

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CHARLOTTE RICHARD,

Claimant,

vs.

ARCONIC,

Employer,

and

LIBERTY MUTUAL INS. CO.,

Insurance Carrier,
Defendants.

FILED

JAN 08 2019

WORKERS COMPENSATION

File No. 5066894

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, Charlotte Richard. Claimant represented herself. Defendants appeared through their attorney, Jane Lorentzen.

The alternate medical care claim came on for hearing on January 8, 2019. 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 claimant's exhibit 1 and defense exhibit A, which were received without objection. The defendants do not dispute liability for claimant's October 20, 2017, work injury.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care.

FINDINGS OF FACT

The claimant, Charlotte Richard, sustained an injury to her right elbow on or about October 20, 2017. Ms. Richard testified live and under oath at hearing and is found to be credible.

Jonathan Winston, M.D., of ORA Orthopedics became claimant's authorized treating physician in March 2018. He initially performed an independent medical examination and then assumed her medical treatment. He diagnosed a nerve injury in her elbow (neurapraxia) and opined she was not at maximum medical improvement.

I would recommend repeating a nerve study with the same neurologist. This would give a better assessment of the trend of the injury. If her nerve study shows improvement, then I would be inclined to recommend no further surgery as this represents a neurapraxia that will get better on its own with observation. I would anticipate that should the nerve study show an improvement that the patient would reach maximum medical improvement within a year of her injury. If, however, the nerve study shows worsening of her conduction velocities or even EMG changes in the muscles, then the patient may benefit from an ulnar nerve exploration with decompression and possible transposition, depending on whether the nerve is subluxating intraoperatively.

(Claimant's Exhibit 1, page 8)

Ms. Richard followed this treatment recommendation. At hearing, she complained that she has not been offered physical therapy or other treatments for her arm. She returned to Dr. Winston in November 2018, a little more than a year after the accident. At that time, he documented that the nerve tests showed her condition had "not gotten any better or any worse, but she does notice that if she were to bang her elbow she gets a sharp shooting pain going to the small and ring finger." (Def. Ex. A, p. 1) He diagnosed "ulnar nerve neuritis" and noted that Ms. Richard is frustrated. (Def. Ex. A, pp. 1-2) "I would recommend having a repeat nerve study to get one more point in time. Ultimately, the patient does not feel comfortable and I do not feel comfortable proceeding with further taking care of this patient." (Def. Ex. A, p. 2) He named three specific physicians within ORA Orthopedics, including Justin Munns, M.D., as possible physicians to assume care. In her Petition for Alternate Medical Care, Ms. Richard requested treatment from Dr. Munns.

I find that as of November 14, 2018, there was a breakdown in the physician-patient relationship between Ms. Richard and Dr. Winston. Dr. Winston took appropriate action and recommended referral to another physician. His recommendations do not appear to be firm treatment recommendations, but rather suggestions or possibilities to help relieve an unfortunate situation.

My interpretation of Ms. Richard's testimony at hearing is that she was never fully on board with the treatment recommendations of Dr. Winston. She believes she should have received some type of active treatment for her documented nerve damage rather than just taking a wait and see approach. She testified that she was unwilling to wait any longer for treatment.

For their part, once the patient-physician relationship broke down, the defendants took reasonable steps to promptly secure a new treatment provider. They arranged an evaluation with Suleman Hussain, M.D., an orthopedic surgeon at ORA Orthopedics for

January 9, 2019. Ms. Richard testified her only objection to Dr. Hussain is that he is not an elbow specialist, according to her internet search.

The issue before the agency is whether the claimant has demonstrated that the employer has not provided reasonable care. On this record, I cannot make such a finding.

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).

For the reasons set forth in the findings of fact, I find that the claimant has failed to meet her burden of proof that the defendants have failed to offer reasonable medical care.

I do note that I completely understand the claimant's frustration. From her point of view, she has gone along with a treatment plan that she was skeptical of from the beginning. She has had symptoms and discomfort in her right elbow for well over a year now which has not gotten any better for which she has not had any real treatment.

Her nerve damage is objectively documented and has shown no improvement in over a year.

The question before the agency, however, has been narrowed down to whether she should see Dr. Hussain or Dr. Munns, both orthopedic surgeons within ORA Orthopedics. Ms. Richard's objection to Dr. Hussain is that the ORA Orthopedics website lists Dr. Hussain's specialties as shoulders and knees. This may be the case, however, Dr. Hussain is an orthopedic surgeon and she has an appointment set with him on January 9, 2019, one day after the alternate care hearing. She has not set an appointment with Dr. Munns at this time. Ordering alternate care would actually delay her treatment. I cannot find that the employer's conduct in setting this appointment with Dr. Hussain is unreasonable. Moreover, the claimant has no evidence that some other type of treatment is available which would improve her condition, such as physical therapy or surgery.

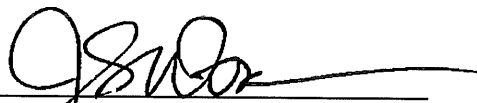
The claimant is not a physician. I am not a physician either. I suspect, however, that regardless of the treatment recommendations by Dr. Hussain, Dr. Munns, or any other physician she sees, she will need a repeat nerve study. The logical course of action is for the claimant to attend the evaluation with Dr. Hussain with an open mind and listen to his treatment recommendations. If he recommends a repeat nerve study, it would be wise to follow his recommendations. There is nothing in this decision which prevents claimant from re-filing a Petition for Alternate Medical Care if Dr. Hussain offers no real treatment or some type of unreasonable care.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is DENIED.

Signed and filed this 8th day of January, 2019.


JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Charlotte Richard
1303 Bridgeview Pl
LeClaire, IA 52753
mommarichie@aol.com
CERTIFIED AND REGULAR MAIL

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Jane V. Lorentzen
Attorney at Law
2700 Grand Ave., St. 111
Des Moines, IA 50312
jlorentz@hhlawpc.com

JLW/kjw