

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TAJI BRUCE,
Claimant,

vs.

MACAPA LOGISTICS, L.L.C.,
Employer,

and

TECHNOLOGY INSURANCE CO.,
Insurance Carrier,
Defendants.

File No. 22003888.02

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. By filing an original notice and petition for alternate medical care, claimant, Taji Bruce, invoked the expedited procedure of rule 876 IAC 4.48.

The alternate medical care claim came on for telephonic hearing on August 5, 2022. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Claimant appeared personally and through her attorney, James Hoffman. Defendants appeared through their attorney, Nicholas Pellegrin.

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. Any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code section 17A.

The evidentiary record consists of Defendants' Exhibits 1 through 3, consisting of ten pages. Ms. Bruce testified on her own behalf. No other witnesses testified at the hearing.

ISSUE

The issue presented for resolution is whether the claimant is entitled to an alternate medical care order requiring defendants to authorize a different physician for treatment of claimant's right knee and authorize additional physical therapy.

FINDINGS OF FACT

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

Taji Bruce sustained an injury to her right knee as a result of her work duties at Macapa Logistics, L.L.C., on March 27, 2022. Defendants accepted that injury as compensable and provided both weekly benefits and medical treatment related to the injury. Defendants initially selected and authorized care through Doctors Now. However, the medical providers at Doctors Now referred claimant for orthopaedic evaluation at Iowa Ortho.

Defendants authorized the recommended orthopaedic care through Timothy R. Vinyard, M.D., at Iowa Ortho in Des Moines. (Claimant's testimony) Claimant was scheduled for evaluation with Dr. Vinyard on April 18, 2022. She failed to appear for that evaluation due to a lack of transportation. (Exhibit 1, page 1; Claimant's testimony) Instead, the appointment was rescheduled for April 25, 2022. Again, claimant failed to present for the evaluation with Dr. Vinyard. (Defendants' Ex. 1, p. 1) This time she testified her four-year-old son was ill and she had to get him from daycare. She could not attend the evaluation by Dr. Vinyard. (Claimant's testimony)

Once again, the appointment was rescheduled. However, a representative of Iowa Ortho, Amanda Butters, spoke with claimant after the second missed appointment. Claimant acknowledges that Ms. Butters notified claimant that she could be discharged as a patient if she failed to appear for another appointment with Dr. Vinyard. (Claimant's testimony) Claimant presented for evaluation by Dr. Vinyard on May 2, 2022. (Defendants' Ex. 1, p. 1) No documentation is in evidence for that evaluation, but there is evidence that claimant presented for physical therapy after Dr. Vinyard's May 2, 2022 evaluation. (Defendants' Ex. 1, p. 7) Claimant also testified that she received a right knee MRI after the initial evaluation by Dr. Vinyard.

Dr. Vinyard re-evaluated claimant again on June 6, 2022. (Defendants' Ex. 1, pp. 4-6) Dr. Vinyard interpreted the MRI as demonstrating small knee joint effusion and a popliteal cyst. (Defendants' Ex. 1, p. 6) Dr. Vinyard recommended against any surgical intervention. Instead, he recommended a corticosteroid injection into the right knee, an anti-inflammatory medication, and 30 days of physical therapy. (Defendants' Ex. 1, p. 7) Dr. Vinyard further noted he anticipated placing claimant at maximum medical improvement (MMI) at her next evaluation. (Defendants' Ex. 1, p. 7)

Although she disputed it during her testimony, physical therapy records document that claimant missed or cancelled appointments on June 27, 2022, June 30, 2022, July 1, 2022, July 7, 2022, July 8, 2022, July 13, 2022, and July 14, 2022. (Defendants' Ex. 1, p. 7) Further physical therapy was denied thereafter.

Ms. Bruce was scheduled to return to Dr. Vinyard on July 6, 2022. She failed to appear for the appointment, testifying that her baby was ill, and she could not attend. Ms. Bruce called Iowa Ortho after missing this appointment and attempted to reschedule her evaluation. Initially, Iowa Ortho rescheduled the appointment. However, an Iowa Ortho representative subsequently called claimant back and explained that they were not going to reschedule claimant and would not see her again. (Claimant's testimony)

At some unspecified time during this timeline, claimant attended an evaluation with her personal physician at Broadlawns. None of the Broadlawns records are in evidence. However, claimant testified that her personal physician advised her that she still has something wrong with her right knee and recommended she undergo additional physical therapy. Claimant now seeks authorization of a physician, other than Dr. Vinyard, for further treatment of her right knee and for authorization of the additional physical therapy recommended by her personal physician.

On July 19, 2022, Dr. Vinyard issued a report. He declared claimant at MMI as of his last evaluation on June 6, 2022. He opined that claimant could return to work without medical restrictions and opined that claimant sustained no permanent impairment. (Defendants' Ex. 2)

Dr. Vinyard issued a supplemental report dated August 4, 2022. In that report, Dr. Vinyard opines that claimant "did not have any structural damage on her MRI" and recommended against any surgical intervention for claimant's right knee. Dr. Vinyard also opines that claimant's subjective complaints were "out of proportion" to her objective findings. He confirmed claimant's missed appointments and declared claimant to be "noncompliant" with his care. (Defendants' Ex. 1, pp. 1-2)

Perhaps more important to these proceedings, Dr. Vinyard opines in his August 4, 2022 report that "the patient does not require any more physical therapy treatment at this time." (Defendants' Ex. 1, p. 2) Instead, Dr. Vinyard dismissed claimant as a patient, declared her to be noncompliant with his treatment recommendations, and declared her to be at MMI. (Defendants' Ex. 1)

Ms. Bruce testified that she has ongoing symptoms and wants additional medical treatment. However, she produces no documentation or medical evidence to establish that additional treatment is reasonable and necessary at this time. Although she testified as to recommendations from her personal physician, it is not clear whether her physician made those recommendations before or after she was last evaluated by Dr. Vinyard. Those recommendations are not specifically outlined or documented. Nor is it clear the history or facts understood by claimant's personal physician at this time.

Considering the evidence in this record, I find that claimant failed to prove additional medical care for her right knee is reasonable and necessary at this time. She has been discharged by her treating orthopaedic surgeon. That surgeon has declared

her to be noncompliant and has released her to return to work without restrictions. Given that there are no specific pending recommendations that are different from those initially provided by Dr. Vinyard and it is not clear whether claimant's personal physician understands the factual background, missed appointments, and the recommendations and discharge of Dr. Vinyard, I find that claimant failed to prove there is additional, reasonable, and necessary medical care that remains to be attempted for her right knee.

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 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). 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).

In this case, claimant was provided reasonable and appropriate medical care through an orthopaedic surgeon and physical therapy. Claimant failed to comply with the treatment recommendations of the authorized surgeon and was ultimately discharged for her noncompliance. Dr. Vinyard further opined that no additional treatment is reasonable or necessary and discharged claimant to return to work without restrictions. Claimant failed to prove alternate medical care is reasonable and necessary. Accordingly, I conclude claimant failed to carry her burden of proof in this situation and that the petition for alternate medical care should be denied without award of further medical care at this time.

ORDER

THEREFORE, IT IS ORDERED:

The claimant's petition for alternate medical care is denied and dismissed.

Signed and filed this 8th day of August, 2022.

A handwritten signature in black ink, reading "William H. Grell", written over a horizontal line.

WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

James Hoffman (via WCES)

Nicholas Pellegrin (via WCES)