

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

---

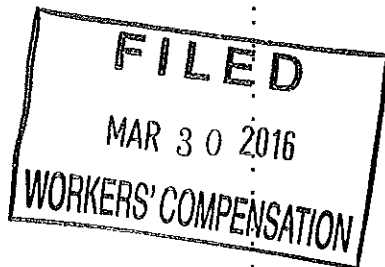
CHET LIEF,  
Claimant,

vs.

CITY OF OLIN,  
Employer,

and

EMC INSURANCE COMPANIES,  
Insurance Carrier,  
Defendants.



File No. 5056323

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, Chet Lief. Claimant appeared personally and through his attorney, Niko Pothitakis. Defendants appeared through their attorney, Anne Clark.

The alternate medical care claim came on for hearing on March 29, 2016. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's 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 the sworn testimony of Chet Lief, and defendants' exhibits 1 through 5, including the affidavit of Angie Brown, medical case manager for EMC.

ISSUE

The issue presented for resolution is whether the claimant is entitled to continue treatment with Stanley Mathew, M.D.

## FINDINGS OF FACT

The claimant suffered an injury on September 15, 2014, which arose out of and in the course of employment. This injury has caused the need for the claimant to seek medical treatment. Claimant underwent a two level fusion in October 2014, with Mary Hlavin, M.D. Dr. Hlavin has provided appropriate medical treatment and follow up. (Defendant's Exhibit 1) Dr. Hlavin has clearly documented Mr. Lief's ongoing complaints of pain in her December 8, 2015, appointment. (Def. Ex. 1) His complaints of pain are significant and severe.

Following that visit, Dr. Hlavin ordered a number of treatments. She ordered an EMG which was performed by Stanley Mathew, M.D. FAAPMR, (Fellow of the American Academy of Physical Medicine and Rehabilitation), on December 9, 2015. (Def. Ex. 2) On December 10, 2015, a referral was authorized for the claimant to see Craig Dove, D.O., for Botox injections. (Def. Ex. 3) That appointment was arranged for January 22, 2016. (Def. Ex. 4) As the gatekeeper, Dr. Hlavin also authorized facet injections with Mark Kline, M.D., on January 19, 2016. (Def. Ex. 2, pp. 1-2)

Mr. Lief did everything he was asked. By his testimony, when he visited Dr. Dove, at St. Luke's Hospital, for the Botox injections on January 22, 2016, a staff person told him that Dr. Dove did not wish to see him because there were too many doctors involved in his care. Instead, Dr. Mathew was offered for evaluation. Mr. Lief agreed to see Dr. Mathew. Dr. Mathew documented that Mr. Lief "is a 46-year-old right-handed male, referred by Dr. Hlavin for chronic neck pain." (Def. Ex. 4)

Mr. Lief testified that Dr. Mathew was the first physician to really take a look at his entire problem in a holistic way. Mr. Lief was subjectively quite pleased with the treatment offered by Dr. Mathew. He further testified that Dr. Mathew provided medical advice regarding exercise, water consumption and stretching. Dr. Mathew documented that he recommended the following.

I do feel the patient is appropriate for chronic pain management. We will give a trial of Valium 5 to 10 mg at bedtime. We will sign a pain agreement today. We will try to seek authorization for botulinum toxin 200 units for cervical dystonia.

We will order Percocet 5/325 one tablet p.o. every 6 hours. We will order compounding cream. We will order physical therapy \_\_\_\_\_ cervical traction. I educated on heat, stretching and range of motion. It is a pleasure to participate in the patient's care.

(Cl. Ex. 4, p. 2) Mr. Lief has received some of the treatment recommended by Dr. Mathew and testified he would like to return to Dr. Mathew for further care.

On March 25, 2016, Dr. Hlavin ordered a referral to the University of Iowa for specialty services. (Def. Ex. 5)

By way of affidavit, EMC medical case manager, Angie Brown testified that Dr. Hlavin had only referred Mr. Lief to Dr. Dove for a Botox injection, not for overall chronic pain management. (Brown Affidavit, 11-13) She further testified by affidavit that there is an unauthorized follow up with Dr. Mathew scheduled on March 30, 2016. (Brown Affidavit, 20)

#### REASONING AND 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. Iowa Code section 85.27 (2013).

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). Determining what care is reasonable under the statute is a question of fact. Id. The employer's obligation turns on the question of reasonable necessity, not desirability. Id.; Harned v. Farmland Foods, Inc., 331 N.W.2d 98 (Iowa 1983).

