BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KERI CENTNER, Claimant, vs. VISTA PRAIRIE AT FIELDCREST, Employer, AMERISURE MUTUAL INSURANCE COMPANY, Insurance Carrier, Defendants.	File No. 20007044.03 ALTERNATE CARE DECISION

I. STATEMENT OF THE CASE.

On September 9, 2022, claimant Keri Centner applied with the agency for alternate care under Iowa Code section 85.27 and rule 876 IAC 4.48 for alleged work injuries sustained on October 10, 2019 to the left upper extremity and body as a whole. The defendants, employer Vista Prairie at Fieldcrest (Vista Prairie) and insurance carrier Amerisure Mutual Insurance Company (Amerisure), did not file an answer.[1] Instead, they stated their position on the record at hearing, accepting liability for the injury to Centner's left upper extremity.

The undersigned presided over a hearing held by telephone and recorded on September 27, 2022. That recording constitutes the official record of the proceeding under agency rule 876 IAC 4.48(12). Centner participated personally and through attorney Leif D. Erickson. The defendants participated through attorney Emilia Lauren Edwards. The record consists of:

- Claimant's Exhibits 1 through 5; and
- Hearing testimony by Centner.

[1] Centner and the defendants are also litigating a contested case proceeding in arbitration before the agency that includes the Second Injury Fund of Iowa (Fund) as a defendant. However, because the Fund is not involved in the care for work injuries under Iowa Code section 85.27, it is not a defendant in this alternate care proceeding.

II. ISSUE.

The issue under consideration is whether Centner is entitled to alternate care in the form of medical cannabis.

III. FINDINGS OF FACT.

On October 10, 2019, Centner sustained injuries to her left hand and arm arising out of and in the course of her employment with Vista Prairie. The defendants have provided care for the injuries that included carpal tunnel release surgery, physical therapy, and a nerve block. Last year, the defendant refused to authorize care at the Mayo Clinic, so Centner applied for alternate care. After the agency issued an alternate care decision authored by the undersigned on November 5, 2021, granting Centner's request for pain management care at the Mayo Clinic, the defendants authorized such care. (Testimony; Exs. 1, 4)

Susan Moeschler, M.D., saw Centner at the Mayo Clinic Division of Pain Medicine and provided care that included implanting a left median nerve peripheral nerve stimulator to address her pain. (Ex. 1, p. 1) The stimulator caused Centner pain, so Dr. Moeschler removed it. (Ex. 1, p. 1; Ex. 5, pp. 7–8; Testimony) Benjamin Sticha, P.A.-C, M.S., told Centner she should try medical cannabis to reduce her pain and that he would prescribe it but doing so was against the law in Minnesota. (Testimony; Ex. 1, p. 2; Ex. 4, p. 5) Consequently, the Mayo Clinic referred Centner to the Greater Siouxland Pain Clinic. (Testimony)

The defendants authorized Centner to get care at the Greater Siouxland Pain Clinic, where she saw Staci Schweder, C.N.P. (Testimony; Ex. 5) Schweder adjusted Centner's prescription medications and recommended medical cannabis. (Testimony; Ex. 5) Centner filled out paperwork for medical cannabis. (Testimony; Ex. 5, p. 10)

The evidence shows Centner has exhausted treatment options for her pain. As a result, multiple treating physicians have recommended medical cannabis as an alternative to opioids, which have a laundry list of undesirable side effects. (Ex. 5, pp. 9–10) The weight of the evidence shows Centner's best option for reducing her pain is medical cannabis.

Claimant's counsel sent a letter to defense counsel, asking if the defendants would authorize medical cannabis to treat Centner's pain as recommended by her treating physicians. (Ex. 2) The defendants refused to authorize medical cannabis because it is illegal under state and federal law. (Ex. 3) After the defendants refused to change their position, Centner applied to the agency for alternate care. (Petition)

IV. CONCLUSIONS OF LAW.

"Iowa Code section 85.27(4) affords an employer who does not contest the compensability of a workplace injury a qualified statutory right to control the medical care provided to an injured employee." Ramirez-Trujillo v. Quality Egg, L.L.C., 878

N.W.2d 759, 769 (Iowa 2016) (citing R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 195, 197 (Iowa 2003)). Under the law, the employer must "furnish reasonable medical services and supplies *and* reasonable and necessary appliances to treat an injured employee." Stone Container Corp. v. Castle, 657 N.W.2d 485, 490 (Iowa 2003) (emphasis in original). Such employer-provided care "must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." Iowa Code § 85.27(4).

An injured employee dissatisfied with the employer-furnished care (or lack thereof) may share the employee's discontent with the employer and if the parties can't reach an agreement on alternate care, "the commissioner may, upon application and reasonable proof of the necessity therefor, allow and order other care." Id. "Determining what care is reasonable under the statute is a question of fact." Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995); Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 436 (Iowa 1997). As the party seeking relief in the form of alternate care, the employee bears the burden of proving that the authorized care is unreasonable. Id. at 124; Bell Bros. Hearing & Air Condition v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); Reynolds, 562 N.W.2d at 436. Because "the employer's obligation under the statute turns on the question of reasonable necessity, not desirability," an injured employee's dissatisfaction with employer-provided care, standing alone, is not enough to find such care unreasonable. Id.

