BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RONDA PORAZIL, Claimant, vs. TIPTON VETERINARY SERVICES, INC., Employer, and WESTERN AGRICULTURAL INS.CO., Insurance Carrier, Defendants.	File No. 21700480.03 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, Ronda Porazil. Claimant appeared via telephone and through her attorney, Gregory Taylor. Defendants appeared through their attorney, James Russell. Claimant's petition was filed on October 25, 2021. Defendants filed an answer on November 3, 2021. Defendants do not dispute liability for the condition on which the claim for alternate care is based.

The alternate medical care claim came on for hearing on November 4, 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.

At hearing, claimant offered exhibits 1 through 4, and defendants offered exhibits A through F, which were all admitted with no objections. Claimant testified on her own behalf. Counsel for both parties also offered oral arguments to support their positions. At the close of hearing, both parties moved to submit additional exhibits, which was granted. Defendants then filed exhibits G and H, which are admitted. Claimant filed exhibits 5 and 6. Exhibit 5 is admitted. However, defendants objected to exhibit 6. Because exhibit 6 is an email from claimant to her attorney that was produced after the hearing, exhibit 6 is excluded from the record. (See Ruling on Defendants' Objection) In summary, the record consists of claimant's exhibits 1 through 5, defendants' exhibits A through H, claimant's testimony, and the parties' oral and written arguments.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of authorization for a second opinion with pain management physician.

FINDINGS OF FACT

Claimant, Ronda Porazil, was injured while working at Tipton Veterinary Services on July 23, 2019. (See petition for alternate care) Her injury occurred when she was lifting a heavy dog from an exam table. (Testimony) She said that her "back went out" and she had pain in her low back and down both legs. Defendants have accepted liability for an "aggravation of lumbar back pain." (See Defendants' answer to alternate care petition) Claimant treated for her back injury with Frederick Dery, M.D., at Steindler Orthopedic Clinic. She testified that she also saw Benjamin MacLennan, M.D., at Steindler on one occasion.

Claimant testified that over the course of her treatment with Dr. Dery, she had 4 separate injections for her low back, which provided temporary relief. She also attended 32 physical therapy visits, which helped for a while. (Testimony; Defendants' Exhibit A) Her last physical therapy visit was on October 7, 2020. (Def. Ex. A) On November 19, 2020, Dr. Dery placed claimant at maximum medical improvement (MMI). (Def. Ex. B; C) He noted that claimant should continue her current medications and get refills from her primary care provider; continue her home exercise program; and follow up as needed. (Def. Ex. B) He did not provide permanent restrictions, and stated that she is able to work unrestricted moving forward. (Def. Ex. C)

Claimant testified that the last time she saw Dr. Dery, he told her that there was nothing further he could offer for treatment, and she would have to "live with" the pain. (Testimony) Claimant continued to see her primary care provider, Andrea Wulf, ARNP, for prescription refills. Defendants limited their authorization of Ms. Wulf's treatment to prescription management only. (Def. Ex. E) Claimant was taking Lyrica, but eventually became displeased with the side effects, and Ms. Wulf agreed to wean her off the Lyrica. She now takes a different medication. (Testimony; Claimant's Exhibit 5)

Ms. Wulf recommended an MRI of the lumbar spine on June 9, 2021, due to claimant's worsening back and sciatic pain. (Cl. Ex. 1) After reviewing the MRI, she recommended a second opinion with an orthopedic specialist to determine if any surgical options exist. In the event no surgery was recommended, Ms. Wulf then recommended claimant see a different pain management physician, other than Dr. Dery, for a second opinion. (Cl. Ex. 1)

On September 8, 2021, claimant saw Mark Taylor, M.D., for an independent medical evaluation. (Cl. Ex. 3) Dr. Taylor agreed that it would be appropriate for claimant to be seen at a different pain management clinic, "not to suggest improper treatment, but rather to have a fresh perspective to help determine whether there are other viable treatments that may help to diminish her pain." (Cl. Ex. 3)

It appears from the records in evidence that Dr. MacLennan did review the 2021 MRI, and did not find any surgical lesions. (See Cl. Ex. 3; Def. Ex. D) Dr. Dery also reviewed the new MRI, and stated that he saw no significant change in the anatomy when compared to her prior study dated October 11, 2019. (Def. Ex. D)

Claimant is aware that Dr. Dery remains authorized for treatment. (Testimony) However, she testified that she wants a second opinion with someone else because Dr. Dery was "adamant" at her last appointment in 2020 that there was nothing else he can do for her. (Testimony) Defendants argue that claimant has not met her burden to prove that the authorized treatment, specifically a return visit to Dr. Dery, is not reasonably suited to treat her injury. I agree. There is no evidence that Dr. Dery has provided or will provide inappropriate or inadequate care. While I understand why claimant would prefer to see a new physician, claimant's preference is not a legal basis for the transfer of medical care.

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. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 16, 1975).

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 14(f)(5); Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). 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 or she 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. See Iowa Code § 85.27(4). Thus, 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, 528 N.W.2d at 124.

In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997), the supreme court held that "when evidence is presented to the commissioner that the employer-authorized medical care has not been effective and that such care is 'inferior or less extensive' than other available care requested by the employee, . . . the commissioner is justified by section 85.27 to order the alternate care.

Ultimately, determining whether care is reasonable under the statute is a question of fact. Long, 528 N.W.2d at 123. In this case, defendants continue to authorize Dr. Dery for treatment of claimant's back pain. While Ms. Wulf is also authorized, her authorization is limited to medication management. Claimant has not seen Dr. Dery since November 2020, almost one year. While he did not have anything further to offer at that time, claimant testified that her pain has worsened over the last year. A return to Dr. Dery to see if he has anything to offer is not unreasonable. There is no evidence at this time to prove that Dr. Dery's treatment is or will be "inferior or less extensive" than other available care.

It is understandable that claimant would like to have a second opinion. However, desirability of a certain course of action is not the legal standard utilized in alternate medical care proceedings. Id. Therefore, I conclude that claimant has failed to prove that the care offered by defendants is unreasonable. Claimant has not carried her burden and for that reason her alternate care petition is denied.

ORDER

THEREFORE, IT IS ORDERED:

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

Signed and filed this 5th day of November, 2021.

JESSICA L. CLEEREMAN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Gregory Taylor (via WCES)

James Russell (via WCES)