

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JENTRY SALTZMAN,

Claimant,

vs.

WOODWARD-GRANGER  
COMMUNITY SCHOOL DISTRICT,

Employer,

and

EMCASCO INSURANCE COMPANY,

Insurance Carrier,  
Defendants.

File Nos. 5067207.01, 5067208.01

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, Jentry Saltzman. Claimant appeared telephonically and through her attorney, Stephen Lombardi. Defendants appeared through their attorney, Brian Scieszinski.

The alternate medical care claim came on for hearing on March 25, 2020. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's February 16, 2015 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 1 through 5<sup>1</sup> and defendants' exhibits A through C. Defendants' exhibit C is an undated email sent from defense counsel to claimant's counsel. At hearing, it was clarified for the record that exhibit C was sent on March 24, 2020 at 2:59 p.m. Claimant provided testimony. No other witnesses were called. Counsel offered oral arguments to support their positions.

<sup>1</sup> Claimant originally offered Exhibits 1 through 4, as well as an affidavit. Page 1 of the affidavit was inadvertently left out of the original filing. Following the hearing, at the undersigned's request, claimant re-filed the full affidavit as Exhibit 5.

## ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of authorization for medical treatment with Jolene M. Smith, D.O., including injections in claimant's lumbar spine and sacroiliac joints, and for claimant to be granted control of the medical care for her work related injury.

## FINDINGS OF FACT

The undersigned having considered all of the testimony and evidence in the record finds:

This petition for alternate medical care concerns two separate files for two separate dates of injury. Claimant sustained an injuries to her back on April 17, 2018 and October 2, 2018, while working for defendant employer. Defendants admitted liability for both dates of injury and the current back condition for which claimant seeks alternate medical care.

The medical records in evidence indicate that claimant saw Dr. Smith on December 6, 2019, at which time she received a lumbar epidural steroid injection at L5-S1. (Exhibit 4, p. 1-2) Claimant returned to Dr. Smith on January 2, 2020, for a follow up appointment. (Ex. 4, p. 3-4) At that time she reported ten percent relief for about one week following the injection, but that her pain had returned to pre-procedure levels. Id. Dr. Smith's record also notes that claimant had prior injections on May 29, 2018 and October 8, 2019, and had completed a course of physical therapy. Id. Dr. Smith reviewed an MRI from May 10, 2018, and noted a shallow right paracentral disc herniation at L1-2. Id. She recommended a repeat lumbar MRI to assess for advancement in that area, since claimant did not respond to the most recent injection as she had the first. Id.

Claimant then saw Trevor Schmitz, M.D., on February 12, 2020. (Ex. 1) Dr. Schmitz is an orthopedic spine surgeon at Iowa Ortho. (Ex. B) Dr. Schmitz reviewed the May 10, 2018 MRI, and determined that claimant is not a surgical candidate. (Ex. 1, p. 3) Claimant's attorney wrote to defense counsel on February 17, 2020, and expressed claimant's dissatisfaction with her appointment with Dr. Schmitz, and requested authorization for treatment with "Dr. Lynn Nelson at DMOS, and/or a palliative care physician, such as Jolene Smith, D.O." (Ex. 2, p. 2)

Claimant's attorney followed up on his letter via email to defense counsel on February 25, 2020, and February 27, 2020. (Ex. 3) Defense counsel replied on February 27, 2020, and indicated he was behind after being out of the office. Id. Claimant's attorney emailed defense counsel again on March 4, 6, and 9, 2020. Id. The petition for alternate medical care was filed on March 13, 2020.

Defense counsel emailed claimant's attorney on March 24, 2020, indicating that defendants had previously authorized Dr. Hawk, Dr. Schmitz, and Dr. Smith to provide treatment for claimant's work-related back injury. (Ex. C) Defendants have not withdrawn that authorization, and counsel confirmed that claimant is authorized to seek treatment with any of those three providers. Id. At hearing, claimant testified that she attempted to schedule an appointment with Dr. Smith and was told by the person answering the phone that she could not be scheduled because it was not authorized. Claimant then advised her attorney that she was unable to schedule an appointment.

