

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TABETHA GEHRKE,

Claimant,

vs.

TRINITY HEALTH CORPORATION,
d/b/a MERCYONE WATERLOO
MEDICAL CENTER,Employer,
Self-Insured,
Defendant.

File No. 22008203.02

ALTERNATE MEDICAL CARE

DECISION

Headnote: 2701

This is a contested case proceeding under Iowa Code chapters 85 and 17A. The expedited procedures of rule 876 IAC 4.48, the "alternate medical care" rule, are invoked by claimant, Tabettha Gehrke.

This alternate medical care claim came on for hearing on April 18, 2023. The proceedings were recorded digitally and constitute the official record of the hearing. By an order filed by the Workers' Compensation Commissioner, this decision is designated final agency action. Any appeal would be by petition for judicial review under Iowa Code section 17A.19.

The record in this case consists of Claimant's Exhibit 1 and Defendant's Exhibits A-G.

ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of continued authorized treatment with Marietta Walsh, D.O.

FINDINGS OF FACT

Defendant accepts liability for a work-related injury to claimant occurring on July 18, 2022.

Prior to the taking of testimony, counsel for both parties had a detailed discussion regarding the facts at issue in this case.

Dr. Walsh is currently the authorized treating physician for claimant's care and treatment. Records indicate claimant believes her treatment with Dr. Walsh has been beneficial and has improved her condition. Claimant does not want her care transferred from Dr. Walsh. (Exhibit 1, page 3)

The parties agree claimant was seen for an exam recently by James Haag, P.A. According to the parties, Physician's Assistant Haag has made recommendations for claimant to be examined by another health care practitioner. (Ex. 1, pp. 2-8)

Claimant's counsel is concerned that the exam by Physician's Assistant Haag and the referral for another exam are efforts by defendant to "... substitute its own (non-medical) judgment for that of the authorized physician, Marietta Walsh, D.O., without any medical evidence for the same." (Claimant's petition, paragraph 8)

In a professional statement, defendant's counsel indicates that, at the present time, defendant is not trying to transfer claimant's care from Dr. Walsh. Defendant indicates that if recommendations for care are made by Physician's Assistant Haag, or other examiners, those recommendations will be forwarded to Dr. Walsh for approval. As noted in an April 5, 2023, letter from defendant's attorney "Your client is being sent to Mr. Haag for evaluation. This evaluation is for the purpose of receiving additional treatment options to consider in order to expedite Ms. Gehrke's recovery. This evaluation is not intended to interfere with current authorized care; rather the examination is intended to enhance her care and provide additional potential treatment options . . ." (Ex. F)

CONCLUSION OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3).

Iowa Code section 85.27(4) provides, in relevant part:

For purposes of this section, the 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. 6.904(3)(e); 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. v. Reynolds, 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.

Iowa Code section 85.39(1) states, in relevant part:

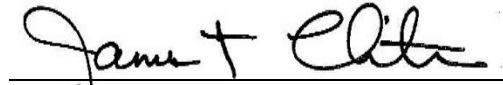
After an injury, the employee, if requested by the employer, shall submit for examination at some reasonable time and place and as often as reasonably requested, to a physician or physicians authorized to practice under the laws of this state or another state, without cost to the employee

Defendant has a right to have claimant examined under Iowa Code section 85.39(1) if reasonably requested. Defendant indicates that, at this time, if any recommendations for treatment or care are made by another examiner, those recommendations will be forwarded to Dr. Walsh for consideration. Because Dr. Walsh still manages claimant's treatment and care, claimant has failed to carry her burden of proof the care offered, at present, by defendant is unreasonable. For that reason, claimant's petition for alternate medical care is denied. Claimant retains the right to file a subsequent petition for alternate medical care if she believes the care offered by defendant is unreasonable.

ORDER

Therefore, it is ordered that claimant's petition for alternate medical care is denied.

Signed and filed this 18th day of April, 2023.



JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Nathaniel Staudt (via WCES)

Lee Hook (via WCES)