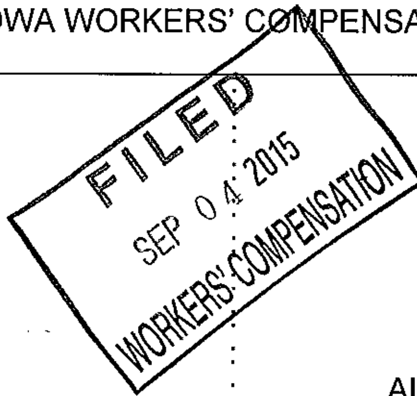
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



JERRY PRINE,	
Claimant,	
vs.	File No. 5037236
SCHNABEL,	ALTERNATE MEDICAL
Employer,	CARE DECISION
and	
LIBERTY MUTUAL INSURANCE COMPANY,	
Insurance Carrier, Defendants.	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, Jerry Prine.

The alternate medical care claim came on for hearing on September 4, 2015. The proceedings were digitally recorded, which constitutes the official record of this proceeding. By order filed February 16, 2015, this ruling is designated final agency action.

The record consists of claimant's exhibits 1-3.

ISSUE

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

FINDINGS OF FACT

Claimant, Mr. Prine, sustained a compensable injury to his low back on February 26, 2011. Defendants do not dispute liability on the claim; however, they dispute the assertion that the current situation creates a meritorious Alternate Medical Care Claim under Iowa Code section 85.27. Claimant is specifically seeking authorization to proceed with medical care with Sanjay Sundar, M.D. at Valley View

Pain Center. However, defendants have authorized the services of Dr. Garrells at Genesis Occupational Health to provide the current medications that have been prescribed by Rahul Rastogi, M.D. and other care providers at the UIHC.

To date the defendants have paid for all medical care and treatment. Mr. Prine's medical treatment has largely been at the University of Iowa Hospitals and Clinics (UIHC). Mr. Prine treated primarily with Sergio Mendoza, M.D.; however, Dr. Mendoza is no longer with the UIHC. Because of this Mr. Prine saw Dr. Rastogi at the UIHC. Dr. Rastogi's June 17, 2015, note states:

> As patient is managing pain with current medications and taking these medication [sic] on same dose for long time without any side effect and medications are effective, thus there is no need for patient to continue to follow up with us and not need any specialist care for continuation of these medications on stable doses for years, thus he should follow up with his local MD. No Follow up needed as [sic] this point.

(Exhibit 1, page 6)

At hearing claimant argued that this constituted a referral to claimant's primary care physician and therefore the primary care physician became an authorized treating physician. Claimant attempted to see his primary care physician at River Valley Family Practice; however, they do not provide long-term pain management either. River Valley Family Practice then referred claimant to Dr. Sundar at Valley View Pain Center. Claimant contends that once the UIHC made the referral to the primary care physician he became an authorized treating physician, and because he made a referral to Dr. Sundar, Dr. Sundar is now also an authorized treating physician, and defendants do not have the right to interfere with that care by sending claimant elsewhere. There is no allegation that the care offered by defendants is somehow unreasonable or is not reasonably suited to treat the injury without undue inconvenience to the employee.

First, I do not read Dr. Rastogi's note to be a specific referral to a specific provider. Rather, I interpret the note to simply indicate that there is no need for claimant to continue to travel to the UIHC for routine medication management. Rather, Mr. Prine could simply see a local physician. This interpretation is supported by the fact that the physician/clinic that claimant contends he was specifically referred to by Dr. Rastogi does not even provide the recommended treatment. Therefore, I find that Dr. Rastogi did not refer Mr. Prine specifically to his primary treating physician and therefore, the primary treating physician did not automatically become an authorized treating physician.

Furthermore, a review of the exhibits in this matter demonstrates that the chronology of events does not support claimant's contentions. The primary care physician/clinic stated in April of 2015 that they did not provide long-term pain management and that they refer those specialty problems to several of their "local competent Pain Clinics." (Ex. 2, p. 2; see also Ex. 2, p. 1) It was not until June of 2015

that the UIHC suggested Mr. Prine follow-up with a local doctor. Therefore, even if Dr. Rastogi's note did constitute a specific referral to the primary care physician the primary care physician was not an authorized physician at the time of the April referral to a local competent pain clinic.

REASONING AND CONCLUSIONS OF LAW

Under Iowa law, the employer is required to provide care to an injured employee and is permitted to choose the care. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

> [T]he 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.

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See Iowa R. App. P. 14(f)(5); 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). In Pirelli-Armstrong Tire Co., 562 N.W.2d at 433, the court approvingly quoted Bowles v. Los Lunas Schools, 109 N.M. 100, 781 P.2d 1178 (App. 1989):

> [T]he words "reasonable" and "adequate" appear to describe the same standard.
>
> [The New Mexico rule] requires the employer to provide a certain standard of care and excuses the employer from any obligation to provide other services only if that standard is met. We construe the terms "reasonable" and "adequate" as describing care that is both appropriate to the injury and sufficient to bring the worker to maximum recovery.

The commissioner is justified in ordering alternate care when employer-authorized care has not been effective and evidence shows that such care is "inferior or less extensive" care than other available care requested by the employee. Long; 528 N.W.2d at 124; Pirelli-Armstrong Tire Co.; 562 N.W.2d at 437.

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 16, 1975).

Reasonable care includes care necessary to diagnose the condition and defendants are not entitled to interfere with the medical judgment of its own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening Decision June 17, 1986).

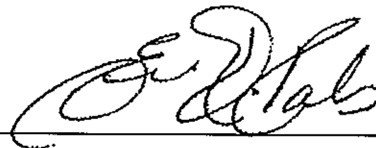
There is no contention in this matter that the care offered by defendants is not reasonable or is not reasonably suited to treat the injury without undue inconvenience to the employee. Rather, the argument in this matter is that by defendants authorizing Dr. Garrells instead of Dr. Sundar they are interfering with the medical judgment of its own treating physician. However, based on the above findings of fact I conclude that Dr. Rastogi did not make a referral specifically to the claimant's primary care physician and therefore, the primary care physician did not become an authorized treating physician. Furthermore, I found that the medical exhibits do not support the chronology of the chain of referrals as set forth by the claimant. The primary care physician made a referral to a local pain clinic before an argument could even be made that the primary care physician had become an authorized physician. Therefore, I conclude that defendants are not interfering with the medical judgment of its own treating physician. Thus, claimant's petition for alternate medical care is denied.

ORDER

THEREFORE IT IS ORDERED:

That claimant's claim for alternate medical care is denied.

Signed and filed this 4th day of September, 2015.



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