IN THE IOWA DISTRICT COURT FOR POLK COUNTY

WEST CENTRAL COOPERATIVE and FARMLAND MUTUAL INSURANCE COMPANY, **Petitioners/Defendants,** **v.** **BRETT SULLIVAN,** **Respondent/Claimant.**	**Case No. CVCV061689** **RULING ON PETITION FOR JUDICIAL REVIEW**

A Petition for Judicial Review came before the Court from a final decision of the Iowa Workers' Compensation Commission. The Court held a hearing on this matter on August 13, 2021. Petitioners West Central Cooperative and Farmland Mutual Insurance Company were represented by attorney Jeffrey Lanz. Thomas Wertz appeared for Respondent Brett Sullivan (Claimant or Sullivan). Having heard the arguments of counsel and reviewed the court file, including the briefs provided by the parties, the certified administrative record, and being otherwise fully advised in the premises, the Court now enters the following ruling.

I. INTRODUCTION

A. Factual Background

Respondent Brett Sullivan was 40 years of age at the time of the Arbitration Hearing. Arbitration Decision (Arb. Dec.) at 2. Sullivan sustained a work injury on October 2, 2011, to his low back, upper back, ribs, right hip, right shoulder, and head when a wheel loader he was operating was struck by a train. Defense Exhibit (DE) A at 1. He reportedly spent 30-days in the hospital and had to undergo surgery and other significant medical intervention as a result of the injury. Arb. Dec. at 2; Transcript (Tr.) at 16-17. Defendants admitted liability for the injury, paid claimant's medical bills, paid claimant's lost time, and paid partial permanent disability (PPD)

benefits. Petitioners' Brief (Pet. Brief) at 1; Tr. at 5-6. There have been many different disputes in this case that have led to numerous decisions by the Workers' Compensation Commission and the Iowa Court of Appeals. *See generally* Arb. Dec. at 13. The only issue being appealed in this judicial review to the district court is the spinal cord stimulator (SCS) trial. Pet. Brief at 1-2. Sullivan's medical history is extensive and the Court will try to note the relevant facts that get us to his request to do a SCS trial.

Sullivan complains of chronic back pain as a result of his work-related injury. Sullivan had a CT scan done on his back on October 2, 2011, which showed fractures to the transverse process at L3 and L4. Joint Exhibit (JE) 2 at 8. On September 17, 2012, he was examined by Dr. Hatfield at the request of Dr. Goetz. JE 3 at 9. Sullivan reported pain in his back and also noted swelling in his lower back that included dull and burning pain that was worse when standing. *Id.* Dr. Hatfield ordered an MRI to investigate further. *Id.* at 10. On October 24, 2012, an MRI of the lumbar spine was performed on Sullivan. JE 2 at 8. The fractures in the L3 and L4 from the CT scan from October 2, 2011, were difficult to see on the MRI but the lumbar discs were noted to be healthy with no significant degeneration. *Id.* There was minimal bulging of the annulus at L4-5, but it was not compressing the neural elements. *Id.* On October 31, 2012, Dr. Hatfield reviewed the MRI results with Sullivan and concluded his symptoms were unchanged and that he believed there was nothing to be offered surgically. JE 3 at 11. Dr. Hatfield opined Sullivan has reached maximum medical improvement (MMI) from a back standpoint and had no restrictions for him from a spine standpoint. *Id.*

On September 13, 2013, Sullivan presented to Dr. Charles Mooney for an independent medical evaluation (IME) and rating. DE A at 1. Dr. Mooney notes that the accident caused various injuries including right comminuted fracture involving the acetabulum and L3-L4 fractures of the

transverse processes, wedge fracture T8-9 vertebral bodies, fracture of the T8 spinous process, left 9th posterior rib fracture, S5 fracture, distal right clavicle fracture, biparetial scalp laceration, and head trauma with loss of consciousness and amnesia of the event. *Id.* Sullivan complained to Dr. Mooney of constant hip and back pain. *Id.* at 2. Sullivan placed his pain between four and five with increasing pain up to a level nine with increased activity. *Id.* at 3. Based on the Quebec Pain Disability Scale completed by Sullivan, his perceived disability had a result of 43% as it relates to his chronic back pain. *Id.* Dr. Mooney's assessment concluded Sullivan sustained "multiple traumas with evidence of thoracic and lumbar fractures, right hip fracture with subsequent total hip arthroplasty, distal right clavicle fracture with essentially normal motion and strength of his shoulder." *Id.* at 4. Dr. Mooney issued an 8% impairment rating of the whole person applicable to DRE lumbar category 2, due to his L3-L4 fractures of the transverse process. *Id.* at. 4-5. Dr. Mooney also concluded Sullivan demonstrated an 8% impairment rating of the whole person based on DRE thoracic category 2 from the wedge fracture T9 vertebral body and fracture of the T8 spinous process. *Id.* at 5.

On April 3, 2014, Sullivan had a repeat lumbar MRI performed at the University of Missouri Health System. JE 4 at 32. Dr. Michael Aro reviewed the MRI and no significant issues were noted beyond a minimal to mild lumbar spondylosis with facet arthrosis and mild disc bulging at L4-5. *Id.* at 33. However, a right-sided S1 superior articular facet subchondral cyst formation was noted. *Id.* A second opinion was provided upon the examination of Sullivan by Dr. Eden Wheeler on September 3, 2014. JE 5 at 35. Sullivan went to Dr. Wheeler for a second opinion after Dr. Goetz told him there was nothing more to do from a surgical perspective. *Id.* During his visit with Dr. Wheeler, Sullivan complained of pain in his left shoulder, low back, left medial thigh, and bilateral lower extremities. *Id.* at 36. In regards to the low back pain, Dr. Wheeler concluded

after reviewing the medical records and examining Sullivan that he has right central low back pain with differential diagnosis of right SI joint dysfunction and/or facet mediated pain. *Id.* at 40-41. For the back pain, Dr. Wheeler recommended formal therapy specifically for the lumbar spine and TENS unit trial for lumbar complaints with the therapy. *Id.* at 41.

