BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MATTHEW SMITH,

Claimant,

vs.

RHINEHART EXCAVATING,

Employer,

and

GRINNELL MUTUAL,

Insurance Carrier,
Defendants.

File No. 5049873

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, Matthew Smith. Claimant appeared personally and through his attorney, Joseph S. Powell. Defendants appeared through their attorney, Peter M. Sand.

The alternate medical care claim came on for hearing on March 9, 2015. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Iowa Workers' Compensation Commissioner's February 16, 2015 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 exhibits 1 and 2 and defendants' exhibit A. All exhibits were offered without objection and received into evidence. Matthew Smith testified on his own behalf. No other witnesses were called to testify.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care. Claimant seeks an order compelling defendants to pay for an evaluation at Mayo Clinic.

FINDINGS OF FACT

The undersigned having considered all the evidence in the record finds:

Matthew Smith sustained a left elbow crush injury on February 28, 2013. (Original Notice and Petition for Alternate Medical Care) Defendants admit that the alleged injury arose out of and in the course of claimant's employment with Rhinehart Excavating. (Answer to Alternate Medical Care Petition)

Following the work injury, defendants authorized medical care. The initial physician selected by defendants referred claimant to an orthopaedic surgeon, John L. Gaffey, M.D. (Claimant's testimony) Dr. Gaffey initially recommended referral for a second opinion at Mayo Clinic in November 2013. (Claimant's Exhibit 2, page 1) Defendants directed claimant instead to Erica Lawler, M.D., an orthopaedic surgeon at the University of Iowa Hospitals and Clinics. (Claimant's testimony)

Dr. Lawler evaluated claimant in-person and concurred with the medical recommendations of Dr. Gaffey. Dr. Lawler offered no additional medical treatment recommendations.

Dr. Gaffey has attempted different medical treatments for claimant's left arm, including a left carpal tunnel release. (Ex. 2, p. 2) However, Dr. Gaffey has recommended against any surgical intervention at claimant's left elbow. Dr. Lawler concurs and is not recommending any surgical intervention for claimant's left elbow. (Claimant's testimony)

Despite Dr. Gaffey's medical treatment, Mr. Smith continues to experience significant pain and symptoms in his left arm. He desires to seek an evaluation at Mayo Clinic as an attempt to determine if there is something that is potentially available to treat his ongoing symptoms and condition.

In January 2015, Dr. Gaffey again recommended referral to Mayo Clinic for evaluation. (Ex. 2, p. 3) However, this referral was specifically at claimant's request. (Ex. A) In a handwritten response to defense counsel, Dr. Gaffey clarified that he believes claimant has achieved maximum medical improvement as of January 14, 2015. Dr. Gaffey further clarified that he does not believe Mayo Clinic will have a lot to offer Mr. Smith with respect to further medical treatment. Instead, he made the referral to Mayo Clinic because claimant requested the referral. Dr. Gaffey further opined that there are qualified orthopaedic specialists closer to the Des Moines area, as opposed to the need for travel to Mayo Clinic in Rochester, Minnesota.

I find that Mr. Smith has received reasonable and appropriate medical care through a qualified orthopaedic surgeon, Dr. Gaffey. I find that defendants provided a reasonable second opinion evaluation through a qualified orthopaedic specialist, Dr.

Lawler, at the University of Iowa Hospitals and Clinics. I find that Dr. Gaffey's treatment has been minimally beneficial to claimant but that Mr. Smith continues to experience significant symptoms.

That being said, claimant introduces no evidence of specific medical treatment that could or would be performed at Mayo Clinic that is superior to or more extensive than the medical treatment offered through Dr. Gaffey. Therefore, I find that claimant has not proven that the care offered by defendants is inferior or less extensive than other available care being requested by claimant. In this instance, claimant is looking for an elusive cure for his symptoms, though there is no evidence such a cure exists. Defendants have offered reasonable medical care to date. Although I understand why it might be desirable to claimant, I find that the requested third-opinion at Mayo Clinic is not reasonably necessary under the evidence and circumstances presented.

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. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 16, 1975).

When a designated physician refers a patient to another physician, that physician acts as the defendant employer's agent. Permission for the referral from defendant is not necessary. Kittrell v. Allen Memorial Hospital, Thirty-fourth Biennial Report of the Industrial Commissioner, 164 (Arb. November 1, 1979) (aff'd by industrial commissioner). See also Limoges v. Meier Auto Salvage, I Iowa Industrial Commissioner Reports 207 (1981).

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).

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).

In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997), the supreme court held that "when evidence is presented to the commissioner that the employer-authorized medical care has not been effective and that such care is 'inferior or less extensive' than other available care requested by the employee, . . . the commissioner is justified by section 85.27 to order the alternate care."

This case requires the application of two lines of legal principles. On the one hand, agency case law has long held that defendants may not interfere with medical judgment and that a referral from a physician does not require permission of the defendants. Claimant urges that the referral from Dr. Gaffey to the Mayo Clinic must be honored and that any refusal or resistance by defendants to authorize that referral is interference with the means and methods of treating claimant's injury.

Defendants on the other hand point out that alternate medical care should only be granted when claimant establishes that the medical care offered by defendants has not been effective and that the care offered is inferior or less extensive than other available care. Defendants point out that there is no evidence that Mayo Clinic will have some alternate medical treatment available. In fact, Dr. Gaffey opines that he does not believe Mayo would have a lot to add to claimant's medical treatment.

Defendants make a compelling argument that no physician would recommend against a second opinion and particularly such an evaluation at Mayo Clinic. According to defendants, if a patient requested such an evaluation, physicians are likely to consent to such a request. Dr. Gaffey has done exactly that in this situation.

However, upon further questioning by defense counsel, Dr. Gaffey opined that Mr. Smith has achieved maximum medical improvement and that the referral requested by Mr. Smith is not likely to offer any additional treatment options. Dr. Gaffey opines that he "would not find it unreasonable for any patient with an unresolved orthopaedic issue to seek an opinion from the Mayo Clinic." (Ex. A, p. 1)

I interpret Dr. Gaffney's referral to be one of appeasement of the claimant. Mr. Smith is seeking an elusive cure. Although Dr. Gaffney does not believe one exists (and there is not competing evidence to suggest one exists), he simply consented to claimant's request for a referral to Mayo Clinic. No specific testing, diagnostics, or treatment is anticipated, however, that would be superior to or more extensive than the medical treatment already offered by Dr. Gaffey and Dr. Lawler.

For purposes of my analysis, I conclude that the most pertinent opinions are those of Dr. Gaffey and Dr. Lawler in which they conclude there is really no additional medical treatment to offer Mr. Smith. Having found that claimant did not offer any evidence that there was superior or more extensive medical treatment available, I conclude that claimant has failed to establish defendants' offered medical care is unreasonable or inferior to other available medical care. Therefore, I conclude that claimant failed to carry his burden of proof in this alternate medical care proceeding.

ORDER

THEREFORE IT IS ORDERED:

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

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

WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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