below.

STANDARD OF REVIEW

The Iowa Administrative Procedure Act, Iowa Code chapter 17A, governs the scope of the Court's review in workers' compensation cases. Iowa Code § 86.26 (2019); *Meyer v. IBP, Inc.*,

710 N.W.2d 213, 218 (Iowa 2006). "Under the Act, [the court] may only interfere with the commissioner's decision if it is erroneous under one of the grounds enumerated in the statute, and a party's substantial rights have been prejudiced." *Meyer*, 710 N.W.2d at 218. A party challenging agency action bears the burden of demonstrating the action's invalidity and resulting prejudice. Iowa Code § 17A.19(8)(a). This can be shown in a number of ways, including proof the action was ultra vires; legally erroneous; unsupported by substantial evidence in the record when that record is viewed as a whole; or otherwise unreasonable, arbitrary, capricious, or an abuse of discretion. *See id*. § 17A.19(10). The district court acts in an appellate capacity to correct errors of law on the part of the agency. *Grundmeyer v. Weyerhaeuser Co*., 649 N.W.2d 744, 748 (Iowa 2002).

"If the claim of error lies with the agency's findings of fact, the proper question on review is whether substantial evidence supports those findings of fact" when the record is viewed as a whole. *Meyer*, 710 N.W.2d at 219. Factual findings regarding the award of workers' compensation benefits are within the commissioner's discretion, so the Court is bound by the commissioner's findings of fact if they are supported by substantial evidence. *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 464-65 (Iowa 2004). Substantial evidence is defined as evidence of the quality and quantity "that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance." Iowa Code § 17A.19(10)(f)(1); *Mycogen*, 686 N.W.2d at 464. "When reviewing a finding of fact for substantial evidence, we judge the finding 'in light of all the relevant evidence in the record cited by any party that detracts from that finding as well as all of the relevant evidence in the record cited by any party that supports it.'" *Cedar Rapids Comm. Sch. Dist. v. Pease*, 807 N.W.2d 839, 845 (Iowa 2011) (quoting Iowa Code § 17A.19(10)(f)(3)).

"Evidence is not insubstantial merely because different conclusions may be drawn from the evidence." *Pease*, 807 N.W.2d at 845. "To that end, evidence may be substantial even though we may have drawn a different conclusion as fact finder." *Id.* "Judicial review of a decision of the [Commission] is not de novo, and the commissioner's findings have the force of a jury verdict." *Holmes v. Bruce Motor Freight*, 215 N.W.2d 296, 297-98 (Iowa 1974).

MERITS

Under the alternate medical care statute, "the employer is permitted to choose the care. By challenging the employer's choice of treatment—and seeking alternate care—[the employee] assume[s] the burden of proving that the authorized care is unreasonable." *Pirelli-Armstrong Tire Co. v. Reynolds*, 562 N.W.2d 433, 436 (Iowa 1997) (internal citations omitted); *see also Long v. Roberts Dairy Co.*, 528 N.W.2d 122, 123 (Iowa 1995) (claimant bears the burden of proving to the agency that the authorized care is unreasonable or inferior to the desired medical treatment). "The question is one of reasonable necessity not desirability." *Id.* at 124. "Determining what care is reasonable under the statute is a question of fact." *Id.* at 123. "The commissioner—not the court—weighs the evidence, and we are obliged to broadly and liberally apply those findings to uphold rather than defeat the commissioner's decision." *Id.*

Accordingly, only upon a determination that substantial evidence does not support the Agency's finding of unreasonableness or inferiority, will the Court reverse. Iowa Code § 17A.19(10). The Agency is justified in ordering alternate care when the 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.

Here, the Agency concluded:

> [T]he care offered by defendants is not reasonable. First, [Petitioners] have offered physical therapy. Ms. de Maldonado has declined this offer. Ms. de Maldonado has already attended over 120 physical therapy visits. Even Dr. Fields has concluded those visits are enough. I conclude that the physical therapy offered by the defendants is inferior to the treatment sought by the claimant. Second, defendants have offered an appointment with a clinical psychologist. There is no evidence in this case that any medical provider has recommended Ms. de Maldonado see a clinical psychologist. Dr. Fields recommended a neuropsychiatrist, but that is different than what defendants have offered. I conclude defendants' offer to send Ms. de Maldonado to Daniel Tranel, Ph.D. is not reasonable. I further conclude that defendants' offer is inferior to the treatment claimant is seeking.

Alternate Medical Care Decision at 5.

The parties dispute whether the District's offer of additional physical therapy is appropriate medical care for de Maldonado. At the time of the hearing, Deputy Pals found it was unclear whether any doctor recommended de Maldonado engage in additional physical therapy sessions. (AMC Dec. 3). Assuming a doctor was recommending she complete additional physical therapy, Deputy Pals found such a recommendation to be ineffective and inferior to the treatment sought by de Maldonado. (AMC Dec. 3). This finding is supported by substantial evidence and is not irrational, illogical or wholly unjustifiable. De Maldonado had engaged in 120 physical therapy sessions over the course of her treatment. (Ex. 2). Those sessions aggravated de Maldonado's pain. (Ex. 3). After learning about de Maldonado's extensive physical therapy history, Dr. Bingham may have rescinded his recommendation for additional physical therapy. (AMC. Dec. 3). Even if Dr. Bingham's recommendation was not rescinded, the District's chosen doctor, Dr. Fields, concluded that the 120 sessions de Maldonado completed were sufficient. (Ex. 2). Accordingly, there is substantial evidence in the record to conclude the offer of additional physical therapy is not appropriate medical care for de Maldonado. In contrast, there is no evidence in the record to suggest that de Maldonado would benefit from additional physical therapy. *See* Ex. 4 ("[de Maldonado] has taken extensive physical therapy, without positive result.")