Claimant testified that she is 25-years old, and has severe back pain. She stated that she is frustrated with the way defendants have handled her medical care, and she wants to control her own care so she can get it handled and be at ease. She further testified that she is happy with the care that has been provided by Dr. Smith and Dr. Hawk.

#### REASONING AND CONCLUSIONS 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.

Defendants' "obligation under the statute is confined to *reasonable* care for the diagnosis and treatment of work-related injuries." Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995) (emphasis in original). In other words, the "obligation under the statute turns on the question of reasonable necessity, not desirability." Id.

Similarly, an application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care she 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. See Iowa Code § 85.27(4). Thus, 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 14(f)(5); Long, 528 N.W.2d at 124.

Ultimately, determining whether care is reasonable under the statute is a question of fact. Long, 528 N.W.2d at 123.

In this case, claimant has not proven that the care offered by defendants is unreasonable. Defendants are providing care and have authorized treatment with Dr. Hawk, Dr. Schmitz, and Dr. Smith. Claimant has only expressed dissatisfaction with Dr. Schmitz, but is not specifically requesting an alternate orthopedic surgeon at this time. Claimant specifically requests treatment with Dr. Smith, which defendants have already authorized. As the alternate care being requested has already been authorized, the issue is moot.

Claimant also requests that she be granted control of the medical care for her work-related back injury, as she is frustrated with the perceived delays in treatment. Claimant notes that she has previously filed two prior petitions for alternate care related to her back condition. Upon review of the file, the undersigned notes that the first petition for alternate care was filed on May 6, 2019, and resulted in a consent order, dated May 16, 2019, which reflected the parties' agreement that defendants would authorize J. Joe Hawk, M.D., to evaluate and treat claimant's back condition related to her work injuries. The second petition for alternate care was filed on June 19, 2019, and alleged that claimant had not been able to schedule an appointment with Dr. Hawk because his office was waiting for medical records and authorization. At that time claimant also requested that she be granted control of the medical care for her work-related injury. The deputy commissioner's order was issued on July 2, 2019, and noted that claimant's appointment with Dr. Hawk had taken place on June 29, 2019. At that time, he had not yet received medical records, but agreed to provide an evaluation and make treatment recommendations. The deputy commissioner declined to grant claimant control of the medical care at that time, as defendants had authorized the appointment. The parties were further instructed to work together to take the necessary steps in order to get Dr. Hawk the medical records he still needed. Defendants later filed a response regarding the motion for rehearing with a letter from Dr. Hawk, dated August 17, 2019, which provided his treatment recommendations, and explained that he initially thought he was to provide an independent medical evaluation, which would have required review of the medical records.

While it is understandable that claimant is in pain, and therefore would like to have all appointments take place as quickly as possible, there is no evidence that the care is not being offered promptly, is not reasonably suited to treat the injury, or is unduly inconvenient for the claimant. Defendants have not withdrawn authorization of any of the three authorized treating physicians. Claimant has had multiple injections, physical therapy, and a surgical consultation with a spine surgeon. She remains authorized to return to Dr. Smith for any causally related treatment that is recommended, although it is unclear whether Dr. Smith's office is aware of the authorization. As such, claimant's request to terminate defendants' right to control care is denied. However, defendants must ensure that the authorizations are properly communicated to the providers in order to avoid further delays in the scheduling of claimant's appointments.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is denied, as defendants have authorized treatment with Dr. Jolene Smith.

Defendants shall take appropriate steps to ensure that Dr. Smith's office is aware of the authorization in order to promptly secure future appointments for claimant.

Signed and filed this 26<sup>th</sup> day of March, 2020.



JESSICA L. CLEEREMAN  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Katrina Phillip (via WCES)

Stephen Lombardi (via WCES)

David Scieszinski (via WCES)