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).

An employer's statutory right is to select the providers of care and the employer may consider cost and other pertinent factors when exercising its choice. Long, at 124. An employer (typically) is not a licensed health care provider and does not possess medical expertise. Accordingly, an employer does not have the right to control the methods the providers choose to evaluate, diagnose and treat the injured employee. An employer is not entitled to control a licensed health care provider's exercise of professional judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988). An employer's failure to follow recommendations of an authorized physician in matters of treatment is commonly a failure to provide reasonable treatment. Boggs v. Cargill, Inc., File No. 1050396 (Alt. Care January 31, 1994).

By a preponderance of evidence I find that it is unreasonable to interfere with Mr. Lief's ongoing care with Dr. Mathew at this point.

At hearing the defendants provided a solid explanation for its concerns about how the claimant came to be under the care of Dr. Mathew. It was not the care the insurance company intended to authorize. It was not the care the medical case manager intended to authorize. It may not have been the care Dr. Hlavin intended to authorize, although there is no statement from Dr. Hlavin verifying this. The facts are: (1) Mr. Lief appeared on January 22, 2016, to see Dr. Dove. (2) On that date, Dr. Dove referred him to see Dr. Mathew instead. (3) Dr. Mathew agreed to examine him. (4) The claimant agreed to be examined. (5) The visit happened. Whether it was a mistake or an intentional referral, it happened. (6) Based upon the record before me it appears that excellent medical treatment occurred at that appointment which has given Mr. Lief hope that his chronic pain can be controlled and managed.

From the claimant's perspective, this referral, whether accidental or intentional, the best thing that has happened in a long time regarding his medical treatment for chronic pain. For reasons not entirely clear in the record, the defendants do not feel the same way. It is clear the defendants are concerned that their authority to direct the claimant's medical treatment has been compromised through miscommunication. This is understandable and there is some truth to this perspective.

Nevertheless, I find that the referral by Dr. Hlavin to Dr. Dove was an authorized referral and the referral of Dr. Dove to Dr. Mathew was also an authorized referral, albeit somewhat unusual. Dr. Dove deemed Dr. Mathew to be a better provider of care in this circumstance – for whatever reason. Dr. Mathew, in turn, has provided excellent medical care for Mr. Lief. It is care which has actually provided Mr. Lief with hope that his pain can be managed. Agency case law is replete with examples of an employer's interference with referrals by an authorized treating physician as a basis for alternate medical care. I find it would be unreasonable to interfere with Dr. Mathew's treatment at this time. Moreover, it is really the primary treatment available to the claimant at this time and his chronic pain is severe.

The defendants also have some concern that Dr. Hlavin has attempted to avoid the use of addictive medications. She had taken the claimant off of Valium previously. Dr. Mathew placed Mr. Lief on both Valium and Percocet. In this ruling, I do not intend to rule on this specific medical issue. The issue of appropriate medications should ideally be resolved through the coordination of treatment and excellent communication between Dr. Hlavin and Dr. Mathew.


Finally, I note that after the alternate medical care petition was filed, Dr. Hlavin authorized a visit with the University of Iowa Hospitals and Clinics, apparently for pain management. As of the date of hearing, the evaluation date had not been scheduled, however, in any event, it does not change my conclusions set forth above.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is GRANTED. The defendants are ordered to authorize the ongoing treatment of Dr. Mathew.

Signed and filed this 30<sup>th</sup> day of March, 2016.

  
\_\_\_\_\_  
JOSEPH L. WALSH  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

Copies to:

Nicholas G. Pothitakis  
Attorney at Law  
PO Box 337  
Burlington, IA 52601-0337  
[niko@pothitakislaw.com](mailto:niko@pothitakislaw.com)

Anne L. Clark  
Attorney at Law  
Ste. 111, Terrace Center  
2700 Grand Ave.  
Des Moines, IA 50312  
[aclark@hhlawpc.com](mailto:aclark@hhlawpc.com)

JLW/kjw