**IN THE IOWA DISTRICT COURT
FOR BLACK HAWK COUNTY**

CITY OF WATERLOO,	)	**Case No: CVCV141363**
Petitioner,	)	
	)	
V.	)	**RULING – JUDICIAL REVIEW**
	)	
JERRY LOCKE,	)	
Respondent.	)	

Procedural Overview

The Petitioner, City of Waterloo (hereinafter "the City") seeks judicial review pursuant to Iowa Code section 17A.19(10)(f) and section 85.27(4) following the final decision of the Deputy Worker's Compensation Commissioner, Joseph Walsh ("Deputy Commissioner"). The subject matter for judicial review stems from an original ruling granting the payment of alternative medical care for Jerry Locke ("Locke") by The City. A telephone conference hearing was held on October 14, 2020 by Deputy Commissioner. The Deputy Commissioner Walsh was delegated the authority by the Worker's Compensation Commissioner to issue a final agency action.

This matter came before the Court for hearing on the Petitioner's Petition to District Court for Judicial Review. Locke filed an answer and asked the Court to dismiss the Petitioner Petition for Judicial Review. The hearing was held and a record was made of the proceeding. Attorneys Bruce Gettman and Adam Babinat appeared for the City. Attorney Gary Nelson appeared via telephone conference for the Respondent. The Court heard no testimony from witnesses, however, heard arguments and considered briefs filed by both parties, and considered the entirety of the certified Worker's Compensation Commission agency file from the contested case, including Petitioner Exhibits A through I and Defendant Exhibits 1 through 3, and a Transcript for Alternative Medical Care Hearing on 10/14/2020.

Findings of Fact

This action arises out of an event on October 31, 2018, when Locke was struck by a bucket on a back hoe while working for the City. Initially Locke declined treatment on the day of the incident and did not report the injury until the next day. The City required Locke to be seen by Allen Occupational Health. Locke had three appointments at Allen Occupational Health and was diagnosed with "acute right shoulder pain and acute lumbar pain" on November 8, 2018.[1] The issues were determined to have been resolved by his next visit on November 18, 2018 and Locke was released from the care of Allen Occupational Health.[2] Locke next sought medical care from Dr. Brian Sankey on March

[1] Exhibit 1.
[2] Id.

5, 2019 and again on June 28, 2019, and complained about issues with "low back pain doing down his legs" and "upper and lower extremities weakness" which he said were connected with being hit by a bucket.[3] The City became aware of Locke seeking out medical care for pain to his back on June 17, 2019. Until that point, the City denied liability for Locke's back issues. Locke continued to struggle with the injury and sought treatment on his own. The City learned at the end of 2019 that Locke was continuing treatment, it conducted a review of care in January, 2020, and continued with its position of denying liability.

Between February 24, 2020 and September 2, 2022, it does not appear that Locke sought treatment until Locke received a referral to Mayo Clinic from his family physician for the issues with his back. Locke attended an appointment at Mayo Clinic for his lower back on September 2, 2020. Mayo Clinic recommended surgery which was scheduled for October 12, 2020. Locke also had an Independent Medical Evaluation on September 8, 2020 by Dr. Darid Manshadl at the request of his attorney.[4] Locke informed the City on September 3, 2020 that he was still seeking treatment. The City had Locke see a physician, Dr. Chad Abernathy, in Cedar Rapids on September 28, 2020. Dr. Abernathy issued a report that did not change the City's opinion to deny liability.[5] The City informed Locke on October 2, 2020 that it would be denying authorization for the surgery scheduled at the Mayo Clinic but it continued to deny liability.[6] On that same date, Locke filed an Original Notice and Petition Concerning Application for Alternate Care before the Iowa Worker's Compensation Commissioner. He alleged that on October 31, 2018, he sustained injuries in the course of his employment with the City and those injuries were the reason for his current issues. Locke filed his petition due to being dissatisfied with the City denying authority to proceed with a scheduled surgery on October 12, 2020 at Mayo Clinics and Hospital and sought authorization for surgery from the Iowa Worker's Compensation Commissioner.

