

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

PHILLIP P. LEVESQUE,

Claimant,

vs.

SAFELITE AUTO GLASS,

Employer,

and

INDEMNITY INSURANCE COMPANY
OF NORTH AMERICA,

Insurance Carrier,
Defendants.

FILED

APR 12 2019

WORKERS' COMPENSATION

File No. 5066414

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

The claimant filed an application for alternate care under Iowa Code section 85.27 and 876 Iowa Administrative Code section 4.48. The defendants filed their answer, denying liability.

Liability for the alleged injury is often a threshold issue when the agency considers an application for alternate care. *See, e.g., Tyson Foods, Inc. v. Hedlund*, 740 N.W.2d 192, 198–99 (Iowa 2007). Such an application cannot be filed “if the liability of the employer is an issue. If an application is filed where the liability of the employer is an issue, the application will be dismissed without prejudice.” 876 IAC § 4.48(7). Accordingly, the claimant’s application for alternate care in the current case must be dismissed without prejudice because the defendants denied liability in their answer.

The defendants’ denial of liability means they lose the right to choose the care received by the claimant for the alleged injury. *Winnebago Indus., Inc. v. Haverly*, 727 N.W.2d 567, 575 (Iowa 2006) (citing *Trade Prof’ls, Inc. v. Shriver*, 661 N.W.2d 119, 124 (Iowa 2003)). The claimant may obtain reasonable medical care from any provider for the alleged injury, at the claimant’s expense, and seek reimbursement for such care using regular claim proceedings before this agency. *See Trade Prof’ls*, 661 N.W.2d at 121–25 (affirming on judicial review an agency decision ordering the payment of medical expenses for unauthorized care because the defendants denied liability for the alleged injury and therefore lost the right to control care).

The denial of liability and resultant dismissal also limit the defendants' ability to assert a lack-of-authorization defense with respect to care relating to the injury alleged by the claimant.

The authorization defense is applicable when the commissioner has denied a claimant's petition for alternate care on its merits. But it is inapplicable where the claimant's petition for alternate care was denied on procedural grounds such that the commissioner could not adjudicate the petition's merits, as is the case when the employer disputes the compensability of the injury.


Brewer-Strong v. HNI Corp., 913 N.W.2d 235, 243–44 (Iowa 2018) (citing *R.R. Donnelly & Sons v. Barnett*, 670 N.W.2d 190, 97 (Iowa 2003)).

However, the defendants' initial denial of liability does not necessarily forever bar them from asserting an authorization defense in this case for care relating to the injury alleged by the claimant. See *id.* at 244. They may change their position if new information provides sufficient proof to justify doing so. *Id.* And if the defendants change their position to accept liability, they may regain their "authorization defense and the statutory rights and obligations to provide and choose appropriate medical care pursuant to Iowa Code section 85.27" moving forward, unless they subsequently change their position to once again deny liability or the commissioner grants a subsequent application for alternate care by the claimant. *Id.* at 245; see also *Winnebago*, 727 N.W.2d at 575 ("There might, in some cases, be a significant change in the facts after the admission of liability that could justify a change of position by the employer . . .").

It is therefore ordered:

- 1) The claimant's application is dismissed without prejudice under 876 Iowa Administrative Code section 4.48(7).
- 2) If the claimant seeks to recover the charges incurred in obtaining care for a condition for which the defendants deny liability, the defendants are barred from asserting lack of authorization as a defense to those charges.

Signed and filed this 12th day of April, 2019.


BENJAMIN G. HUMPHREY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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