

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TERESA LOOSE,

Claimant,

vs.

SG&E, INC.,

Employer,

and

ACCIDENT FUND NATIONAL
INSURANCE COMPANY,

Insurance Carrier,
Defendants.

FILED
AUG 06 2019
WORKERS' COMPENSATION

File No. 5067739

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

STATEMENT OF THE CASE

On July 23, 2019, claimant filed an original notice and petition for alternate medical care under Iowa Code section 85.27, invoking the provisions of rule 876 IAC 4.48. Defendants filed an answer accepting that claimant sustained an injury on or about March 9, 2017, which arose out of and in the course of her employment. The alternate medical care claim came on for a telephone hearing on August 5, 2019, at 10:30 a.m. The proceedings were digitally recorded.

The record consists of claimant's exhibits 1 through 4, which include a total of 10 pages. The record also contains defendants' exhibits A through B, which contain 4 pages. No witnesses were called to testify.

ISSUE

The primary issue presented for resolution is whether claimant is entitled to an order authorizing a psychological evaluation and additional treatment as recommended by Dr. Biggerstaff.

FINDINGS OF FACT

Having considered all evidence in the record, the undersigned finds:

Teresa Loose, claimant, sustained a low back injury while working for the defendant employer on or about March 9, 2017. Claimant seeks an order of this agency granting her treatment as recommended by Matthew Biggerstaff, D.O., for consideration of a spinal cord stimulator. Defendants resist the requested treatment and argue Dr. Biggerstaff is not an authorized treating physician. Alternatively, defendants assert Dr. Biggerstaff lost his status as an authorized treating physician in or around May 2018. Defendants have offered to return claimant to David Boarini, M.D. for further treatment recommendations. Defendants have also offered to authorize an alternate pain management specialist.

It is undisputed that Dr. Boarini is claimant's authorized treating physician. Dr. Boarini's medical records and recommendations are not detailed within this evidentiary record. According to an electronic correspondence between a representative of the defendant insurer and counsel for claimant, dated March 6, 2018, defendants authorized an epidural steroid injection (ESI) on January 29, 2018. At hearing, the parties stated the referral for the ESI came from Dr. Boarini. The reply correspondence from counsel for claimant confirms claimant underwent an ESI. The correspondence also relays claimant had a follow-up appointment with Dr. Biggerstaff on March 22, 2018. (Exhibit 4, page 10).

On May 16, 2018, the defendant insurer contacted counsel for claimant to inquire whether claimant was still seeking medical treatment. (Ex. A, p. 2). On July 30, 2018, the defendant insurer contacted counsel for claimant to inquire as to whether he continued to represent claimant in her workers' compensation claim. (Ex. A, pp. 1-2). On August 14, 2018, counsel for claimant replied to the defendant insurer, providing he continued to represent claimant, and that she was still presenting to Dr. Biggerstaff for pain management. (Ex. A, p. 1). The reply correspondence also discusses claimant's reaction to the previously authorized ESI, and Dr. Biggerstaff's recommendation claimant obtain updated diagnostic imaging. (Ex. A, p. 1). The defendant insurer confirmed receipt of claimant's electronic correspondence on August 14, 2018. (Ex. A, p. 1).

It does not appear as though claimant ever obtained an updated MRI report. It is clear defendants did not authorize or schedule claimant to obtain the recommended diagnostic imaging in 2018.

The first medical record contained in the evidentiary record is from Dr. Biggerstaff's office. The record is dated April 4, 2019. (Ex. 1, p. 1). Claimant presented to Dr. Biggerstaff as a follow-up to a transforaminal ESI on the right at L4-5. (Id.). The medical record notes the ESI was administered approximately one month prior. (See Ex. 1, p. 4). Claimant reported mild to moderate reduction of her pain following the injection. Claimant relayed her belief that her ongoing pain was related to her workers' compensation case. Dr. Biggerstaff diagnosed claimant with lumbosacral spondylosis without myelopathy, and lumbar radiculopathy. (Ex. 1, p. 4). Given that claimant had proven refractory to conservative measures, including medication management and injection therapy, Dr. Biggerstaff opined claimant would be "an

excellent candidate” for spinal cord stimulation. (Id.). He scheduled claimant to present to a pain psychologist, provided her with information on the procedure, and relayed he would present the recommendations to workers’ compensation for approval prior to proceeding with any sort of workup. (Id.).