On October 7, 2020, Dr. Abernathy signed a new report at the request of Locke.[7] The Court notes that Exhibit 2 has the date of October 3, 2020 at the top of the letter, however, Dr. Abernathy did not sign the report until October 7, 2020. The City reviewed the new report and on October 9, 2022, informed Locke that it was changing its care position and admitted liability and stated it reasserted control of his care and further reminded him that the surgery scheduled on October 12, 2020 was not authorized.[8] The City made a referral for Locke to the University of Iowa Hospitals and Clinics.[9] Locke proceeded to have surgery at Mayo Clinic on October 12, 2020. Dr. Abernathy opined on October 12, 2020 that the surgery he was to receive at Mayo Clinic was not medically urgent and there were no safety issues of delaying that care.[10] On October 13, 2020, the City filed an answer with the Workers' Compensation Commissioner admitting liability for the claim for "low

[3] Id.
[4]
[5] Exhibit D
[6] Exhibit E
[7] Exhibit 2
[8] Exhibit G
[9] Exhibit H
[10] Exhibit I

back pain" but denies that it has the responsibility to pay for the claimants October 12, 2020 surgery at Mayo Clinic because it previously specifically not authorized the surgery at that facility.

A telephone hearing in this matter occurred with the Deputy Workers' Compensation Commissioner on October 14, 2020. The sole issue considered was "whether the claimant, who established medical care with a physician during a period in which the claim was denied, is entitled to an order for alternative medical care to continue treatment with the physician he chose."[11] The Deputy Commissioner found that "it is unreasonable to refuse to authorize Mr. Locke's medical treatment with the Mayo Clinic since he had firmly established such medical care at the time when he was legally allowed to do so."[12] The Deputy Commissioner also found that "he [Locke] was literally at the facility preparing for the procedure which his medical provider recommended when the employer switched positions." Ultimately the conclusion was that to allow the City to cancel the scheduled treatment was "both an unreasonable interference with claimant's treatment, as well as an unreasonable delay or inconvenience to his care" and Locke's petition was granted.

On appeal, the City argues the Commissioner in incorrect in determining the City had not right to control Locke's medical care. The City also argues that the Commissioner erred in finding that the care proposed by the City was unreasonable. Specifically, the City argues that the Commission made two errors in its ruling; one legal and one factual. As a result, the City argues the decision should be reversed.

The Court notes that further findings of fact may be included in the analysis below.

Standard of Review

Pursuant to Iowa Code §17A.19(10)(f), provides the standard for judicial review of an agency action. The district court is to determine whether there is substantial evidence in the record when viewed as a whole that support the agency's decision. Substantial evidence is "the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of a fact are understood to be serious and of great importance."[13]

Analysis

1. Iowa Workers' Compensation Generally

Under Iowa Workers' Compensation statute, an employer is obliged to furnish reasonable services and supplies following an injury to an employee, and has to pay the workers' compensation benefits as provided.[14] When an employer admits compensability for the injured employee, the employer has the right to choose the medical care.[15] An employee has the right to choose medical care at the employer's expense when, 1) in an emergency

[11] Exhibit 1
[12] Id.
[13] Iowa Code §17A.19(10)(f)(1)
[14] Iowa Code § 85.27(4)
[15] Id.

when the employer cannot be reached, 2) when the employer and employee agree to alternative medical care, and 3) the workers' compensation commissioner may order the employer to pay alternative medical care following a hearing.[16] The denial of liability for the injury by an employer leads to the loss of its right to choose care.[17]

2. Notice of an Employer's Reassertion of Care

Following the injury Locke sustained during his employment, the City initially admitted liability and required him to see a doctor at Allen Occupational Health. Locke had three appointments there and was discharged and reported no longer having lower lumbar pain. While Locke had appointments with his own family doctor about his pain, the City was not made aware of any further issues until June 17, 2019. Locke requested the City's workers' compensation coordinator that he be allowed to have additional treatment. The record is silent as to whether Locke's request was granted at that time. Counsel for the Petitioner supplied factually in his argument that the City in December, 2019, agreed to have this case reviewed. In January, 2020, Dr. Jabbari, a physician with Allen Occupational Health issued an opinion that Locke's current condition was a degenerative condition, had been ongoing, and was not causally connected to the work injury. At this point, the City notified Locke it denied compensability. It is not in dispute that from January, 2020, until October 9, 2020, the City denied compensability for Locke's injury to his back. The next time the City had notice of this issue continuing was on September 3, 2020, when counsel for Locke sent a letter to counsel for the City informing them of the surgery scheduled at Mayo Clinic on October 12, 2020. The City requested Locke see a doctor of their choice, Dr. Chad Abernathey, on September 28, 2020. As a result of that appointment, the City sent notice to Locke's attorney on October 2, 2020 and informed him that the City does not authorize the surgery at Mayo Clinic. However, when the letter was sent, the City continued to deny compensability. On October 2, 2020, Locke filed a Petitioner Concerning Application for Alternative Care with the Workers' Compensation Commissioner. It was not until October 9, 2020, that the City first admitted compensability for this injury in a letter it sent to Locke's attorney. The City subsequently filed an answer with the Workers' Compensation Commissioner in which it admits liability for the claim but denies responsibility for Locke's surgery on October 12, 2020.

