

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BRAD JOHNSON,

Claimant,

vs.

CROSS TECHNOLOGIES, INC.,

Employer,

and

PINNACLEPOINT INSURANCE CO.,

Insurance Carrier,
Defendants.

File No. 21010470.01

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, Brad Johnson. Claimant appeared personally and through attorney, Nicholas Shaull. Defendants were provided legal notice under the statute and rules, however, did not appear for hearing.

The alternate medical care claim came on for hearing on September 7, 2021. 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 Exhibits 1 through 10.

ISSUE

The issue presented for resolution is whether the claimant is entitled to receive any medical treatment.

FINDINGS OF FACT

The claimant sustained an injury to his left shoulder, neck and back on or about June 16, 2021. He testified he reported the injury to his direct supervisor. The

defendants, however, did not direct his medical care. He ended up going to a physician on his own, Jay Johnson, D.O. Dr. Johnson has provided conservative treatment up to this point, including approximately twelve physical therapy visits.

On August 17, 2021, Dr. Johnson diagnosed thoracic disc disease and radiculopathy and recommended a thoracic MRI. (Claimant's Exhibit 7) Claimant's counsel contacted the adjuster for the insurance carrier and requested this treatment be authorized.

On August 25, 2021, claimant filed this petition. On August 26, 2021, the agency mailed notice of this hearing to the defendants.

I find that the claimant is receiving excellent care through Dr. Johnson and Unity Point. The delay in authorization of the thoracic MRI is unreasonable.

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 Dec. January 31, 1994).

Based upon the record before me, I find that the delay in authorization of the thoracic MRI is unreasonable.


ORDER

THEREFORE IT IS ORDERED:

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

Defendants shall immediately authorize the care and treatment recommended by Dr. Johnson.

Signed and filed this 7th day of September 2021.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Nicholas Shaul (via WCES)

Kathryn Johnson (via WCES)