Following the referral by Dr. Biggerstaff, and claimant’s request regarding authorization of the same, defendants offered a follow-up appointment with Dr. Boarini. (Ex. 3, p. 8). Claimant asserts this offer was not an appropriate response to her request to begin the process of obtaining a spinal cord stimulator. (Ex. 3, p. 9).

The only other medical record in the evidentiary record is a pre-written opinion letter addressed to Dr. Biggerstaff, dated July 17, 2019. (Ex. 2, p. 6). The letter asserts Dr. Biggerstaff had been providing pain management services to claimant since January 10, 2018; Dr. Biggerstaff believes claimant’s symptoms are related to the March 2017 workplace injury; and he recommends claimant proceeds with consideration for a spinal cord stimulator. The letter also provides Dr. Biggerstaff does not recommend claimant return to Dr. Boarini as such a referral would not be productive. Dr. Biggerstaff signed the letter, adopting the pre-written opinions, on July 22, 2019. (Ex. 2, pp. 6-7).

The parties dispute whether Dr. Biggerstaff is claimant’s authorized pain management specialist. The parties agree Dr. Boarini is an authorized treating physician. Claimant contends that because Dr. Boarini referred claimant to Dr. Biggerstaff, Dr. Biggerstaff became an authorized treating physician. Defendants first contend Dr. Biggerstaff did not assume the role of claimant’s authorized pain management specialist. In support of this contention, defendants point out there is no evidence of how claimant was referred to Dr. Biggerstaff. As previously noted, Dr. Boarini’s records and recommendations are not detailed within this evidentiary record. While it is not clear Dr. Boarini specifically referred claimant to Dr. Biggerstaff, it is clear defendants authorized claimant to receive a steroid injection in January 2018. Given this express authorization, it is immaterial whether defendants have paid any medical bills from Broadlawns.

Alternatively, defendants contend Dr. Biggerstaff’s authorization as claimant’s pain management specialist was no longer valid after May 16, 2018. The date of May 16, 2018, is arbitrary with respect to defendants’ argument. Defendants assert the insurer repeatedly contacted claimant’s counsel to determine if claimant was still represented and requesting medical treatment. The date of the first e-mail was May 16, 2018. Counsel for claimant did not respond to the insurer’s two electronic correspondences until August 14, 2018. It is worth noting counsel for claimant provided he continued to represent claimant, and she continued to treat with Dr. Biggerstaff.

Defendants also assert Dr. Biggerstaff began treating claimant outside of workers’ compensation. In support of this contention, defendants cite to Dr. Biggerstaff’s medical notes which provide, “Work-related injury: No.” This is not convincing. Claimant first presented to Dr. Biggerstaff for an ESI expressly related to her low back injury. Moreover, it is clear from Dr. Biggerstaff’s medical records that

claimant continued to treat for the same symptoms. Claimant relayed her belief that her symptoms were a result of her workers' compensation injury, and Dr. Biggerstaff expressly provided he would follow-up with workers' compensation for authorization of his treatment recommendations.

Lastly, defendants contend they received no communications or requests for authorization from Dr. Biggerstaff following their May 16, 2018, e-mail correspondence with claimant's counsel.

The record is void of any evidence showing defendants communicated to claimant, claimant's counsel, or Dr. Biggerstaff that he had lost his status as an authorized treating pain management specialist.