The City claims the Deputy Commissioner is legally incorrect in making a distinction in its ruling of when the City conveyed notice to the employee that it was now admitting compensability and resuming the right to direct medical care. The Deputy Commissioner determined that the October 9, 2020 letter to Locke's counsel was an informal notification and held that the City did not formally admit the claim until after the surgery. The City relies on the notice standard established in *Ramirez-Torrio*[18] to establish that the October 9th correspondence was sufficient notice to Locke to reassert care. *Ramirez-Torrio* addressed an issue of an employer giving notice of the revocation of authorization of care, to an employee who has prior authorization of care from the employer. This case is about notice of an employer, who after further investigation, changes its mind and now admits compensability because the injury is a work-related injury. But when notice is received is

[16] Id.
[17] Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 208 (Iowa 2010)
[18] Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 777-78 (Iowa 2016).

a central question in both cases. The workers' compensation statute does not dictate a specific form notice must be given when an employer admits compensability. *Ramirez-Torrio* established that the employer must establish by "a preponderance of the evidence the employee knew or reasonably should have known…that the employer no longer authorized the care the employee received at the time the employee received it."[19] The Court concludes that Locke, on October 9, 2020, had notice that the City was admitting compensability and reestablished the direction of care, even though it did not file an answer until after the surgery occurred. Based on the evidence presented, the City established by a preponderance of the evidence that Locke had notice on October 9, 2020. The Court finds that the Deputy Commissioner erred in the conclusion that Locke received notice from the employer on October 12, 2020. Even with the error on the notice date to Locke, the analysis does not end. Locke has the ability to establish that the City's proposed care is unreasonable.

3. Reasonableness of Care Proposed by City

Before the agency can authorize alternate care, the employee must show the care offered by the employer was unreasonable.[20] The employee must prove "by a preponderance of the evidence that such care offered by the employer was not reasonable and beneficial" under the totality of the circumstances."[21] The employer would then be required to cover the cost of unauthorized alternate care if the employee can show that the care he sought is both reasonable and beneficial.[22] "[U]nauthorized medical care is beneficial if it provides a more favorable medical outcome than would likely have been achieved by the care authorized by the employer."[23] If the employee does not show that unauthorized alternate care was "reasonable and beneficial" within the meaning of Bell Brothers, then the employee is responsible for the medical expenses incurred.[24] "[A]n employee generally may recover medical expenses incurred in seeking unauthorized care upon proving by a preponderance of the evidence the care was reasonable and beneficial under the totality of the circumstances."[25] An employer only obtains the right to choose care by conceding the compensability of the claimed injury.[26] "The duty of the employer to furnish reasonable medical care to an injured employee supports all claims for care by an employee that are reasonable under the totality of circumstances, even when the employee obtains unauthorized care, upon proof that such care was reasonable and beneficial."[27]

The City argues that it presented a reasonable care plan to Locke upon acceptance of liability for his injury. The letter sent by the City to counsel for Locke on October 2, 2020, does not establish this is unauthorized care because the City had not at that point

[19] Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d at 778.
[20] Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010)
[21] Id.
[22] Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d at 207.
[23] Bell Bros., 779 N.W.2d at 206;
[24] Id.
[25] Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d at 773.
[26] Id.
[27] Bell Bros, 779 N.W.2d at 206.

conceded that the claimed injury arose in the course and scope of employment.[28] It was only on and after October 9, 2020 that the City had authority to direct Locke's care. The information presented by the City as to what they were recommending for care was they were "seeking a referral from Dr. Abernathey (who does not perform the low back surgery recommended by the Mayo Clinic" to the University of Iowa Hospitals & Clinics for low back treatment and potentially perform surgery."[29] However, the attorney for the City assured that "I am doing everything I can to expedite his treatment with the University of Iowa of Iowa Hospitals & Clinics and hope to receive final word today."[30] The City also asked Locke to cancel the surgery at Mayo Clinic.[31] Locke was clearly dissatisfied with this plan and did not cancel his surgery. At that point, Locke had already consulted with Mayo, had surgery scheduled, and had begun the pre-op process on October 9, 2020. Locke argues that at this point, City's offer of care was unreasonable. The City's plan was merely a referral to UIHC Neurosurgery Dept. and that plan was on October 12, 2020.[32] It was non-specific and there was no definitive guarantee that there would be surgical intervention. Further Locke argues that Dr. Abernathy agreed with the proposed surgery recommended by Dr. Sebastian at Mayo Clinic so the procedure arranged by Locke was reasonable and beneficial. It was only after Locke had the surgery that Dr. Abernathy opined that Locke would not be harmed if the surgery was delayed.