Dr. Wheeler reexamined Sullivan for back pain on November 6, 2014, where no changes in his symptoms were reported. JE 5 at 42. Sullivan continued to report lumbar discomfort but Dr. Wheeler's opinion and diagnosis remained unchanged from the previous visit. *Id.* at 42-43. She opined that Sullivan could continue to benefit from physical therapy. *Id.* at 43. On December 10, 2014, Sullivan had a follow-up visit with Dr. Wheeler. *Id.* at 44. Sullivan reported that he had completed five sessions of physical therapy and noted more mobility and looseness, but his back was "hurting worse." *Id.* Sullivan was to continue physical therapy and it was noted Sullivan desired to maximize therapy before undertaking invasive treatment. *Id.* at 45.

Dr. Wheeler saw Sullivan again on January 14 and February 12, 2015. *Id.* at 46, 48. In January Sullivan complained of an increase in pain and having constant pain. *Id.* at 46. Sullivan did note his right low back pain improved with therapy. *Id.* Dr. Wheeler recommended that he continue for an additional three to five weeks in physical therapy. *Id.* at 47. In February, Sullivan felt "the lower part of his back may be improved, but does note that therapy aggravates this pain complaints." *Id.* at 48. Sullivan did relay that his centralized low back had aching, burning, and stabbing pain. *Id.* Dr. Wheeler recommended discharge from therapy but advised him to continue to engage in a home exercise regimen. *Id.* at 49. Dr. Wheeler also advised consideration of SI joint injections. *Id.*

On April 23, 2015, Sullivan presented to Dr. Daniel Bruning for his low back pain. JE 6 at 52. Sullivan was transitioning into Dr. Bruning's care from Dr. Wheeler. *Id.* His pain score for his

back was seven out of ten. *Id.* Dr. Bruning assessed that he had lumbar disc displacement, lumbar spondylosis, and lumbar radiculopathy. *Id.* at 53. An epidural steroid injection was performed. *Id.* He returned to Dr. Bruning on May 8, 2015. *Id.* at 55. He reported a 20% relief to Dr. Bruning but noted that his lower back pain has increased. *Id.* His pain rating was five out of ten. *Id.* Sullivan's risk of hyperglycemia was too high and a steroid shot was not given. *Id.*

Sullivan returned to see Dr. Wheeler on May 19, 2015. JE 5 at 50. He reported that his pain was worse than what he had felt in several months. *Id.* Dr. Wheeler recommended ablation but discussed with him that she cannot guarantee he will have significant extremity improvement. *Id.* at 51. Dr. Wheeler noted he was scheduled to see Dr. Goetz in two days for a consult for hip surgery. *Id.* at 50. Dr. Wheeler recommended that he proceed with an ablation. *Id.* at. 51. The doctor also recommended Sullivan continue his home exercises.

Sullivan saw Dr. Goetz on May 21, 2015, March 3, 2016, August 9, 2016, and March 6, 2018. JE 3 at 15, 18, 21, 25. In all of his visits, Sullivan complained of low back pain. *Id.* at 16, 18, 21, 25. In August, Dr. Goetz requested a new MRI of the lumbar spine and from those results, the doctor would help arrange a referral to spine surgery versus pain management versus additional physical therapy. *Id.* at 22. The MRI of his lumbar spine was performed on September 7, 2016. There was no evidence for an acute lumbar spine fracture. *Id.* at 23. At the L4-5 the mild disk bulge and facet hypertrophic changes contributed to bilateral lateral recess narrowing without compression of the traversing L5 nerves. *Id.* Dr. Goetz recommended an epidural steroid injection. *Id.* at 24. However, Sullivan did not receive an epidural steroid injection because he was worried about blood sugars related to his diabetes. *Id.* at 25.

On June 22, 2018, Sullivan was referred by Dr. Goetz to Dr. Ledet at Central Studies Medicine for evaluation and management of his low back pain. JE 7 at 58. An updated MRI for

the lumbar and pelvic area was ordered as well as bilateral EMGs. *Id.* at 62. Sullivan returned to Dr. Ledet on October 3, 2018. *Id.* at 64. He continued to complain of low back pain with a pain average of six out of ten. *Id.* Dr. Ledet reviewed the lumbar and pelvic MRIs and reassured Sullivan "that there is no evidence of bio-mechanical impingement." *Id.* at 67. He recommended that Sullivan continue with medication-based treatments at this time. *Id.* However, if that failed to treat the symptoms then Dr. Ledet would consider a trial of implantable technologies to include spinal cord stimulation. *Id.* Sullivan returned to Dr. Ledet on October 26, 2018. *Id.* at 68. Spinal cord simulation information was given and discussed by Dr. Ledet. *Id.* at 71. On December 17, 2018, he had a follow-up visit with Dr. Ledet. *Id.* at 72. Sullivan reported to Dr. Ledet that since discontinuing the medication he has noticed an increase in low back pain. *Id.* Dr. Ledet concluded the pain cannot be treated by surgical procedure. *Id.* at 74. He scheduled Sullivan for a Behavioral Health screening with a follow-up for additional discussion and trial of SCS. *Id.*

Sullivan's follow-up visit with Dr. Ledet was on February 12, 2019. *Id.* at 76. Sullivan continued to report low back pain with an average seven out of ten pain rating. *Id.* The Behavioral Health screening was completed and planning towards the SCS trial. *Id.* at 78. At the screening, Sullivan rated that his average pain intensity from the last two weeks was nine out of ten. *Id.* at 80. The social worker did note in the screening that Sullivan may be at risk of medical non-compliance with the spinal cord simulator due to a history of non-compliance with checking his blood sugar levels as recommended. *Id.* at 82. Dr. Ledet concluded Sullivan may be a good candidate for dorsal column stimulation based on his clinical history, physical examination, and radiographic studies. *Id.* at 78. The dorsal column stimulation educational material was reviewed and questions by Sullivan were addressed. *Id.* The plan was to proceed with the trial of implantable technologies. *Id.*