I find claimant has established that a spinal cord stimulator psychological evaluation is a reasonable treatment option based upon the recommendation from Dr. Biggerstaff. I cannot find that the offer to send claimant back to Dr. Boarini is either a reasonable treatment option or that it is not a reasonable treatment option. No evidence is contained within this record to suggest that both treatment options could not be simultaneously pursued. Outside of a letter to claimant's counsel noting they were trying to schedule a follow-up appointment with Dr. Boarini, there is no evidence in this record that defendants actually scheduled claimant for a follow-up appointment with Dr. Boarini, or scheduled an initial evaluation with any other pain management specialist.

I find Dr. Biggerstaff is an authorized treating physician. Defendants failed to prove Dr. Biggerstaff was not claimant's authorized treating pain management specialist at the time of his April 2019 referral. While it is true there was a gap in communication between claimant's counsel and the defendant insurer, defendants were made aware claimant was continuing to treat with Dr. Biggerstaff as of August 2018. There is no evidence in the record defendants communicated to claimant or claimant's counsel that Dr. Biggerstaff was no longer an authorized treating physician thereafter. In fact, the defendant insurer replied, "Ok, thank you" to claimant's counsel.

Dr. Biggerstaff recommended a psychological evaluation and, if approved, a spinal cord stimulator trial. I find these treatment recommendations to be reasonable and necessary. The treatment recommendations made by Dr. Biggerstaff are more extensive than the pending referral for updated diagnostic images offered by defendants. I find that when defendants refused to authorize the same, they interfered with the medical judgment of an authorized treating physician. I find that interfering with the medical judgment of an authorized treating physician is not providing reasonable treatment.

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 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 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. 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, 123 (Iowa 1995). “[W]hen 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.” Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997).

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 19, 1988).

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, Iowa Industrial Commissioner Reports 207 (1981).

In this case, defendants authorized an epidural steroid injection with Dr. Biggerstaff in January 2018. Claimant continued to present to Dr. Biggerstaff for follow-up appointments through 2018. Defendants became aware of the same in August 2018. Defendants did not notify claimant or claimant's counsel that Dr. Biggerstaff was

no longer an authorized treating physician until the filing of this petition for alternate medical care. With the power to choose care comes the responsibility to monitor the care for the purpose of determining when further care will no longer be authorized. The employer's statutory burden to monitor an injured employee's care is not an onerous one. Nothing in the language of section 85.27(4) suggests employees have a duty to investigate or a duty to inquire as to whether an authorization remains in effect before seeking care.

Having found that Dr. Biggerstaff is an authorized treating physician, and acknowledging he has made certain recommendations, defendants are not entitled to ignore said recommendations.

Based on the above findings of fact, I conclude defendants interfered with the medical judgment of an authorized treating physician and have not promptly provided authorized care. I further conclude defendants have failed to provide reasonable alternative treatment, making the recommendations of Dr. Biggerstaff, by default, more extensive and superior to the presumed, but not established recommendations of Dr. Boarini. I conclude claimant has proven she is entitled to alternate medical care in the form of a psychological assessment in anticipation of Dr. Biggerstaff administering a spinal cord stimulator.

Claimant's petition for alternate medical care is granted.

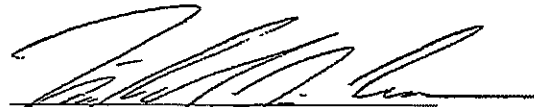
ORDER

THEREFORE, IT IS ORDERED:

Claimant's petition for alternate medical care is hereby granted.

Defendants shall authorize the psychological evaluation and proceed with consideration of a spinal cord stimulator as recommended by authorized treating physician, Dr. Biggerstaff.

Signed and filed this 6th day of August, 2019.



MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Jason Neifert
Attorney at Law
1441 – 29th St., Ste. 111
West Des Moines, IA 50266
jneifert@nbolawfirm.com

Laura J. Ostrander
Attorney at Law
PO Box 40785
Lansing, MI 48901-7985
Laura.ostrander@accidentfund.com

MJL/sam