Ordinarily, the defendants' refusal of treatment for an injured employee's ongoing pain that is recommended by multiple authorized care providers would be deemed unreasonable under the Iowa Workers' Compensation Act. See, e.g., McDole v. The Waldinger Corp., File No. 5052076 (Alt. Care, Jun. 28, 2016). But this case is not an ordinary one. The care recommended by providers authorized by the defendants involves a controlled substance under state and federal law.

The defendants cite to the agency decision in Presson v. Freiburger Concrete & Topsoil, Inc., File No. 5046542 (Alt. Care, Apr. 24, 2018).[2] In that case, Deputy Copley concluded that prior agency caselaw finding it unreasonable to deny authorization of medical cannabis to treat the claimant's ongoing treatment in Oregon, where such a prescription was lawful, was off base because it did not consider the federal criminalization of marijuana and codified finding that it had no legitimate medical benefit. Id. Deputy Copley further relied on the criminalization of marijuana under Iowa law in denying the application even though the claimant lived in Illinois, which had enacted the Illinois Compassionate Use of Medical Cannabis Pilot Program Act. See id. Centner asks the agency to revisit the rationale given recent developments in Iowa law.

State laws are in a state of flux with respect to the criminalization of marijuana. In the past, the agency has authorized and denied use of medical cannabis for claimants living in states that have decriminalized marijuana use for medical purposes. See Presson, File No. 5046542 (Alt. Care, Apr. 24, 2018) (denying alternate care of medical marijuana for a claimant living in Illinois); see also McKinney v. Labor Ready, File No.

[2] 2018 WL 2006437.

5005302 (Alt. Care, Nov. 14, 2002)[3] (granting alternate care of medical marijuana authorization for a claimant living in Oregon). Because decriminalization of marijuana for medical purposes is necessary at both the state and federal level for its use to be lawful, federal law is dispositive on the question of reasonableness under section 85.27.

Marijuana is classified as a Schedule I controlled substance under the federal Controlled Substance Act (CSA), 12 U.S.C. section 812. "By classifying marijuana as a Schedule I drug, as opposed to listing it on a lesser schedule, the manufacture, distribution, or possession of marijuana became a criminal offense with the sole exception being use of the drug as part of a Food and Drug Administration preapproved research study." Gonzales v. Raich, 545 U.S. 13–14 (2005) (citing 21 U.S.C. §§ 823(f), 841(a)(1), 844(a) and U.S. v. Oakland Cannabis Buyers' Co-op. 532 U.S. 483, 490 (2001)).

> The CSA provides for the periodic updating of schedules and delegates authority to the Attorney General, after consultation with the Secretary of Health and Human Services, to add, remove, or transfer substances to, from, or between schedules. § 811. Despite considerable efforts to reschedule marijuana, it remains a Schedule I drug.

Id. at 14–15. The Supreme Court has held the CSA precludes a medical necessity exception even if "some people have 'serious medical conditions for whom the use of cannabis is necessary in order to treat or alleviate those conditions or their symptoms,' that these people 'will suffer serious harm if they are denied cannabis,' and that 'there is no legal alternative to cannabis for the effective treatment of their medical conditions.'" Oakland Cannabis Buyers' Co-op., 532 U.S. at 498–99 (quoting 190 F.3d 1109, 1115 (9th Cir. 1999)).

Here, the record shows Centner suffers from considerable pain caused by her work injuries. She has tried all treatment available to her. None of it has been successful. Multiple pain specialists have recommended she try medical cannabis to reduce her pain. Medical cannabis is the best treatment option remaining for her chronic pain. Understandably, Centner wants to reduce her pain level and therefore desires such a prescription regardless of its legality.

The defendants are business entities. Their acts are carried out by people. Consequently, it would require individuals to violate federal law to authorize and fund medical cannabis for Centner's pain. Refusing to violate federal law under these circumstances is reasonable even if medical cannabis is a treatment of last resort that could best help alleviate Centner's pain and recommended by treating physicians authorized by the defendants. Without decriminalization at the state and federal level, medical cannabis for pain management does not constitute reasonable care under the Iowa Workers' Compensation Act.

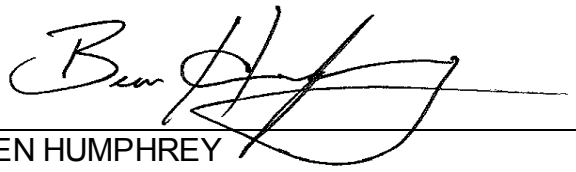
[3] 2002 WL 32125774.

V. ORDER.

Under the above findings of facts and conclusions of law, it is ordered that the application for alternate care is DENIED.

On February 16, 2015, the Iowa workers' compensation commissioner issued an order delegating authority to deputy workers' compensation commissioners, such as the undersigned, to issue final agency decisions on applications for alternate care. Consequently, there is no appeal of this decision to the commissioner, only judicial review in a district court under the Iowa Administrative Procedure Act, Iowa Code chapter 17A.

Signed and filed this 27th day of September, 2022.



BEN HUMPHREY
Deputy Workers' Compensation Commissioner

The parties have been served, as follows:

Leif K. Erickson (via WCES)

Emilia Lauren Edwards (via WCES)

Eric T. Lanham (via WCES)