On March 11, 2019, Dr. Joseph Chen performed an IME on Sullivan at the request of Defendants. DE C at 15. Sullivan reported his pain was typically seven out of ten but gets up to a nine out of ten. *Id.* at 19. He stated he wanted to proceed with the SCS trial to improve his pain. *Id.* He indicated he had a score of 33 out of 50 or 66 out of 100 on the Oswestry Low Back Disability Questionnaire. *Id.* at 21. Sullivan's score indicated severe self-report of disability. *Id.* Dr. Chen concluded he had abnormally high scores in his Fear Avoidance Belief Questionnaire. *Id.* at 22. Dr. Chen diagnosed Sullivan's back pain condition as chronic mechanical myofascial thoracic and low back pain. *Id.* at 23. He concluded the fractures to his T8 and T9 vertebra body, T8 spinous process, and L3 and L4 transverse process have healed in the intervening seven years. *Id.* at 22. He noted Sullivan's current complaints of severe pain to be a result of high Fear Avoidance Beliefs. *Id.* at 23. Dr. Chen concluded the spinal cord stimulator trial is not causally related to Mr. Sullivan's work-related back injury. *Id.* He also concluded a spinal cord stimulator trial is not reasonable and necessary treatment for his work-related back injury because spinal cord stimulation treatment will not address his fear-avoidance beliefs and behaviors nor his pain catastrophization, rumination, anxiety, or depression. *Id.* at 24.

Dr. Chen recommended instead that he: (1) start a general flexibility exercise program; (2) start a simple and consistent walking or other aerobic conditioning programs; and (3) correct his high fear-avoidance beliefs and behaviors, pain catastrophization, rumination, anxiety, and depression. *Id.* at 25. Based on Dr. Chen's opinion, the workers' compensation carrier denied Sullivan's request for the trial spinal cord stimulator. DE F at 37.

On May 9, 2019, Dr. William Boulden performed a records review at the request of Defendants. DE D at 29. It was his opinion that surgery was not required. *Id.* Dr. Boulden did not agree with Dr. Ledet's assessment and concluded Sullivan's degenerative changes in his back do

not need any surgical intervention based on the MRI reports. *Id.* He agreed with Dr. Hatfield, who is a spine specialist, that there is not a surgical problem. *Id.* Dr. Boulden opined that because Sullivan is a smoker it could be one of the reasons he has back problems. *Id.* He opined that Dr. Chen's assessment was "very well written and very appropriate" and agrees with it. *Id.*

Dr. John Kuhnlein provided a record review on behalf of Sullivan on October 5, 2019. Claimant's Exhibit (CE) 2 at 3. Dr. Kuhnlein notes that Sullivan's back pain is chronic and has not responded to other forms of conservative treatment. *Id.* at 5. He agrees with Dr. Ledet that the spinal cord stimulation trial is indicated for Sullivan's low back pain. *Id.* He concludes that Dr. Ledet's request for a spinal cord stimulator trial is reasonable given he has been through all other forms of treatment for chronic pain. *Id.*

Dr. Ledet responded to a letter from Sullivan's attorney on October 21, 2019. CE 1 at 5. Dr. Ledet stated he would not implant an SCS unless there was a substantive improvement in the patient's ability to participate in activities of daily living during the trial of SCS. *Id.* The only way to know if a patient is a good candidate for SCS is through the process of trial stimulation. *Id.* Dr. Ledet's opinion is that the chronic pain symptoms are causally related to the work injury and, therefore, the recommendation of the SCS trial is also related to his work injury. *Id.* He also opined that Sullivan's psychological state and cognitive distortions should be addressed with a multidisciplinary approach. *Id.* at 6. Dr. Ledet also agreed with Dr. Boulden regarding Sullivan not needing spine surgery. *Id.* However, Dr. Boulden is not a pain physician and does not treat chronic pain patients. *Id.* Dr. Chen and Dr. Boulden are not actively engaged in the evaluation and treatment of patients in chronic pain administering interventional therapies including trial and implantation of neuromodulation devices. *Id.* Dr. Ledet believes he has a higher level of specialization and expertise in that area. *Id.*

Dr. Chen and Dr. Boulden provided supplemental record reviews on January 18, 2020. DE C at 26; DE D at 31. Dr. Chen opined that he has treated and seen many individuals with chronic pain and has found individuals like Sullivan, who hold unreasonable expectations about their expected improvement and recovery, are rarely pleased upon completion of invasive treatments. DE C at 27. Dr. Chen opined that the spinal cord stimulator treatment will not address any of Sullivan's fear-avoidance beliefs that contribute to chronic pain. *Id.* He again recommended a general flexibility program with walking or other aerobic exercise program to improve his physical endurance. *Id.* at 29. Dr. Chen notes that his opinions were not to prevent Mr. Sullivan from getting treatment for his pain and ultimately wants Sullivan to choose for himself what path he wants to take according to his knowledge, experience, and values. *Id.* at 30. Dr. Boulden does agree Dr. Ledet does more spinal cord stimulators than him. DE D at 31. However, his opinion is still that Sullivan will not be a good candidate because of his pain issues, and in his experience there will not be success. *Id.* Dr. Boulden confirms again that Sullivan's neurotropic pain is not related to the work accident. *Id.*

Dr. Wheeler and Dr. Goetz both signed a pre-prepared letter by Defendants' Attorney. DE E at 33; DE B at 11. Dr. Wheeler would not recommend a spinal cord stimulator and agrees with the opinions of Dr. Chen. DE E at 33. Her opinion is that the spinal cord stimulator is likely not going to benefit Sullivan or help him. *Id.* She also agrees that the spinal cord stimulator being recommended is not reasonable and necessary medical treatment for Sullivan's work injury. *Id.* at 33-34. Dr. Goetz agrees the odds of the spinal cord stimulator working in the long term are low based upon the examinations of Sullivan, his review of the MRI findings, and his experience treating patients. DE B at 12. Dr. Goetz agrees with the opinion of Dr. Chen, Dr. Boulden, and Dr. Wheeler and he would not recommend Sullivan having a spinal stimulator. *Id.*