The City now raises two different arguments in its opposition to the Deputy Commissioner's finding. They first argue that Locke did not establish care at Mayo Clinic. They argue that that seeing Mayo Clinic one time and scheduling a surgery is not establishment of care. The Deputy Commissioner found that Locke has "firmly established such medical care at a time when he was legally allowed to do so." Nowhere is there a requirement for a specific number of appointments that it takes to 'establish care'. In this case, Locke met with Dr. Sebastian at Mayo enough to schedule a surgery. Surgeries do not get set unless recommended by a doctor with surgery privileges at a facility. It is reasonable and consistent that Locke had in fact established care at the Mayo Clinic on September 2, 2020.

The City also argues that there is insufficient evidence in the record to establish that Locke was at Mayo Clinic on October 9, 2020 for his pre-operative procedures. At the hearing before the Deputy Commissioner on October 14, 2020, counsel for Locke made the statement that Locke was in fact at Mayo Clinic undergoing preoperative care on October 9, 2020, the day the City provided notice is accepted liability. It was explained to the Deputy Commission by the attorney for the Claimant in his argument that "They don't get to then reclaim the right to direct care three days prior to a fusion, especially on October 9th when my client is going through the pre-op process."[33] The Deputy Commissioner specifically stated in the hearing in response to a request by the Locke's attorney to follow up to an argument made by the City, "I'm going to go ahead in this case – we don't have any testimony and it looks like I'm taking some statements from both counsel about what's

[28] Id.
[29] Exhibit G
[30] Id.
[31] Id.
[32] Exhibit H
[33] Transcript p. 5.

going on on the claim here and the medical history, so, I'm going to go ahead and allow the Claimant to make a responsive statement."[34] Mr. Gettman was allowed to respond to Mr. Nelson's argument. At no point does Mr. Gettman lodge an objection or challenge the statement by Mr. Nelson about where the Claimant was on October 9, 2020. Iowa Rule of Evidence 1.103(a) governs preserving a claim of error. The transcript of the proceeding is void of any indication by the City of an objection or factual dispute about where Locke was on October 9, 2020 to the facts accepted by the Deputy Commissioner based on Locke's attorney's statement. To preserve the argument, the City needed to lodge an~~d~~ objection during the hearing. The City, therefore, has waived its argument that there is insufficient evidence in the record to support the ruling. The Court considers it fact on this record that Locke was undergoing required pre-op procedures on October 9, 2020 at the Mayo Clinic.

The Deputy Commissioner found that the City's attempt to change the care on the eve of surgery would unreasonably delay Locke's treatment~~;~~, cause a substantial inconvenience to Locke's treatment~~,~~; and unreasonably interfere with Locke's effort to receive quality care which was reasonably suited to treat his injury.[35]~~36~~

Based on the totality of circumstances, the Court finds Locke established by a preponderance of the evidence that the City's proposed care plan was not reasonable and not beneficial to him. Further the Court finds that the Deputy Commissioner's finding is supported by substantial evidence. On the day the City resumed care of Locke by finally admitting liability, the City did not have a reasonable care plan to present to Locke, other than a referral to University of Iowa Hospitals & Clinics. Further, Locke had established care with Dr. Sebastian at the Mayo Clinic. A care plan had been established and shared with the City in September, 2020. When the City requested Locke see Dr. Abernathy, Locke was prompt and compliant. Based on Dr. Abernathy's September 28, 2020 report, the City continued to deny liability. It was only on the Friday prior to surgery, when Locke was undergoing pre-operative care, that the City resumed care. The City could have resumed care at any point but continued to deny liability until the 11th hour before the scheduled surgery. There is no evidence that Locke did anything to cause the delay the City finally admitting liability. It was a choice made by the City to wait so long before admitting the claim. The City did not have a care plan with a specific appointment or doctor set up at the University of Iowa Hospitals & Clinics. Dr. Abernathy said in his report that Locke does require surgery to correct the L5-S1 spondylolisthesis and the fusion recommended by Dr. Sebastian was appropriate.[37]

IT IS THE ORDER OF THE COURT that the decision of the Deputy Commissioner is affirmed as modified.

[34] Transcript p. 7.
[35] Exhibit 1
[36] ~~pre~~
[37] Exhibit D

Motion to Dismiss filed by the Respondent is granted for reasons stated above. This matter is hereby dismissed and costs are assessed to the petitioner.

State of Iowa Courts

Case Number	**Case Title**
CVCV141363	CITY OF WATERLOO VS JERRY LOCKE
Type:	ORDER OF DISPOSITION

So Ordered

Melissa Anderson-Seeber, District Court Judge,
First Judicial District of Iowa

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