

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SHAWN STEPHENSON,

Claimant,

vs.

DB&J ENTERPRISE, INC.,

Employer,

and

SFM INSURANCE,

Insurance Carrier,
Defendants.

File No. 20004139.02

ALTERNATE MEDICAL CARE

DECISION

Head Note: 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, Shawn Stephenson. Claimant appeared personally and through his attorney, Eric Loney. Defendants appeared through their attorney, Lee Hook.

The alternate medical care claim came on for hearing on September 22, 2021. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the 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 evidentiary record consists of Claimant's Exhibit 1-3 and Defendants' Exhibits A-F, and the live telephonic testimony of Shawn Stephenson, Michele Metz, and Lori Waymire. During the course of the hearing defendants accepted liability for the August 14, 2019 work injury and for the neck, head, bilateral shoulders, left elbow, bilateral feet, and back conditions for which claimant is seeking treatment.

Numbered paragraph nine of claimant's petition for alternate medical care sets forth the relief he seeks under Iowa Code section 85.37. At the onset of the hearing, the parties advised that the claimant's request that defendants authorize physical therapy at DMOS, per Dr. Klein's recommendation, was rendered moot that morning

when defendants produced exhibits E and F. The parties also advised the undersigned that the defendants recently authorized treatment for the back with Dr. Klein and an appointment was scheduled for September 28, 2021; therefore, this issue was resolved. Thus, the only remaining issue for this proceeding is claimant's request that defendants authorize Elevate Physical Therapy for return-to-work hardening/conditioning sessions.

ISSUE

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

FINDINGS OF FACT

Claimant, Shawn Stephenson, sustained an injury to his neck, head, bilateral shoulders, left elbow, bilateral feet, and back as the result of the August 14, 2019 work injury. Mr. Stephenson has been receiving treatment for his injuries. On July 23, 2021, Paul D. Butler, M.D., recommended physical therapy for 1-5 days per week for 6 weeks. (Cl. Ex. 1, p. 1; Def. Ex. A)

On August 3, 2021, Becky Roush, the Controller at J & D Restaurants, Inc., authored a to whom it may concern letter. The letter states, "[a]s Shawn Stephenson's employer I give him authorization to seek physical therapy for his Return-to-Work Hardening/Conditioning sessions at Elevate Physical Therapy located at 1810 S.W. Birch Circle, Suite 107, Ankeny, IA 50023." (Cl. Ex. 2, p. 2) Mr. Stephenson testified that Ms. Roush would like him to receive treatment at Elevate Physical Therapy ("Elevate") and that is also where he believes he will receive the best care.

Michele Metz is the claims representative for SFM in this case. On August 5, 2021, she sent an email to claimant's counsel advising that Athletico was trying to schedule work conditioning for Shawn and had left him four messages, but he had not returned their calls. She requested that Shawn call Athletico to schedule an appointment. Claimant's counsel advised Ms. Metz that Mr. Stephenson had already started work-hardening at Elevate per the employer's authorization. He provided her a copy of Ms. Roush's August 3, 2021 letter. The attorney for the defendants sent an email to claimant's counsel advising that the authorized physical therapist for Mr. Stephenson's neck is DMOS and the authorized therapist for work-hardening is Athletico. He further advised that Elevate is not authorized for work-hardening. He then stated that "[a]uthorizations for medical care will be provided by SFM, not Mr. Stephenson's employer." (Cl. Ex. 3, p. 1) Claimant's counsel wrote back advising that the Iowa Code states that the employer has to right to select the care and that Mr. Stephenson will continue to go to Elevate per the employer's authorization. (Cl. Ex. 3, pp. 1-2)

Defendants' attorney authored a missive to claimant's counsel on August 18, 2021. In that letter defense counsel advised that he spoke with Ms. Roush and Ms. Metz, and it has been determined between the employer and SFM Insurance Company that SFM Insurance Company is the entity responsible for authorizing medical care.

Defendants agreed to pay for any Elevate Physical Therapy medical bills incurred as a result of the August 3, 2021 letter through August 18, 2021. He then advised that further physical therapy or work-hardening at Elevate is not authorized. The letter also states, "It is my understanding work-hardening has been placed on hold while physical therapy at DMOS continues." (Def. Ex. C, p. 1)

Claimant previously filed a different alternate medical care petition seeking to have defendants authorize Elevate for his treatment. (See File No. 20004139.01) On August 23, 2021, the undersigned issued the decision in that companion file. At the time of the last alternate care proceeding, Mr. Stephenson's work-hardening was put on hold until he completed physical therapy at DMOS for his neck. I found that because the medical providers had placed his medical treatment on hold, there was not treatment that could be ordered at the time of the last proceeding and claimant's petition for alternate medical care was denied.