B. Procedural History

Sullivan filed an Original Notice, Petition, and Answer Concerning Application for Alternate Medical Care on March 8, 2019. Sullivan's reason for dissatisfaction and relief sought is seeking authorization to proceed with a spinal cord stimulator because Petitioners would not authorize that recommended treatment. On March 20, 2019, Deputy Commissioner Michelle McGoven dismissed Sullivan's Application for Alternate Medical Care. Deputy McGoven dismissed the application because before benefits can be ordered, the compensability of the claim must be established, either by admission of liability or by adjudication. Order of Dismissal at 1. In the Order it was stated that Iowa Code section 85.27 is not designed to adjudicate disputed compensability of a claim, therefore, the action was dismissed. *Id.*

On April 18, 2019, Sullivan commenced a contested case by filing a Notice and Petition. Respondent's Brief (Res. Brief) at 8. On June 5, 2020, Deputy Commissioner Andrew Phillips denied Sullivan's Petition for Alternate Medical Care pursuant to Iowa Code section 85.27. Arb. Dec. at 19. He found the opinions of Dr. Goetz, Dr. Wheeler, Dr. Boulden, and Dr. Chen to be more persuasive than the opinions of Dr. Ledet and Dr. Kuhnlein. *Id.* at 17. The Deputy Commissioner concluded that he does not find any information indicating claimant has carried his burden of proof to order the alternate care requested. *Id.* at 18. He opined Dr. Chen has outlined a reasonable course of treatment that could serve as an alternative to a trial of a spinal cord stimulator. *Id.*

On June 22, 2020, Sullivan filed a Motion for Rehearing on the Arbitration Decision. Rehearing was requested because the issue of causation was not clear from the Arbitration Decision and because the Arbitration Decision did not comply with the Iowa Administrative Procedure Act, chapter 17A.16(1). Deputy Commissioner Phillips denied the motion because the

Deputy held claimant did not meet his burden of proof for alternate care for the spinal stimulator, therefore, causation does not need to be addressed. On June 29, 2020, Sullivan appealed the Arbitration Decision filed on June 5, 2020, and the Ruling on Claimant's Motion for Rehearing filed on June 29, 2020. On February 21, 2021, Deputy Commissioner Stephanie Copley reversed the Arbitration Decision and the Ruling on the Motion for Rehearing. Appeal Decision at 8. The Deputy Commissioner authorized the spinal cord stimulator recommended by Dr. Ledet and its payment by Defendants. *Id.* The Deputy Commissioner was not persuaded by the opinions of Dr. Chen and Dr. Boulden that Sullivan's chronic back pain is not related to his 2011 work injury. *Id.* at 6. The Deputy found the opinions of Dr. Ledet and Dr. Kuhnlein to be more persuasive as to the chronic pain symptoms being causally related to claimant's 2011 work injury. *Id.* Due to the chronic back pain symptoms being causally related to the 2011 injury, the Deputy Commissioner found the SCS trial is causally related to claimant's work injury. *Id.* The Appeal Decision also found the requested SCS was both reasonable and necessary for the treatment of Sullivan's work-related chronic back pain. *Id.* at 7. The Deputy Commissioner concluded Sullivan satisfied his burden to prove he is entitled to medical care in the form of the SCS trial as recommended by Dr. Ledet. *Id.*

On February 27, 2021, Petitioners filed a Motion for Rehearing of the Appeal Decision filed on February 8, 2021. One of the issues Petitioners raise is that Claimant has the burden of proving that the care authorized by the employer is unreasonable under *Long v. Roberts Dairy Co*. 528 N.W.2d 122 (Iowa 1995). Motion for Rehearing at 4. Defendants argue Claimant never met this burden because he did not directly address the issue of reasonableness and necessity, but addressed it indirectly throughout his argument in Brief Point III. *Id.*; Appeal Dec. at 6, footnote 1. Therefore, Defendants argue Deputy Copley was incorrect in reversing Deputy Phillips. Motion

for Rehearing 4-5.

Deputy Copley disagreed and upheld her appeal decision on March 16, 2021. Ruling on Rehearing at 6. The Deputy concluded *Long* does not apply to this case because Defendants denied liability of the SCS being causally related to the work injury. *Id.* at 2. The Deputy Commissioner also concluded Defendants' denial of the SCS trial due to it not being causally related to the work injury amounts to a denial of compensability of the injury. *Id.* at 5. Deputy Copley affirmed her appeal decision as to causation and also found the SCS trial to be reasonable even though she concluded *Long* was not applicable. *Id.* at 6.

On April 15, 2021, Petitioners filed a Petition for Judicial Review in District Court. Petitioners request this Court to reverse the Appeal Decision and the Ruling on Defendants' Motion for Rehearing of Deputy Copley, reinstate the Arbitration Decision, award Respondent no benefits, and dismiss the Petition before the Agency. The basis for Petitioners' Petition is that the Appeal Decision of the Deputy Commissioner prejudiced the substantial rights of Petitioners because the agency action is: (1) an error as a matter of law; (2) based upon a determination of fact clearly vested by a provision of law in the discretion of the agency that is not supported by substantial evidence in the record before the court when that record is viewed as a whole; and (3) inconsistent with prior precedents of the agency.

II. 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, we 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 Cmty. 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).

The application of the law to the facts is also an enterprise vested in the commissioner. *Mycogen*, 686 N.W.2d at 465. Accordingly, the Court will reverse only if the commissioner's application was "irrational, illogical, or wholly unjustifiable." *Id*.; Iowa Code § 17A.19(10)(l). "A decision is "irrational" when it is not governed by or according to reason." *Christensen v. Iowa Dep't. of Revenue*, 944 N.W.2d 895 at 905 (Iowa 2020). A decision is "illogical" when it is "contrary to or devoid of logic." *Id*. "A decision is "unjustifiable" when it has no foundation in fact or reason" or is "lacking in justice." *Id*. This standard requires the Court to allocate some deference to the commissioner's application of law to the facts, but less than it gives to the agency's findings of fact. *Larson Mfg. Co. v. Thorson*, 763 N.W.2d 842, 850 (Iowa 2009). However, when the legislature has not vested the agency with such authority, the Court reviews an agency's interpretation of a statute for correction of errors at law. *Westling v. Hormel Foods Corp.*, 810 N.W.2d 247, 251 (Iowa 2012).

III. MERITS

A. Whether the Agency's determination that the need for the SCS trial is causally related to the work injury is supported by substantial evidence.

