BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DANYEL COCKRUM, Claimant, vs. ALLEGIANT AIR, LLC, Employer, and STARR SPECIALTY INS. CO., Insurance Carrier, Defendants.	File No. 22009981.01 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, Danyel Cockrum. Claimant appeared through her attorney, Matt Denning. Defendants did not appear.

The alternate medical care claim came on for hearing on November 3, 2022. 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 3, which includes a total of 13 pages. Defendants did not participate at hearing. The record closed on November 3, 2022.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of mental health treatment as recommended by Daphney Myrtil, M.D.

FINDINGS OF FACT

The undersigned having considered all the evidence in the record finds:

Claimant sent copies of the petition for alternate medical care via certified mail to the addresses listed for the defendant employer and defendant insurer on the Iowa Workers' Compensation insurance verification webpage. (Statement of claimant's counsel) Claimant also e-mailed a courtesy copy of the alternate medical care petition to the claims adjuster assigned to the file on October 24, 2022. (Statement of claimant's counsel) Claimant's counsel received confirmation that the defendant insurer was served with a copy of the petition. Claimant's counsel did not receive confirmation that the defendant employer was served with a copy of the petition. Based upon the above information, I find that claimant properly served notice of the petition for alternate medical care on the defendant employer and defendant insurer.

The defendant employer did not answer or otherwise plead or appear, nor provide this agency with a phone number or person to contact for the hearing. The defendants are therefore found to be in default concerning this alternate medical care proceeding.

Danyel Cockrum sustained a work-related injury on August 19, 2022. On September 21, 2022, Dr. Myrtil of UnityPoint Occupational Medicine examined claimant and completed a Patient Status Report. (Exhibit 3) Dr. Myrtil diagnosed claimant with a left ankle sprain, left ankle contusion, and cervical strain. (Id.) Dr. Myrtil recommended "sessions w/ behavioral health for focused sessions related to work injury." (Id.) Defendants authorized the referral for a mental health evaluation on or about October 12, 2022; however, the evaluation had not been scheduled prior to the November 3, 2022, hearing.

Defendants have authorized a mental health evaluation for Ms. Cockrum; however, they have not scheduled claimant for the same despite repeated requests. The claimant has communicated her dissatisfaction with her care to the defendants. (Exhibit 1) Defendants have not filed a denial that the care requested is unrelated to claimant's work injury.

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).

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); Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); 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. 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 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 right to select the provider of medical treatment to an injured worker does not include the right to determine how an injured worker should be diagnosed, evaluated, treated, or other matters of professional medical judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 18, 1988).

Reasonable care includes care necessary to diagnose the condition and defendants are not entitled to interfere with the medical judgment of its own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening, June 17, 1986). When a designated physician refers a patient to another physician, that physician acts as the defendant employer's agent. Permission for the referral from defendant is not necessary. Kittrell v. Allen Memorial Hospital, Thirty-fourth Biennial Report of the Industrial Commissioner, 164 (Arb. November 1, 1979) (aff'd by industrial commissioner). See also Limoges v. Meier Auto Salvage, I Iowa Industrial Commissioner Reports 207 (1981).

In this case, claimant's authorized treating physician has recommended a mental health evaluation. Defendants have authorized but not scheduled the reasonable medical recommendation of the treating physician. The delay in providing such care violates Iowa Code section 85.27's requirement that care be provided promptly. For this reason, I conclude that claimant is entitled to an order for alternate medical care.

Given that defendants have agreed to authorize a referral for a mental health evaluation, I find defendants maintain the right to select a provider of their choosing, provided they act promptly to schedule the care ordered in this decision.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's petition for alternate medical care is granted.

Within fourteen (14) days of the entry of this order, defendants shall identify a provider of their choosing and schedule an appointment for claimant to be evaluated at the earliest reasonable opportunity by said provider.

Failure to timely comply with this order may result in defendants losing the right to select the authorized medical provider moving forward.

Signed and filed this __4th__ day of November, 2022.

MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Matt Denning (via WCES)

Allegiant Air, LLC (via regular and certified mail)
5800 Fleur Dr
Des Moines, IA 50321

Starr Specialty Ins. Co. (via regular and certified mail)
399 Park Ave, 3rd Floor
New York, NY 10022