

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

---

MATILDE AVALOS SANCHEZ,

Claimant,

vs.

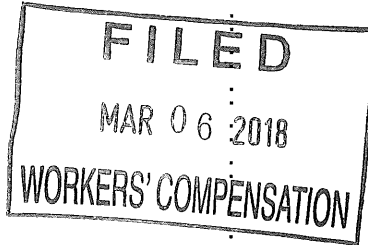
DHL SUPPLY CHAIN,

Employer,

and

NEW HAMPSHIRE INSURANCE  
COMPANY,

Insurance Carrier,  
Defendants.



File No. 5060415

ALTERNATE MEDICAL  
CARE DECISION

HEAD NOTE NO: 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, Matilde Avalos Sanchez. Claimant appeared personally and through her attorney, Philip Miller. Defendants appeared through their attorney, Eric Lanham.

The alternate medical care claim came on for hearing on March 5, 2018. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's 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 record consists of claimant's exhibits A through E, defendants' exhibits A through J, which were received without objection. In addition, the claimant, Matilde Avalos Sanchez, testified under oath at hearing. The defendants do not dispute liability for claimant's June 30, 2017, work injury. By consent of the parties, Bernard Ortiz served as the Spanish language interpreter.

## ISSUE

The issue presented for resolution is whether the defendants should be stripped of their authority to choose the medical providers.

## FINDINGS OF FACT

The claimant sustained an injury to her low back on June 30, 2017, which arose out of and in the course of her employment. She began receiving treatment for her left foot and ankle, as well as her left shoulder in July 2017. Jenny Butler, M.D., became her authorized treating physician. Dr. Butler recommended physical therapy. Claimant received the physical therapy. In approximately November 2017, Dr. Butler told claimant she was leaving the medical clinic and she would need to find a new physician.

Counsel for the parties were in communication regarding the designation of a new physician. On December 12, 2017, defense counsel wrote the following: "It is my understanding Dr. Jenny Butler has left Clarke County Occupational, and my client would prefer to go ahead and get your client in to see specialists on both her foot/ankle and shoulder." (Claimant's Exhibit E, page 10)

The defendants subsequently authorized two specialists at Iowa Orthopedics to treat the claimant. The physicians at Iowa Orthopedics ultimately declined to see the claimant. (Def. Exs. A through E) No physician stated exactly why they chose not to take Ms. Avalos Sanchez as a client. Claimant's counsel suggested it was due to the volume of records submitted by the defendants. Defense counsel suggested it was due to the fact that claimant's counsel served a "NOTICE OF INTENTION TO SERVE SUBPOENA DUCES TECUM AND LIST FOR DOCUMENTS TO BE PROVIDED" on two individuals at Iowa Orthopedics. (Def. Ex. F) The official-looking document signed by claimant's counsel notices the office staff of his intent to take their depositions. (Def. Ex. F) While I cannot state with certainty that this document is the reason those physicians declined to provide treatment, I suspect it was a significant deterrent from anyone wanting to treat her.

After the physicians declined to accept the claimant as a patient, Ms. Avalos Sanchez returned to the clinic and saw a Physician Assistant. She testified she was offered more physical therapy which was paid for by Medicaid. For their part, on February 12, 2018, defendants authorized Dan Miller, D.O., an occupational medicine physician in the Des Moines area. A notice was sent to claimant's counsel setting an appointment for February 16, 2018. (Def. Ex. G) She failed to appear for the appointment and a new appointment was set. (Def. Exs, I, H) She did not show for the second appointment either. (Def. Ex. J) Claimant's counsel characterized as short notice appointments with improper intent. It is clear in the record that claimant's counsel did not notify his client of these appointments.

## REASONING AND CONCLUSIONS OF LAW

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. Iowa Code Section 85.27 (2013).

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See 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).

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

An employer's statutory right is to select the providers of care and the employer may consider cost and other pertinent factors when exercising its choice. Long, at 124. An employer (typically) is not a licensed health care provider and does not possess medical expertise. Accordingly, an employer does not have the right to control the methods the providers choose to evaluate, diagnose and treat the injured employee. An employer is not entitled to control a licensed health care provider's exercise of professional judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988). An employer's failure to follow recommendations of an authorized physician in matters of treatment is commonly a failure to provide reasonable treatment. Boggs v. Cargill, Inc., File No. 1050396 (Alt. Care January 31, 1994).

Based upon the record before me, it is evident the claimant needs further treatment. The claimant testified that her P.A. has recommended further physical therapy and the defendants have acknowledged she should be seen by a specialist. The claimant, however, has failed to prove that the defendants have abandoned care or any other basis for stripping their right to direct medical care.

I find that the defendants have attempted to authorize reasonable and appropriate treatment for the claimant. The defendants did receive notice by early January 2018, that none of the specialists they attempted to send claimant would see her. It does bother me that defendants made no effort to authorize any other treatment for approximately 5 weeks. I do not find that this is a significant enough delay under

these circumstances, to strip them of authority to direct the care. Defendants did attempt to arrange an appointment with Dr. Miller by February 12, 2018.

I further find that claimant's counsel has, at least to some extent, interfered with her ability to receive such treatment, first by sending an unusual notice to depose Iowa Orthopedics' office staff, which likely compromised her ability to receive treatment, then by twice not informing his client of a short notice appointment arranged by the defendants. In this circumstance, I find this type of conduct is not in claimant's best interest.


ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is DENIED.

The claimant is still entitled to care. Defendants shall immediately authorize a physician to treat the claimant. Claimant's counsel is ordered to immediately provide this information to the claimant or otherwise interfere with claimant's medical treatment.

Signed and filed this 6<sup>th</sup> day of March, 2018.

  
\_\_\_\_\_  
JOSEPH L. WALSH  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

Copies to:

Philip F. Miller  
Attorney at Law  
808 Ashworth Road  
West Des Moines, IA 50265  
[philmillerlawoffice@mchsi.com](mailto:philmillerlawoffice@mchsi.com)

Eric Lanham  
Attorney at Law  
PO Box 171300  
Kansas City, KS 66103  
[elanham@mvplaw.com](mailto:elanham@mvplaw.com)

JLW/kjw