Petitioners argue Deputy Copley's conclusion that the SCS trial is causally related to the work injury is not supported by substantial evidence. They argue the burden of proof is on Sullivan to prove some employment incident or activity was the proximate cause of the impairment and he failed to do so. Petitioners' Brief at 13. Deputy Phillips in his Arbitration Decision concluded Sullivan had not carried his burden of proving the current symptoms were causally connected to the 2011 injury. Arbitration Decision at 17. Specifically, Deputy Phillips found the opinions of Dr. Goetz, Dr. Wheeler, Dr. Boulden, and Dr. Chen to be more persuasive than Dr. Ledet and Dr. Kuhnlein's opinions. *Id.* However, Deputy Copley reversed Deputy Phillips and concluded

Sullivan's chronic back pain was causally connected to his 2011 work injury. Appeal Decision at 6. This was based on her finding that Dr. Kuhnlein and Dr. Ledet's opinions were more persuasive. *Id.* at 6.

"A claimant must prove by a preponderance of the evidence that the injury is a proximate cause of the claimed disability." *Grundmeyer.*, 649 N.W.2d at 752. Proximate cause is established if it is a substantial factor. *Ayers v. D & N Fence Co.*, 731 N.W.2d 11, 17 (Iowa 2007). The preponderance of the evidence is established when the causal connection is probable, rather than merely possible. *Blacksmith v. All-American, Inc*., 290 N.W.2d 348, 354 (Iowa 1980). Usually, the determination of causation by the Agency is established through expert testimony. *Grundmeyer*, 649 N.W.2d at 752. Specifically, expert testimony is necessary to establish the causal connection between the injury and the disability for which benefits are claimed. *Id.* With regard to expert testimony,

> [t]he commissioner must consider [such] testimony together with all other evidence introduced bearing on the causal connection between the injury and the disability. The commissioner, as the fact finder, determines the weight to be given to any expert testimony. Such weight depends on the accuracy of the facts relied upon by the expert and other surrounding circumstances. The commissioner may accept or reject the expert opinion in whole or in part.

Id.

The Agency's decision must "include an explanation of why the relevant evidence in the record supports each material finding of fact . . . . Each conclusion of law shall be supported by cited authority or by a reasoned opinion." Iowa Code § 17A.16(1). This requirement is not meant to be burdensome instead, it is meant to allow a reviewing court to ascertain what evidence was considered and the reasoning behind the Agency's findings. *Schutjer v. Algona Manor Care Center*, 780 N.W.2d 549, 560 (Iowa 2010). The Court may only reverse the Agency's findings if they are not supported by substantial evidence. *See Univ. of Iowa Hosp. & Clinics v. Waters*, 674

N.W.2d 92, 95 (Iowa 2004). Under Iowa Code section 17A.19(10)(f)(1), substantial evidence is defined as "the quantity and quality of evidence 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."

Here, Deputy Copley explained she was not persuaded by Dr. Chen's and Dr. Boulden's opinions that Sullivan's chronic back pain was not related to his 2011 work injury. Appeal Decision at 6. In light of the fact that Sullivan had a documented trauma of being struck by a train, Deputy Copley did not agree with Dr. Chen's rationale that there are many ways to develop chronic back pain. *Id.* Deputy Copley also rejected Dr. Boulden's opinion that Sullivan's back pain was attributable to other factors, including his smoking and diabetes. She reasoned that it could be the case these factors are contributing to it. *Id.* However, before his 2011 injury, Sullivan did not have issues with back pain. *Id.* His chronic back pain did not begin until his work injury. *Id.* For these reasons, Deputy Copley found the opinions of Dr. Kuhnlein and Dr. Ledet to be more persuasive than those of Dr. Boulden and Dr. Chen. *Id.*

Petitioners assert Sullivan's chronic back pain is not causally related to his 2011 work injury because his pattern of pain complaints were not consistent with his traumatic injury. Petitioners' Brief at 15. Further, they cite that in his deposition Sullivan testified that his back had gotten worse between 2018 and 2019. *Id.* Petitioners go into further detail in their brief on why Dr. Chen's and Dr. Boulden's medical opinions regarding the causal connection were more persuasive than Dr. Ledet's and Dr. Kuhnlein's opinions. However, the standard on judicial review is "not whether the evidence supports a different finding than the finding made by the commissioner, but whether the evidence 'supports the findings actually made.'" *Meyer*, 710 N.W.2d at 218 (citation omitted).

This Court finds Deputy Copley's Appeal Decision provided a sufficiently detailed explanation of the evidence and the material facts, in addition to her providing a reasoned opinion for her conclusions of law. *See* Iowa Code § 17A.16(1). The Deputy Commissioner as the fact-finder determined the weight to give each expert and explained why she was more persuaded by Dr. Kuhlein and Dr. Ledet's causation opinions compared to Dr. Chen and Dr. Boulden's opinions. *See Grundmeyer*, 649 N.W.2d at 752. Therefore, the Court finds there is substantial evidence to support Deputy Copley's conclusion that Sullivan's chronic back pain is causally connected to his 2011 work injury.

B. Whether the Agency's finding regarding the applicability of *Long* was irrational, illogical, or wholly unjustifiable.

Petitioners contend it was an abuse of discretion and/or error of law for Deputy Copley to not apply the holding in *Long v. Roberts Dairy Co.,* once causation had been determined. Petitioners' Brief at 24; 528 N.W.2d 122 (Iowa 1995). In Deputy Copley's Ruling on Defendants' Motion for Rehearing, she denies that the test and burden of proof set forth in *Long* are applicable. Ruling on Rehearing at 2-5. She found that this case is not the traditional alternate medical care setting as presented in *Long*. *Id.* at 2. In this case, Petitioners denied liability that the back pain was causally connected to the work injury and it is not just "a mere difference of opinion over the diagnosis and treatment." *Id.* at 2, 5 (internal quotations omitted). Deputy Copley also found that Petitioners have abandoned their obligation to provide care due to their denial of compensability. *Id.* at 6

