

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

PAUL J. JONES,

Claimant,

vs.

GRAHAM MANUFACTURING,

Employer,

and

TRAVELERS INDEMNITY CO.,

Insurance Carrier,
Defendants.

FILED

JUN 22 2018

WORKERS COMPENSATION

File No. 5063957

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapters 17A and 85. Claimant Paul Jones alleges he sustained an injury while working for the defendant, Graham Manufacturing, on December 11, 2017. Graham Manufacturing and its insurer, the defendant, Travelers Indemnity Company have accepted the claim.

Jones filed an application for alternate medical care on May 21, 2018. Following a hearing on May 30, 2018, a deputy workers' compensation commissioner denied, in part, and granted, in part, the application. The deputy workers' compensation commissioner denied the claimant's request for surgery with David Beck, M.D., but granted the request for an appointment with a physician in the Mason City area. (Exhibit 1, page 5) The deputy's order provides, "[t]he defendants shall immediately arrange an appointment with an appropriate treatment provider in Mason City, if one is available." (Ex. 1, p. 5)

Jones filed a second application for alternate medical care on June 11, 2018, attaching a copy of the May 30, 2018 decision, Exhibit 1, and e-mail correspondence between the parties, Exhibit 2. Defendants filed an answer and the matter proceeded to telephone hearing on June 22, 2018. Attorney Mindi Vervaecke appeared on behalf of Jones. Attorney James Ballard appeared on behalf of the defendants. No testimony was received at hearing. Exhibits 1 and 2 were admitted, and the parties provided argument.

The undersigned has been delegated with the authority to issue final agency action in this matter. Appeal of this decision, if any, is to the district court pursuant to Iowa Code section 17A.19.

FINDINGS OF FACT

On May 31, 2018, the claimant's counsel sent an electronic mail message to the defendants' counsel asking whether the defendants intended to send the claimant to Dr. Peterson or Dr. Beck for treatment. Defendants' counsel sent a reply message the same date stating an appointment had been scheduled for the claimant with Eun Kim, M.D., with the Mayo Clinic, in Albert Lea, Minnesota on June 21, 2018. (Ex. 2, p. 1) Claimant's counsel responded the same date stating the defendants had been ordered to provide care to the claimant "in the Mason City area" and Albert Lea is not in the Mason City area. (Ex. 2, p. 1)

Defendants did not select a medical provider in Mason City to provide care for the claimant. Claimant filed a second application for alternate medical care requesting the defendants be ordered to comply with the May 30, 2018 decision and schedule an appointment with a medical provider in the Mason City area. Defendants filed an answer and the matter proceeded to hearing. Defendants did not submit any evidence at hearing.

CONCLUSIONS OF LAW

An employer is required to 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. Iowa Code § 85.27(1) (2017). The employer has the right to choose the provider of care, except when the employer has denied liability for the injury. Id. "The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." Id. § 85.27(4). If the employee is dissatisfied with the care, the employee should communicate the basis for the dissatisfaction to the employer. Id. If the employer and employee cannot agree on alternate care, the commissioner "may, upon application and reasonable proofs of necessity therefor, allow and order other care." Id.

The employee bears the burden of proving the care authorized by the employer is unreasonable. R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 196 (Iowa 2003). The determination of whether care is reasonable is a question of fact. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

The May 30, 2018 alternate medical care decision provides, "[t]he defendants shall immediately arrange an appointment with an appropriate treatment provider in Mason City, if one is available." (Ex. 1, p. 5) The day after receiving the decision the defendants scheduled an appointment for the claimant in Albert Lea, Minnesota.


Claimant's counsel expressed dissatisfaction with the care, stating "[s]he ordered you to provide care 'in the Mason City area' – Albert Lea is not in the Mason City area." (Ex. 2, p. 1) Defendants presented no evidence at hearing a provider is not available in the Mason City area. Defendants have failed to comply with the May 30, 2018 alternate medical care decision and have acted unreasonably. The application for alternate medical care is granted. Defendants shall promptly schedule an appointment with a provider in Mason City, as previously ordered on May 30, 2018.

ORDER

THEREFORE IT IS ORDERED:

Claimant's application for alternate care is granted. Defendants shall immediately arrange for an appointment with an appropriate treatment provider in Mason City.

Signed and filed this 22nd day of June, 2018.



HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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