

LINDA LOUISE LAW,	:	
	:	
Claimant,	:	
	:	
vs.	:	
	:	File No. 5029446
STATE OF IOWA,	:	
DEPARTMENT OF PUBLIC SAFETY,	:	
	:	ALTERNATE MEDICAL
Employer,	:	
	:	CARE DECISION
and	:	
	:	
SEDGWICK CMS,	:	
	:	
Insurance Carrier,	:	Head Note No.: 2701
Defendants.	:	

The issue presented for resolution is whether claimant is entitled to alternate medical care consisting of continued treatment with Eric Hanks, D.C., and whether defendants have abandoned claimant's care.

### FINDINGS OF FACT

Defendants admit liability for an injury occurring on August 9, 2007. Claimant is employed as a special agent with the Iowa Division of Criminal Investigation. Claimant was rear-ended by a third party while driving a car as a special agent.

Claimant testified she immediately reported her injury to her supervisor. At her supervisor's request, claimant filled out a first report of injury.

On August 9, 2007, claimant was treated at Iowa Lutheran Hospital. Claimant complained of pain in her neck and shoulder blades. Claimant was recommended to use Aleve or Ibuprofen, and apply ice to sore areas. She was told not to go to a chiropractor until after one week had passed. (Exhibit 3)

Claimant testified that approximately two weeks after her accident she was contacted by defendants' third party administrator (TPA), Sedgwick. Claimant told the claims representative she was treating with Dr. Hanks. She testified the claims representative told her that the insurance company for the third party driver who hit her, would handle her medical bills. Claimant testified that, by this conversation, she understood the third-party insurance company would pay for her medical care.

Julie Elmquist testified she is a claims examiner for Sedgwick. She testified she has been involved with claimant's claim file since approximately May 2009. She testified that according to the file, for claimant's August 9, 2007 injury, claimant was contacted by Sedgwick in November of 2007. Ms. Elmquist testified the Sedgwick examiner was told, at that time, that the third-party auto-insurer was handling claimant's medical bills.

Claimant testified she continued to submit her medical bills to the third-party auto-insurance carrier. She testified she heard nothing from Sedgwick regarding her August of 2007 injury. She testified her medical bills have been paid by her group health insurance and by the auto-insurer.

In a November 2008 letter, Dr. Hanks indicates claimant was at maximum medical improvement (MMI). Dr. Hanks indicated claimant's condition was chronic. (Ex. A)

Claimant testified that following her conversation with Sedgwick, she never followed up with Sedgwick regarding her medical claims. She testified she assumed, by the conversation, that the third-party auto insurer was responsible for her medical care. Claimant testified she was told by Sedgwick approximately two weeks before hearing, her file was closed with Sedgwick in September 2007.

Ms. Elmquist testified Sedgwick's claim file indicates claimant lost no time from work due to her work injury. She testified defendant, State of Iowa, has assumed liability for claimant's claim. She testified the file indicates the assumption of liability of the claim was not communicated to claimant until just recently.

In a June 5, 2009 letter, claimant's counsel wrote to Ms. Elmquist. The letter indicates claimant is treating with Dr. Hanks. It also asks for an authorized physician for treatment of claimant. The letter also asks for payment of medical bills for claimant from August 2007 through August 2008. (Ex. 1)

In a June 18, 2009 letter, claimant's counsel indicates he had not received a response from Sedgwick and was filing a petition for alternate medical care. (Ex. 2)

Ms. Elmquist testified that, at the time of hearing, Sedgwick was processing the bills, detailed in Exhibit 1, for payment.

Defendant's counsel indicated defendant wanted claimant evaluated by Henri Cuddihy, M.D., for evaluation to determine what care would be appropriate for claimant.

Claimant testified she is satisfied with treatment by Dr. Hanks. She testified she wants to continue treatment with Dr. Hanks. She testified she did not treat with Dr. Hanks from November 2008 to April 2009. She testified her symptoms have returned since the spring of 2009.

#### CONCLUSIONS OF LAW

The only issue to be determined is if defendants have abandoned claimant's care, and if claimant is entitled to continued care with Dr. Hanks.

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

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.

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).

The record in this case indicates defendant's TPA directed claimant to a third-party insurer to handle medical care for claimant, for the August 2007 injury. The record suggests that because of this, claimant did not inquire further, regarding medical treatment, from defendant. This was because claimant was led to believe, by defendant's TPA, that the third party auto-insurer was responsible for claimant's medical care. The record suggests that because of this, defendant's TPA, closed their file on claimant because they had not heard anything from claimant for almost two years regarding the August 2007 injury.

The records suggest defendant's TPA did not purposely abandon claimant's medical care. However, the record also suggests that, Sedgwick led claimant to believe all her medical care should be paid for by a third-party auto-insurer. There is no explanation why defendant's TPA directed claimant to the third-party auto-insurer. Defendant, by the conduct of their TPA, has abandoned the claimant's medical care and as a result has lost the ability to direct medical care in this case. Alternate medical care will be granted.

Although defendant has lost the ability to direct medical care in this case, defendant still may direct claimant for exams to Dr. Cuddihy, or a provider of their choice, pursuant to Iowa Code section 85.39.

ORDER

THEREFORE, IT IS ORDERED:

That claimant's petition for alternate medical care is granted.

Defendant shall be liable for claimant's medical care with Dr. Hanks.

Signed and filed this 1<sup>st</sup> day of July, 2009.

---

JAMES F. CHRISTENSON  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

Copies to:

Nicholas W. Platt  
Attorney at Law  
2700 Grand Ave., Ste. 111  
Des Moines, IA 50312

Julie A. Burger  
Assistant Attorney General  
Special Litigation  
Hoover State Office Bldg.  
Des Moines, IA 50319-0106

JFC/kjw