When an employee sustains a compensable work-related injury, employers are obligated to provide reasonable medical services to treat the injured employee. Iowa Code § 85.27(4). Once compensability is established, the employer has the right to choose the care the employee receives. *Id.* There are situations, however, in which the employee is permitted to choose his or her own

care at the employer's expense. The situations are: (1) in an emergency when the employer or employer's agent cannot be reached immediately; (2) when the employee and employer have consented to alternative medical care to be paid by the employer; or (3) when the workers' compensation commissioner orders alternative care to be paid by the employer. *Id.*

However, there are two circumstances in which the employer's right to choose medical care does not prevent the employee from choosing his or her own medical care at his or her own expense. *Bell Bros. Heating & Air Conditioning v. Gwinn*, 779 N.W.2d 193, 204 (Iowa 2010). The first circumstance is when the employer denies the compensability of the injury. *Id.* The second circumstance is when the employee abandons the protections of Iowa Code section 85.27 or otherwise obtains his or her own medical care independent of the statutory scheme. *Id.* In the first circumstance, when the employer contests compensability the employee has been left to pursue his or her own medical care for the injury at his or her own expense. *Id.* In essence, the injured employee has been abandoned by their employer. As a result, the employer has no right to choose the medical care. *Id.* The employee is free to pursue a claim against the employer to recover the reasonable cost of the medical care upon proof of compensability. *Id.*

The second circumstance is when the employee obtains his or her own unauthorized medical care or abandons the protections of section 85.27. *Id.* Compensability of the injury is usually admitted by the employer in this circumstance and the employer has assumed responsibility for providing reasonable medical care. *Id.* The main issue in this circumstance is that the employee disagrees with the care provided or rejects the care, and instead obtains alternative medical care without consent from either the employer or from the workers' compensation commissioner. *Id.*

Deputy Copley found the first circumstance arose in this case and that by denying liability and not offering care, Petitioners abandoned their right to provide care. Ruling on Rehearing at 6.

Specifically, this case stepped into some gray area when Petitioners denied liability for the back injury in their answer to the Alternate Care Petition. On March 8, 2019, Sullivan filed an Original Notice, Petition, and Answer Concerning Application for Alternate Care. Petitioners answered and admitted liability for the work injury but denied his current chronic back pain was causally related to the work injury. Order for Dismissal for Alternate Care at 1. Deputy McGovern dismissed with prejudice the Alternate Care Petition. *Id.* Deputy McGovern dismissed the petition because Defendants cannot deny liability while at the same time direct the course of treatment. *Id.* Under section 85.27, if an employer denies or disputes compensability of an injury, then the Agency must dismiss the alternate care application and the petition should instead be filed pursuant to Iowa Administrative Code rule 4.1. *R.R. Donnelly & Sons v. Barnett*, 670 N.W.2d 190, 197 (Iowa 2003). This is because the issue of compensability is totally removed from the alternate medical care process. *Id.* at 196. Instead, it is limited to determining the reasonableness and necessity of the alternative medical care sought by an employee. *Id.* at 197. Further, the employer cannot assert an authorization defense in response to any subsequent claim of alternative medical care expenses when the employer denies compensability. *Id.* at 198.

The Court does not completely agree with Deputy Copley's finding that Petitioners have forfeited their right to direct Sullivan's medical care. Deputy Copley found that when Petitioners denied compensability they abandoned their obligation to provide care and such abandonment means Defendants have forfeited their right under section 85.27. Ruling on Rehearing at 6. However, in *Bell Bros. Heating*, the Iowa Supreme Court rejected the idea that an employer who acknowledges compensability of a work-related injury but later disputes the *nature and extent* of the injury loses all rights to choose medical care under section 85.27. 779 N.W.2d at 207 (emphasis added). Such a dispute over the nature and extent of an injury is not grounds alone for a

determination that an employer has forfeited its right to select medical care. *Id.* Section 85.27 would become "virtually meaningless" and "would lead to absurd results" if an employer only controls care until the employee disagrees with the authorized provider's assessment as to the nature and extent of the injury. *Id.* Additionally, once an employee establishes compensability by either admission of the employer or by adjudication, the statutory duty of the employer to furnish reasonable medical care emerges under section 85.27. *Id.* at 206.

Here, like in *Bell Bros. Heating*, there is not substantial evidence to support Deputy Copley's finding that Petitioners' denial of compensability of the injury forfeited any rights they have to choose medical care under section 85.27. *See id.* at 208. Like in *Bell Bros. Heating*, Defendants denied that the extent of the injury was causally related to the work injury in 2011. *See id.* at 196-98. Petitioners admitted in the 2011 work injury, that Sullivan suffered an 8% BAW impairment rating, and the award for future medical benefits for Sullivan's back condition. Resistance to Motion for Rehearing filed 3/28/2019 at 1. In this case, Petitioners only denied the extent of his current back injury as being causally related to the 2011 work injury. *Id.* They have acknowledged compensability for the 2011 work injury. *Id.* Therefore, like in *Bell Bros. Heating*, this is not grounds alone for the determination that the employer has forfeited its right to select medical care. *See* 779 N.W.2d at 207.

Deputy Copley finding that the test and burden of proof as set forth in *Long v. Roberts Dairy Co*. was not supported by substantial evidence, and is irrational, illogical, or wholly unjustifiable. Compensability had been established by Deputy Copley when she found the current chronic back pain was causally related to the work injury from 2011. *See id.* at 207. Appeal Decision at 6. It has also been determined by this Court that there was not substantial evidence for Deputy Copley to find Petitioners forfeited their right to select medical care under section 85.27.

In this case, the SCS trial has not been performed and Sullivan is seeking authorization of alternative medical care, not reimbursement of alternative medical care. *See Bell Bros. Heating*, 779 N.W.2d at 206. As a result, the employee now must establish the claim for alternative medical care by proving the alternate medical care is reasonable and necessary, or that the medical care provided by the employer is unreasonable. *Long v. Roberts Dairy Co.*, 528 N.W.2d 122, 123 (Iowa 1995); *Bell Bros. Heating*, 779 N.W.2d at 206, 209.

C. Whether the Agency's determination that Sullivan raised the issue regarding reasonableness of the SCS trial was an abuse of discretion.

