

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DARCY LEE,  Claimant,  vs.  CVS A/K/A SIGNIFY HEALTH,  Employer,  CINCINNATI INSURANCE COMPANY,  Insurance Carrier,  Defendants.	File No. 23002580.01    ALTERNATE CARE DECISION   Headnote: 2701
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**I. STATEMENT OF THE CASE.**

Claimant Darcy Lee applied for alternate care with the agency on September 7, 2023. The agency scheduled the case for a telephone hearing to be held on September 19, 2023. The defendants, employer CVS a/k/a Signify Health (Signify) and insurance carrier The Cincinnati Casualty Company (Cincinnati), did not answer and no attorney appeared on their behalf in this matter. On September 19, 2023, Lee filed proof of certified mailings, showing she served both defendants by certified U.S. Mail, return receipt requested.

The undersigned presided over a hearing held by telephone and recorded on September 19, 2023. That recording constitutes the official record of the proceeding under Iowa Administrative Code rule 876—4.48(12). Lee participated by and through attorney Mindi M. Vervaecke. The defendants did not participate. The record consists of Exhibit 1, totaling nine pages.

**II. ISSUE.**

The issue in this contested case proceeding is whether Lee is entitled to alternate care in the form of care with Justin Raatz, D.P.M., at East Village Foot & Ankle Surgeons.

**III. FINDINGS OF FACT.**

On February 8, 2023, Lee sustained a work injury to her left lower extremity affecting her ankle and knee. The defendants assigned nurse case manager, Robin Hamrick, to Lee and arranged care with Timoth Gibbons, M.D. (Ex. 1, p. 1) Dr. Gibbons prescribed at home experiences, which Lee performed, and they caused her pain. (Ex. 1,

p. 1) Lee informed Dr. Gibbons of her ongoing symptoms and her desire for answers, which he noted he found “confusing.” (Ex. 1, p. 1) Dr. Gibbons also noted that Lee leveled an accusation unsupported by any evidence in the record that “doctors were told not to talk to her about certain topics” or “examine her ankle,” which he demonstrated was not the case. (Ex. 1, p. 1) After an appointment on August 24, 2023, Dr. Gibbons maintained that Lee was at maximum medical improvement (MMI) despite her complaints and on August 31, 2023, released her from care despite her ongoing complaints of ankle pain. (Ex. 1, pp. 1–2)

Lee has ongoing symptoms in her left leg. (Ex. 1, p. 1) Lee was dissatisfied with the care defendants provided for her work injury, so she saw Dr. Raatz at East Village Foot & Ankle Surgeons for a second opinion. (Ex. 1, p. 7) Dr. Raatz diagnosed her with a fracture and recommended magnetic resonance imaging (MRI) to further evaluate her injury. (Ex. 1, p. 4; Petition)

Through claimant’s counsel, Lee informed the defendants she was dissatisfied with her care and requested authorization to see Dr. Raatz at East Village Foot & Ankle Surgeons. (Ex. 1, p. 7) Hamrick informed claimant’s counsel by email that Dr. Gibbons had not found any fractures or dislocations on x-rays, only significant arthritis. (Ex. 1, p. 5) Kay Patch of Cincinnati informed claimant’s counsel by email that the defendants would not approve Lee’s request for additional imaging. (Ex. 1, p. 7) It is more likely than not the defendants will not provide additional care for Lee’s injured left leg despite her ongoing symptoms and the diagnosis by Dr. Raatz.

#### 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 Eqq, 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).

The term “care” in the alternate care provision of Iowa Code section 85.27

includes services and supplies, as suggested by the first paragraph in the same statute. . . . The term ‘care in medical context means ‘prevention or alleviation of a physical or mental defect or illness.’ See, e.g., Browning v. Burt, 66 Ohio St.3d 544, 613 N.E.2d 993, 1003 (1993). The term includes such things as crutches, artificial members, and appliances because these things, just as services by health care professionals, prevent or alleviate physical or mental defects or illnesses.

Manpower Temporary Serv. v. Sioson, 529 N.W.2d 259, 263 (Iowa 1995).

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 proofs of the necessity therefor, allow and order other care." Iowa Code § 85.27(4). "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; Gwinn, 779 N.W.2d at 209; 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. "[W]hen 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." Reynolds, 562 N.W.2d at 437 (quoting Long, 528 N.W.2d at 124).

Here, the defendants arranged care with Dr. Gibbons, who did not identify anything other than significant arthritis in x-rays performed on Lee's injured leg. He recommended at-home exercises, which Lee performed. The exercises caused her pain. She informed Dr. Gibbons of this fact, but he nonetheless maintained her MMI designation and released her from care. The defendants refused to authorize additional imaging in the form of an MRI recommended by Dr. Raatz, despite Lee's ongoing symptoms and Dr. Raatz diagnosing her with a fracture.

The care provided by defendants has not been effective as Lee's symptoms are ongoing. At the time of hearing, the defendants had refused to offer any additional care. The care they were offering was therefore inferior and less extensive than the MRI Dr. Raatz recommended, and Lee requested they authorize. For these reasons, the evidence shows the care (or lack thereof) the defendants were offering at the time of hearing was unreasonable. Dr. Raatz's recommended MRI is reasonable given Lee's ongoing complaints.

## **V. ORDER.**

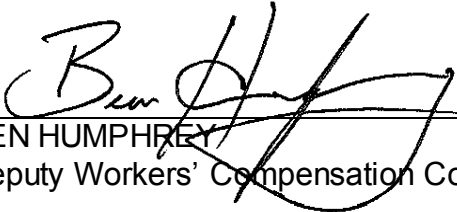
Under the above findings of facts and conclusions of law, it is ordered:

- 1) Lee's application for alternate care is GRANTED.
- 2) The defendants shall promptly authorize the MRI recommended by Dr. Raatz and reasonable follow-up care relating to it.

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 19th day of September, 2023.

  
BEN HUMPHREY  
Deputy Workers' Compensation Commissioner

The following person was served via the Workers' Compensation Electronic System:

Mindi M. Vervaecke, Attorney for Claimant

The following persons were served via certified U.S. Mail, return receipt requested:

CVS a/k/a Signify Health  
4055 Valley View Lane, Suite 400  
Dallas, TX 75244

Cincinnati Insurance Company  
PO Box 1337  
Cannonsburg, PA 15317