

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CURTIS WILLIAMS,

Claimant,

vs.

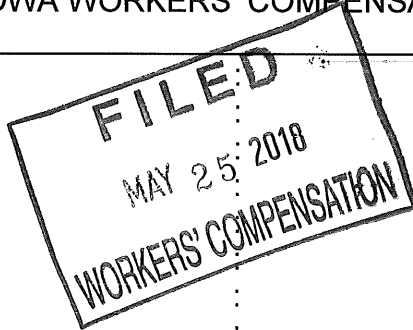
CROSS DILLON TIRE,

Employer,

and

YORK RISK SERVICES GROUP,

Insurance Carrier,
Defendants.



File No. 5058360

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapters 17A and 85. The expedited procedure of rule 876 IAC 4.48, the "alternate medical care" rule, is requested by claimant, Curtis Williams. Claimant filed a petition on May 11, 2018.

The alternative medical care claim came on for hearing on May 24, 2018. At the time of hearing, defendants admitted the occurrence of a work injury on March 16, 2016 and admitted liability for the medical condition sought to be treated by this proceeding. The proceedings were recorded digitally and constitute the official record of the hearing. The evidentiary record consists of claimant's exhibits 1 through 3.

By an order filed February 16, 2015 by the workers' compensation commissioner, this decision is designated final agency action. Any appeal would be by petition for judicial review under Iowa Code section 17A.19.

ISSUE

The sole issue presented for resolution is whether claimant is entitled to alternate medical care in the form of authorization of the surgery recommended by Bryan Trout, DPM.

FINDINGS OF FACT

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

Claimant suffered an admitted injury to his right ankle on March 16, 2016. Defendants authorized medical care, including right ankle surgery in June 2016. Following surgery, claimant continued to experience difficulties with his right ankle and requested further medical evaluation and treatment. (Claimant's testimony)

Claimant's requests for further care culminated in an alternate medical care petition filed on November 13, 2017. This petition was resolved by consent of the parties and their agreement was commemorated by a distinct deputy commissioner in an order filed November 27, 2017. By that consent order, Deputy James Elliott wrote:

Defendants agree that it will arrange an appointment with Iowa Ortho or DMOS within ten (10) day of this order. The defendants agreed that if defendants are not able to arrange an appointment within ten days claimant's counsel has the authority to arrange an appointment and care at a Des Moines area orthopedic practice and defendants will authorize and pay for such care.

Deputy Elliott's order specifically stated:

The claimant's petition for alternate medical care is granted. Defendants shall arrange an appointment within ten (10) days, and if not, claimant is authorized to arrange his own referral and orthopedic treatment.

Counsel for both parties represented they took efforts to cooperate in obtaining medical care for claimant in compliance with the order. One provider identified to potentially provide care was Dr. Trout, of Iowa Ortho. These attempts to arrange evaluation were unsuccessful for a time and claimant himself was ultimately able to arrange a medical appointment with Dr. Trout. (Claimant's testimony)

Claimant presented to Dr. Trout for evaluation on March 13, 2018. Following evaluation of claimant's right ankle, Dr. Trout recommended proceeding with a lateral ankle stabilization with peroneal debridement and possible repair. Claimant agreed to proceed. (CE1, p. 1)

Claimant requested authorization of the procedure recommended by Dr. Trout. (CE2) Defendants sought to obtain a second opinion consultation prior to authorizing the surgical treatment. (CE3) At the time of hearing, defendants' counsel represented a second opinion evaluation had been scheduled for June 11, 2018 with Peter Maurus, M.D. of Steindler Orthopedic Clinic.

Claimant filed the instant alternate care petition, seeking specific authorization of the surgery recommended by Dr. Trout. Claimant argues defendants are responsible

for medical care recommended by Dr. Trout, pursuant to Deputy Elliott's November 27, 2017 order. Defendants argue that although Dr. Trout has been agreed to by the parties to render care, defendants remain entitled to investigate the soundness of his opinions prior to authorizing care.

CONCLUSIONS OF LAW

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

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 employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27; Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner, 78 (Review-Reopening 1975).

An employer's right to select the provider of medical treatment to an injured worker does not include the right to determine how an injured worker should be diagnosed, evaluated, treated, or other matters of professional medical judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988).

The parties entered into a consent order on November 27, 2017. Thereby, defendants agreed to arrange an appointment within ten days of the order. In the event defendants failed in these efforts, the consent order conveyed to claimant the authority to arrange an appointment and care. There is no evidence defendants were able to schedule an appointment within the designated timeframe and claimant was not evaluated until March 13, 2018. As a result, defendants failed to meet the conditions of the consent order, despite the best efforts of defendants' counsel. This failure to comply with the conditions of the consent order triggered claimant's right to arrange care with a provider of his choosing. Claimant has selected Dr. Trout and begun a course of care. The November 27, 2017 consent order further stated defendants would authorize and pay for such care arranged by claimant.

The parties agree Dr. Trout is an authorized medical provider in treatment of claimant's right ankle condition. Dr. Trout made a treatment recommendation on March 13, 2018. Two months have passed without authorization of the procedure. Dr. Trout is an authorized physician; defendants are not entitled to interfere with his medical judgment in recommending treatment. There is no allegation Dr. Trout is unqualified or ill-informed with respect to claimant's care. Rather, defendants simply seek a second opinion from another provider. Notably, the appointment obtained for this desired evaluation is not until June 11, 2018. Not only are defendants attempting to interfere with the judgment of the authorized treating provider by withholding authorization for recommended surgery, defendants have not obtained prompt medical care with Dr. Maurus.

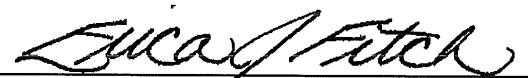
An award of alternate medical care is warranted.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's application for alternate medical care is granted. Defendants shall authorize the surgical procedure recommended by Dr. Trout on March 13, 2018. Within seven (7) days of the date of this order, defendants shall contact Iowa Ortho and confirm authorization of the procedure.

Signed and filed this 25th day of May, 2018.



ERICA J. FITCH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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