Petitioners argue the Agency's determination that Sullivan raised the issue of reasonableness of the SCS trial on appeal is not supported by substantial evidence, and is an error of law and/or is an abuse of discretion. Petitioners' Brief at 11. Petitioners argue Sullivan failed to preserve error on the issue of reasonable and necessary medical treatment under *Long*, or more specifically, the unreasonableness of the treatment recommended by Dr. Chen, Dr. Boulden, Dr. Wheeler, and Dr. Goetz. *Id.* at 18. Petitioners argue Sullivan never directly addressed or raised the issue of reasonableness in his appeal brief to the Agency, therefore, it was incorrect for the Appeal Decision to hold the issue was not waived. *Id.* The Arbitration Decision applied the holding of *Long* and found Claimant had not carried his burden of proof to order the alternate care requested. Arbitration Decision at 18. Deputy Copley reversed this finding in her Appeal Decision and found that the issue was not waived because Sullivan raised the issue of reasonableness indirectly throughout his argument in Brief Point III. Appeal Decision at 6.

The Court does not find Deputy Copley in her Appeal Decision committed an abuse of discretion when she found Sullivan indirectly raised the issue of reasonableness in his appeal brief *See Boehme v. Fareway Stores, Inc.*, 762 N.W.2d 142, 145 (Iowa 2009) (holding whether a

commissioner correctly interprets the agency's appellate procedural rules regarding preservation of error for an abuse of discretion). Iowa Administrative Code rule 876—4.28(7) states,

> [t]he appeal will consider the issues presented for review by the appellant and cross-appellant in their briefs and any issues necessarily incident to or dependent upon the issues that are expressly raised, except as provided in 876-4.29(86,17A). An issue will not be considered on appeal if the issue could have been, but was not, presented to the deputy. An issue raised on appeal is decided de novo and the scope of the issue is viewed broadly. If the ruling from which the appeal was taken made a choice between alternative findings of fact, conclusions of law, theories of recovery or defenses and the alternative selected in the ruling is challenged as an issue on appeal, de novo review includes reconsideration of all alternatives that were available to the deputy.

However, the Agency has broad authority in agency appeals under Iowa Code section 17A.15(3). Section 17A.15(3), states that in an appeal, "the agency may reverse or modify any finding of fact if a preponderance of evidence will support a determination to reverse or modify such a finding, or may reverse or modify any conclusion of law that the agency finds to be in error." Iowa Code § 17A.15(3). When determining whether the agency's action is an abuse of discretion, the court shall consider whether the Agency decision lacked rationality and was made clearly against reason and evidence. *Dico, Inc. v. Iowa Emp't Appeal Bd.*, 576 N.W.2d 352, 355 (Iowa 1998). Deputy Copley did not commit an abuse of discretion because it was within her authority under section 17A.15(3) for her to reverse Deputy Phillips and her finding that Sullivan raised the issue within his appeal brief did not lack rationality.

D. Whether the Agency's finding that the SCS trial is reasonable and necessary treatment is supported by substantial evidence or if the Deputy's applicability of *Long* is irrational, illogical, or wholly unjustifiable.

Petitioners argue the Agency's determination that the SCS trial is reasonable and necessary medical treatment is not supported by substantial evidence. Petitioners' Brief at 11. Petitioners also argue the Deputy's finding that the treatment offered by Dr. Chen, Dr. Goetz, and Dr. Wheeler was unreasonable and was not offered by Petitioners is not supported by substantial evidence. *Id.*

at 11-12. Deputy Copley reversed Deputy Phillips's Arbitration Decision and found Claimant satisfied his burden in proving the SCS trial is both reasonable and necessary treatment of his work-related injury. Appeal Decision at 7. Deputy Copley was not persuaded by the opinions of Dr. Chen, Dr. Boulden, Dr. Goetz, and Dr. Wheeler when it came to whether the SCS trial is reasonable and necessary treatment. Appeal Decision at 7. Dr. Chen and Dr. Boulden questioned whether the trial was appropriate based on Sullivan's pain distribution and because of his psychological state. *Id.* However, the Deputy found Dr. Ledet refuted these concerns in his report from November 11, 2019. *Id.* She was also not persuaded by Dr. Goetz and Dr. Wheeler's opinions that Sullivan is not likely to benefit from an SCS. *Id.* The Commissioner found Dr. Ledet's opinion that Sullivan is a good candidate to be more persuasive because Dr. Ledet has more expertise when it comes to SCS. *Id.* Based on Dr. Ledet's opinion, as supported by Dr. Kuhnlein, Deputy Copley found the SCS trial is both reasonable and necessary treatment for Sullivan's work-related chronic back pain. *Id.*

Under *Long*, in order to establish alternative care under section 85.27, the employee has the burden of proving the employer's course of treatment is unreasonable. 528 N.W.2d 123. Determining what is unreasonable under the statute is a question of fact. *Id.* The question of the employer's obligation under section 85.27 is based on reasonable necessity, not desirability. *Id.* at 124. In *Long*, the court denied claimant's request for alternative medical care because he furnished no proof that the care provided by the defendant would be inferior or less extensive than the care offered by claimant as alternative medical care. *Id.* In *Pirelli-Armstrong Tire Co. v. Reynolds*, the court concluded that "when evidence is presented to the commissioner that the employer authorized medical care has not been effective and that such care is 'inferior or less extensive' than other available care requested by the employee . . . the commissioner is justified by section 85.27

to order the alternate care." 562 N.W.2d 433, 437 (Iowa 1997). The treatment offered by employer must be (1) prompt, (2) reasonably suited to treat the injury, and (3) without due inconvenience to employee. *West Side Transp. V. Cordell*, 601 N.W.2d 691, 693 (Iowa 1999).