In addition to physical therapy, and some time prior to Dr. Fields' deposition, the District also offered de Maldonado a neuropsychological referral with Dr. Tranel. (Ex. B; Ex. 2; Ex. 6). At the time of the deposition, Dr. Fields confirmed he had made a "neuropsych" referral for de Maldonado with Dr. Tranel. (Ex. 2). Dr. Fields made this recommendation after first considering a referral to a physiatrist. (Ex. 2). Dr. Fields determined it was more appropriate for de Maldonado to see a "neuropsychiatrist" to determine if her ongoing pain was physical or psychiatric in nature. (Ex. 2). Despite the fact that during his deposition, Dr. Fields repeatedly stated he was referring de Maldonado to a "neuropsychiatrist," Dr. Fields made direct reference to Dr. Tranel, a clinical psychologist. (Ex. 2). De Maldonado disputed a neuropsychological referral was appropriate care for her ongoing pain. (Ex. 2; Ex. 6).

The Deputy agreed with de Maldonado, and there is substantial evidence in the record to support the Deputy's conclusion. First, although Dr. Fields referred to Dr. Tranel by name, Dr. Fields clearly articulated that a neuropsychiatric evaluation was the appropriate evaluation for de Maldonado. (Ex. 2). The purpose of the referral was to help ascertain the origin of de Maldonado's pain. (Ex. 2). There is no evidence in the record to support a conclusion that a clinical psychologist has the training and expertise needed to complete a neuropsychiatric evaluation. Additionally, as the Deputy noted, the District scheduled a neuropsychological examination, not a neuropsychiatric one. The record is devoid of evidence to suggest these two evaluations are the same or substantially similar—that they would both assist in determining whether the nature of pain is psychiatric or physical. Finally, Dr. Fields was unable to comment on how Dr. Tranel, who is not a medical doctor, would be able to complete his work or how he could assess physical symptoms. (Ex. 2). Accordingly, the Deputy's finding was not irrational, illogical or wholly unjustifiable.

Even assuming, however, that a neuropsychological is the same or substantially similar to a neuropsychiatric evaluation, there is still substantial evidence to support the Deputy's finding that such an evaluation was inappropriate and inferior care for de Maldonado. Dr. Fields had previously considered making a referral to a physiatrist for de Maldonado.(Ex. 2). According to Dr. Fields, a physiatrist can be helpful in treating a patient's pain. (Ex. 2). Dr. Mathew is a physiatrist and a pain specialist. (Ex. 2; Ex. 6). He has more training to treat pain symptoms than Dr. Fields does. (Ex. 2). Dr. Mathew is willing to treat de Maldonado and believes her pain will decrease with such treatment. (Ex. 1). Based on these facts, there is substantial evidence in the record to support the Deputy's finding that the District's offered care was inferior to that sought by de Maldonado. While the District argues that there is substantial evidence to support a resolution in its favor, the question for the Court is not whether it could draw another conclusion, but whether there is substantial evidence to support the one made by the Agency. *Pease*, 807 N.W.2d at 845. In this case, the Court finds substantial evidence supports the Agency's decision and that it is valid.

In addition to its substantial evidence argument, the District also asserts the Court should reverse the Deputy's ruling because Dr. Mathew is an inappropriate treatment provider. Specifically, the District argues the Court should not trust Dr. Mathew's recommendations or treatment because of his close relationship with de Maldonado's counsel. The Agency, however, is on the front lines of workers' compensation cases. It is familiar with the expert witnesses utilized by claimant and respondents' counsel, not only in this case, but also in general. It is in the best position to evaluate the expert witnesses in any given case. The Agency, as the fact finder, determines the weight to be given to any expert testimony. *Sherman v. Pella Corp*., 576 N.W.2d 312, 321 (Iowa 1998); *Dodd v. Fleetguard, Inc.,* 759 N.W.2d 133, 138 (Iowa Ct. App. 2008). Such

weight depends on the accuracy of the facts relied upon by the expert and other surrounding circumstances. *Id*. The commissioner may accept or reject the expert opinion in whole or in part. *Sherman,* 576 N.W.2d at 321.

> Making a determination as to whether evidence "trumps" other evidence or whether one piece of evidence is "qualitatively weaker" than another piece of evidence is not an assessment for the district court or the court of appeals to make when it conducts a substantial evidence review of an agency decision.

Arndt v. City of Le Claire, 728 N.W.2d 389, 394 (Iowa 2007).

Here, the Deputy found Dr. Mathew was a proper treating physician. The Deputy had Dr. Mathew's opinions and Dr. Fields' testimony to consider when making her decision. Even Dr. Fields acknowledged that Dr. Mathew was a physiatrist and was qualified to treat de Maldonado's pain symptoms. The Agency was within its discretion to give more weight to Dr. Matthew's opinions. *Sherman,* 576 N.W.2d at 321.

ORDER

IT IS ORDERED therefore that Petitioners' Petition for Judicial Review is DENIED. Costs are assessed to the Petitioners.

State of Iowa Courts

Case Number	**Case Title**
CVCV062582	WATERLOO COMMUNITY SCHOOL DIST ET AL VS GRACIELA DEMALDONADO
Type:	OTHER ORDER

So Ordered

Heather Lauber, District Judge,
Fifth Judicial District of Iowa

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