Since the time of that alternate care proceeding, claimant has continued to treat for his work injuries. On September 2, 2021, Thomas Klein, D.O., recommended 4-6 weeks of physical therapy for Mr. Stephenson's neck. (Cl. Ex. 1, p. 2; Def. Ex. B) On September 7, 2021, R. Brent Mongar, Physical Therapist at DMOS, authored a missive. He stated he had been treating Mr. Stephenson since August 13, 2021, for his elevated neck pain. He felt that the remaining neck issues could be addressed through work conditioning/work-hardening. He felt that would be appropriate in order for Mr. Stephenson to return to work. However, the DMOS therapist felt Mr. Stephenson would need a more thorough and intense program than could be offered at the DMOS clinic at this time. (Def. Ex. E)

On September 20, 2021, Dr. Klein ordered that physical therapy for the neck should be discontinued and the focus should be on work-hardening. (Def. Ex. F)

I find Mr. Stephenson has now completed his physical therapy at DMOS. I further find that there is no medical order or note in evidence that indicates a medical provider has a current hold on the work-hardening that was prescribed by Dr. Butler on July 23, 2021. (Cl. Ex. 1)

Mr. Stephenson testified that he seeks treatment at Elevate because he believes they would provide the best treatment and that they will not be biased. He believes that Athletico is biased because the defendants have been allowed to have "sidebars" with Athletico. Additionally, Mr. Stephenson has family members who have received treatment at Athletico and had poor results. Although Mr. Stephenson has not ever treated with Athletico, he does not want to receive treatment there due to his family members' poor outcomes. Ms. Roush also wants Mr. Stephenson to treat at Elevate. According to Mr. Stephenson, Ms. Roush was asked by her attorney to rescind her letter authorizing Elevate and she refused to do so. Ms. Roush has not rescinded her letter that authorizes treatment with Elevate. (Testimony)

Ms. Metz testified that she is the SFM loss time adjuster for Mr. Stephenson's case. She has handled Mr. Stephenson's case since January 2020. She testified that

although Ms. Roush would like Mr. Stephenson to treat with Elevate, Ms. Metz controls the care, not Ms. Roush. Ms. Metz has authorized the treatment with Athletico. In her 20 years of experience Athletico is one of the best therapy facilities and they are close to claimant's residence. Ms. Metz thought Ms. Roush had agreed to rescind her letter authorizing Elevate. (Testimony)

Ms. Waymire is the nurse case manager. She is not an employee of SFM; defendants have hired her in this case. Based on her 12 years of experience, she testified that Athletico provides quality care and stands above the other providers. Additionally, Ms. Waymire testified that Dr. Butler's July 23, 2021 order for physical therapy is still relevant. (Testimony; Cl. Ex. 1)

Ms. Roush has given written authorization for Elevate to treat Mr. Stephenson. There is conflicting testimony regarding whether Ms. Roush has agreed to rescind her letter or not. Mr. Stephenson testified that the defense attorney asked Ms. Roush to rescind the letter, but she told him she refused to rescind the letter and wants Mr. Stephenson to receive treatment with Elevate. Ms. Metz did not ask Ms. Roush to rescind her letter. It is not clear if Ms. Metz has talked directly to Ms. Roush about this issue; however, it is Ms. Metz's understanding that Ms. Roush had agreed to rescind. I find Mr. Stephenson's testimony on this issue to be more credible. It is clear that he spoke directly with Ms. Roush about this issue. There is nothing in evidence from Ms. Roush that indicates she has rescinded her letter of authorization. I find that Ms. Roush has not rescinded her authorization of Elevate.

I find that Ms. Metz, the SFM claims adjuster, has authorized Athletico to perform the treatment ordered by Dr. Butler on July 23, 2021. I find that Ms. Roush, Controller at J & D Restaurants, Inc., has authorized Mr. Stephenson to seek physical therapy for his return-to-work hardening/condition sessions at Elevate. I find that the defendants have authorized both Athletico and Elevate to provide the treatment recommended by Dr. Butler and sought by Mr. Stephenson. While there may be a conflict between the insurance carrier and the employer regarding medical authorization, the fact remains that both Athletico and Elevate have been authorized. I find it is not reasonable for defendants to deny the treatment in question with an authorized provider. Thus, I find the care offered by defendants is unreasonable.

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).

Under Iowa law, the employer has the right to choose the provider of care. Based on the above findings of fact, I conclude that defendants have authorized both Athletico and Elevate to provide the treatment recommended by Dr. Butler on July 23, 2021. Because Elevate is an authorized provider, I conclude it is not reasonable for defendants to take the position that claimant cannot seek treatment at Elevate. Thus, I conclude the care being offered Mr. Stephenson is unreasonable.

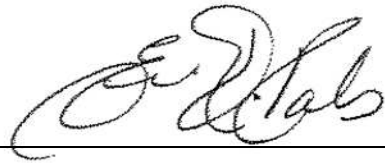
ORDER

THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care is granted.

Defendants shall authorize Elevate Physical Therapy to provide the treatment recommended by Dr. Butler.

Signed and filed this 23rd day of September, 2021.

A handwritten signature in black ink, appearing to read 'Erin Q. Pals', is written over a horizontal line.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Eric Loney (via WCES)

Lee Hook (via WCES)