This case started with the Petitioners denying the spinal cord stimulator for two reasons: 1. causation, not being causally related to the work injury; and 2. not being reasonable and necessary. Record, Tr. 107. The Deputy found that there was causation and substantial evidence supported her decision. The Deputy also found that the SCS was reasonable and necessary. The factual issue for this Court is what was the care being offered by the Petitioners. The Court concludes that in Deputy Copley's Appeal Decision and Ruling on the Motion for Rehearing, she correctly applies the test and burden of proof from *Long* and her finding is supported by substantial evidence

The burden is on Sullivan to prove the medical care being furnished or recommended by Petitioners is unreasonable. *See Long*, 528 N.W.2d at 123. Petitioners have offered a treatment plan that they have authorized and find to be reasonable care for Sullivan's work-related injury. Dr. Chen has recommended Sullivan: (1) pursue an intensive cognitive behavioral therapy with a pain psychologist; (2) start a general flexibility program with crossing one leg over the other; and (3) start a simple and consistent walking program or other aerobic conditioning exercise program to improve his physical endurance. DE C at 24-25. However, Deputy Copley concludes claimant met his burden of proving the SCS trial is reasonable and necessary treatment. Appeal Decision at 7. The Deputy was more persuaded by Dr. Ledet's opinion that the SCS trial is the appropriate care for Sullivan's injury. *Id.* She goes on to explain further why she is not persuaded by Dr. Chen, Dr. Goetz, Dr. Boulden, and Dr. Wheeler. *Id.* She further states "Dr. Ledet specifically indicated claimant would be a good candidate for the trial." *Id.*

Under *Long*, the test is not what is the most appropriate treatment plan or the more desirable treatment plan, but whether the treatment plan offered by Petitioners is unreasonable. *See Long*, 528 N.W.2d at 124. Deputy Copley found prompt care was not provided by Petitioners at the inception of the injury had compensability been acknowledged. *See* Rehearing Ruling at 6; *see also* Appeal Decision at 7. Due to care not being offered promptly, the Agency has the authority to order alternate care, including care from a doctor chosen by the claimant. *West Side Transp*., 601 N.W.2d at 693. Petitioners argue they did offer Dr. Chen's recommendations at the time of the hearing. Petitioners' Brief at 26. They contend they introduced evidence of reasonable care as recommended by four physicians. *Id.* The Court acknowledges there are references in the record to Dr. Chen's recommendation of a general flexibility program being a reasonable treatment plan for Sullivan's chronic back pain. *See* Tr. at 37 (quoting "Dr. Chen and Dr. Boulden have given alternative treatment options as far as exercises that we think should be given prior to the spinal cord stimulator."). However, our task is not to determine whether there is evidence supporting a different finding, but rather, viewing the record as a whole, supports the findings actually made. *Meyer*, 710 N.W.2d at 218. As a result, Deputy Copley's findings are supported by substantial evidence.

Whether the Agency's determination that Dr. Goetz referred Claimant for a second opinion for pain management is supported by substantial evidence.

Petitioners argue Deputy Copley's finding that Dr. Goetz referred Sullivan for a second opinion is not supported by substantial evidence. Petitioners' Brief at 13. In the Appeal Decision, Deputy Copley stated "given the persistent pain, Dr. Goetz referred claimant for a second opinion in pain management." Appeal Decision at 4. Petitioners argue Dr. Goetz did not use the words "second opinion" in his referral for pain management. Petitioners' Brief at 13. Instead, he said

"second opinion" in reference to the spine surgery. *Id.* Petitioners contend this is an important distinction because it goes to their argument that the SCS trial is not reasonable and necessary medical treatment based on the opinions of Dr. Goetz who was the long-term authorized treating physician. *Id.*

Under Iowa Code section 17A.19(10), "the court shall reverse, modify, or grant other appropriate relief from agency action ... if it determines that substantial rights of the person seeking judicial relief have been prejudiced because the agency action is .... (*f*) Based upon a determination of fact ... that is not supported by substantial evidence in the record when that record is viewed as a whole." The Iowa Supreme Court has found "substantial rights language analogous to a harmless error rule." *City of Des Moines v. Pub. Emp't Relations Bd.*, 275 N.W.2d 753, 759 (Iowa 1979). The Agency's actions "should not be tampered with unless the complaining party has in fact been harmed." *Id.* Petitioners bear the burden of demonstrating the Agency's decision has resulted in prejudice. *See Titan Tire Corp. v. Emp't Appeal Bd.*, 641 N.W.2d 752, 758 (Iowa 2002).

Here, this Court has no evidence cited to in the record by Petitioners that clarifies or supports a different finding. Petitioners only evidence is that Dr. Goetz stated "we will help him arrange a referral to pain management here locally for consideration of radiofrequency denervation again." Petitioners' Brief at 13; JE 3 at 22-25. Additionally, Petitioners have failed to show how they have been harmed or prejudiced by the Deputy's finding. Petitioners claim it is important to their position that the SCS trial is not reasonable and necessary medical treatment. Petitioners Brief at 13. The Court disagrees with this argument by Petitioners. Even if this finding was removed from Deputy Copley's decision, there are still other factual findings, as previously analyzed, to support her conclusion it was reasonable and necessary medical treatment. *See Hill v. Fleetguard,*

Inc., 705 N.W.2d 665, 673 (Iowa 2005). Therefore, Deputy Copley's finding is supported by substantial evidence.

IV. CONCLUSIONS AND DISPOSITIONS

For all the reasons set forth above, the Court concludes the Agency's findings are affirmed as to: (1) its determination that the need for the SCS trial as being causally related to the work injury, (2) it not committing an abuse of discretion when Deputy Copley reversed Deputy Phillips and found Sullivan raised the issue of reasonableness of the SCS trial in its appeal, (3) its finding that Sullivan met his burden in proving the care offered by the employer was unreasonable, and (4) the finding regarding whether Dr. Goetz referred Sullivan for a second opinion for pain management . The Court concludes: the Agency's finding that *Long* does not apply in this case was irrational, illogical, or wholly unjustifiable, however, Deputy Copley applies *Long* in her Ruling on Motion for Rehearing.

IT IS THE ORDER OF THE COURT that the Iowa Workers' Compensation Commission's decision is **AFFIRMED.**

Costs are assessed equally to Petitioners.

State of Iowa Courts

Case Number	**Case Title**
CVCV061689	WEST CENTRAL COOP ET AL VS BRETT SULLIVAN
Type:	ORDER FOR JUDGMENT

So Ordered

William P. Kelly, District Court Judge,
Fifth Judicial District of Iowa

Electronically signed on 2021-09-24 11:22:23