

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DAVID KAMP,

Claimant,

vs.

IOWA 80 GROUP, INC.,

Employer,

and

TWIN CITY FIRE INS. CO.,

Insurance Carrier,
Defendants.

File No. 23000906.02

ALTERNATE MEDICAL CARE
DECISION

Head Note: 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, David Kamp. On February 27, 2023, claimant filed an alternate medical care petition against Iowa 80 Group, Inc. and Twin City Fire Ins. Co.

The alternate medical care claim came on for telephone hearing on March 10, 2023. 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.

The record consists of Claimant's Exhibits 1 through 5. All exhibits were offered without objection and received into evidence. Claimant testified on his own behalf. No other witnesses were called to testify. Argument of counsel was heard and considered. The evidentiary record closed at the conclusion of the hearing.

ISSUE

The issue presented for resolution is whether the defendant has provided reasonable treatment to the claimant without undue delay and, if not, the appropriate remedy.

FINDINGS OF FACT

David Kamp sustained a work-related injury to his right leg on February 4, 2021. Defendants admitted liability for the alleged work injury and directed claimant's medical treatment.

Defendants authorized medical care through Andrew Bries, M.D. of ORA Orthopedics. After reviewing an MRI of claimant's right leg, Dr. Bries recommended and performed a quadriceps tendon repair. The procedure occurred in February 2021. According to Dr. Bries, claimant initially did well postoperatively; however, he had significant problems progressing. Given said problems, claimant underwent repeat injections and rehab.

Dr. Bries ultimately placed claimant at maximum medical improvement on June 14, 2022. (Exhibit 1, page 2) At the time, claimant was, "doing all of his normal activities again but was still having some discomfort at times, especially when he hyperflexed and extended his knee." (Ex. 3, p. 1) Claimant did not feel as though the strength in his quadriceps had returned to normal; however, it is noted that his range of motion had significantly improved. (Id.)

Dr. Bries' report, dated September 25, 2022, provides,

I did discuss with the patient if he continues to have symptoms moving going [*sic*] forward, we would consider other PRP injections versus the diagnostic scope we had previously gotten approved. He demonstrates understanding and has returned to work full duty.

(Ex. 3, p. 2)

Claimant has experienced ongoing right knee pain since his release on June 14, 2022. To address the same, claimant was scheduled for a follow-up appointment with Dr. Bries to occur on or about January 24, 2023. However, claimant asserts that the workers' compensation coordinator for ORA Orthopedics contacted him the day before his scheduled appointment and relayed that the same had been cancelled, as it was not authorized by the defendant insurer's third-party administrator.

The next day claimant contends that he contacted Dr. Bries' office and spoke to one of the nurses on staff. Claimant explained his situation and relayed that he was having a difficult time finding someone to examine his right knee. According to claimant, the nurse told him to still present for his cancelled appointment because Dr. Bries wanted to see him. (Claimant's Testimony) It appears claimant presented to his appointment; however, it is unclear whether an examination took place. Nevertheless, claimant asserts that he spoke with Dr. Bries about his ongoing complaints of pain.

Dr. Bries produced a letter to defendants on January 24, 2023. (Ex. 4, p. 5) The letter provides,

It is my understanding the patient is continuing to have symptoms in his knee and if I were to see him again, I would likely recommend another MRI

to evaluate for any structural injury and to see if we need to do a repair of his quadriceps tendon again versus an arthroscopic debridement.

I do believe the current symptoms he is getting are exactly the same as he experienced postoperatively once his quadriceps tendon had healed and are likely causally-related to his initial injury and surgery.

(Ex. 4, p. 6)

On the same day, claimant's counsel notified defendants of claimant's ongoing pain and requested authorization of continued medical treatment with Dr. Bries. (Ex. 5, p. 9) Claimant also requested a second opinion with an orthopedic physician other than Dr. Bries. (*Id.*) Claimant's counsel followed up on his January 24, 2023, e-mail, and requests for follow-up care, on February 3, 2023. On the morning of February 9, 2023, defense counsel responded to claimant's request via e-mail. (Ex. 5, p. 7) Defendants relayed that they would authorize a follow-up visit with ORA Orthopedics once they were in possession of updated medical records from claimant's primary care physician. (*Id.*) Claimant questioned the need to further delay the authorization and scheduling of a follow-up appointment with Dr. Bries.

Through his February 27, 2023, petition, claimant seeks an order directing defendants to promptly authorize and schedule ongoing medical care and treatment of claimant's right leg with Dr. Bries. In their March 9, 2023, answer, defendants admitted liability for claimant's right leg injury and further provided that a follow-up appointment with Dr. Bries has been authorized and is scheduled to occur on March 29, 2023.

Given the information provided in defendants' answer, the undersigned reached out to the parties to determine whether a hearing on the alternate medical care petition was still necessary. Prior to hearing, claimant's attorney requested a consent order be entered in lieu of a hearing, while defendants indicated claimant's petition should be dismissed.

In essence the only dispute is whether, procedurally, the petition should be dismissed or an order should be entered memorializing (and ordering) defendants' agreement to provide the medical care requested.

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 January 31, 1994).

In this instance, claimant had an appointment scheduled with Dr. Bries on or about January 24, 2023. While it is somewhat unclear who scheduled the appointment in the first place, it is clear the appointment was cancelled by defendants. Claimant subsequently communicated his basis for dissatisfaction to the employer and made reasonable efforts to resolve the dispute prior to filing his petition for alternate medical care. When claimant filed his petition on February 27, 2023, defendants had not authorized a follow-up appointment with Dr. Bries, an authorized treating physician, despite the January 24, 2023, letter, which includes recommendations for additional treatment.

Claimant requested a consent order, as opposed to a dismissal, in light of his difficulties in obtaining authorization, and to ensure that the recently scheduled appointment with Dr. Bries would not be cancelled like the January 24, 2023, appointment. Claimant's request is reasonable under the circumstances. In comparison, defendants offer no legitimate reason as to why they would not agree to a consent order.

Instead, defendants contend that claimant cannot carry his burden of proving the authorized care is unreasonable, as they have agreed to authorize the care claimant is requesting. Defendants further note that they have already scheduled the appointment. While it is true that defendants have scheduled claimant for an appointment with Dr. Bries, it is also true that claimant was previously scheduled for an appointment with Dr. Bries and the same was cancelled, thus prompting the current petition. The follow-up appointment was only scheduled after claimant filed his petition for alternate medical care. At the time the appointment was scheduled, the delay in care had already occurred.

Having reviewed all evidence in the record, and after weighing the interests of all parties, I find that the most appropriate way to deal with this dispute is to grant the claimant's request for alternate medical care. Both parties are ordered heretofore to engage in reasonable communication in all disputes regarding authorized care.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is GRANTED. Defendants shall promptly provide written authorization to Andrew Bries, M.D., to evaluate and treat claimant's right leg condition.

Signed and filed this 13th day of March, 2023.

A handwritten signature in black ink, appearing to read "Michael J. Lunn", written over a horizontal line.

MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Troy Howell (via WCES)

Meredith Ashley (via WCES)

Caitlin Kilburg (via WCES)