BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JEFFERY GREENE, Claimant, vs. THORPE PLANT SERVICES, INC., Employer, and STARR INDEMNITY AND LIABILITY CO., Insurance Carrier, Defendants.	File No. 22700818.04 ALTERNATE MEDICAL CARE DECISION Headnote: 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, Jeffery Greene.

The alternate medical care claim came on for hearing on September 25, 2023. Claimant appeared personally and through his attorney Nicholas Cooling. Defendants appeared through their attorney Tyler Block. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding.

Pursuant to the Commissioner's July 21, 2023, 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 hearing record consists of:

- Defendants' Exhibit A

Claimant was the only witness to provide testimony. Counsel for both parties provided argument. The record closed at the end of the end of the alternate medical care telephonic hearing.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care in the form of:

- Authorization to continue treating with Amanda Ruxton, D.O., and a ruling stating defendants do not have the right to change the authorized provider from Dr. Ruxton.

FINDINGS OF FACT

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

On July 17, 2022, claimant sustained a work-related injury to his neck, upper back, head, and bilateral upper extremities. (See Petition; Hearing Testimony). Defendants admitted liability for the injury and authorized treatment with Amanda Ruxton, D.O., a general practitioner. (Hearing Testimony; Addendum to Defendants' Answer). Eventually, Dr. Ruxton referred claimant to Nazih Moufarrij, M.D., an orthopedic surgeon. (Hearing Testimony).

On March 14, 2023, Dr. Moufarrij performed cervical fusion surgery on claimant. (Addendum to Defendants' Answer). Claimant testified he has had three follow-up appointments with Dr. Moufarrij, the last appointment taking place approximately two months ago. (Hearing Testimony). Claimant indicated Dr. Moufarrij told him he could come back for treatment if needed. (Id.). The Addendum to Defendants' Answer indicates that Dr. Moufarrij released claimant from his care on July 5, 2023, stating no further follow-up care was needed. (Addendum to Defendants' Answer). Dr. Moufarrij's treatment records were not submitted into evidence for the hearing.

On September 12, 2023, defense counsel emailed claimant's counsel stating an appointment had been made for claimant with John Estivo, D.O., an orthopedic Specialist at Mid Continent Orthopedics. (Exhibit A, pp. 3-4). The appointment was to take place on September 28, 2023.[1] (Id. at 4). Defense counsel's email indicated that Dr. Estivo was the new authorized treating physician, and would oversee claimant's physical therapy and medical care through maximum medical improvement. (See id. at 1-4). Claimant's counsel emailed back, objecting to defendants' transfer of care and expressing dissatisfaction with the care defendants offered. (Id. at 2). The communication from claimant's counsel objects to Dr. Ruxton being replaced as the authorized provider, but it does not mention Dr. Moufarrij. (Id. at 1). At the hearing, claimant stated that someone from Dr. Estivo's office called him to confirm the September 28th appointment. (Hearing Testimony). Claimant testified that the individual called the appointment an independent medical exam (IME). (Id.). Defendants deny the September 28th appointment is an IME. (Id.).

On September 13, 2023, claimant filed a petition for alternate medical care requesting "to continue treatment with his current authorized treating provider, Dr. Amanda Ruxton." (See Petition). At the hearing, claimant testified that he was still

[1] Defendants also made claimant an appointment with Eva Henry, M.D., a neurologist. (Ex. A, p. 4). Claimant has not expressed dissatisfaction with this appointment, and testified that he plans to attend the appointment. (Hearing Testimony). That appointment is not implicated in this alternate care proceeding.

having symptoms, including numbness and tingling in his hands, headaches, a dead-feeling in his right arm, and reduced strength. (Hearing Testimony). Claimant testified that Dr. Ruxton has proscribed him nerve medication, which he feels he still needs, that he trusts her, and would like her to continue to act as the authorized physician for his work injury. (Id.). Claimant also testified that Dr. Black, his family physician, prescribes him pain medication. (Id.). It is unclear whether defendants are covering the costs of those medications, or if Dr. Black has been designated as a treating physician for this claim. (Id.). Defendants indicated Dr. Estivo is authorized to prescribe claimant necessary medications. (Id.).

Claimant has not requested a return appointment with Dr. Moufarrij since his last visit in July 2023. (Hearing Transcript). Defendants also have not attempted to schedule a follow-up appointment with Dr. Moufarrij since claimant's last appointment. (Id.). At the hearing, claimant's counsel stated that he was seeking a ruling from the agency declaring that defendants cannot change his authorized providers. (Id.). Claimant's counsel also requested follow-up appointments with Dr. Ruxton and Dr. Moufarrij. (Id.).

The Addendum to Defendants' Answer states that claimant's injuries are orthopedic in nature, and he needs treatment from an orthopedic doctor. (Addendum to Defendants' Answer). It declares "[t]here is no indication that medical treatment with a general practitioner is needed in this case." (Id.). At hearing, defense counsel indicated defendants would authorize a return appointment with Dr. Moufarrij, if claimant requested it and Dr. Moufarrij agreed. (Hearing Testimony).

CONCLUSIONS OF LAW

Under Iowa law, an employer who has accepted compensability for a workplace injury has a right to control the care provided to the injured employee. Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 769 (Iowa 2016). The relevant statute provides as follows:

> 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.

Iowa Code § 85.27(4).

Defendants' "obligation under the statute is confined to *reasonable* care for the diagnosis and treatment of work-related injuries." Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995) (emphasis in original). In other words, the "obligation under the statute turns on the question of reasonable necessity, not desirability." Id. 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. See Iowa Code § 85.27(4). 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.

An employee's desire for a different "reasonable" treatment plan does not make the employer-authorized care unreasonable. See Long, 528 at 124. A finding that the treatment requested by the claimant is reasonable does not result in an implicit finding that the authorized treatment is unreasonable. Id. The employee must prove the care being offered by the employer is unreasonable to treat the work injury, not that another treatment plan is reasonable. Id.; See also Lynch v. Bursell, 870 N.W.2d 274 (Table) (Iowa Ct. App. 2015). Determining whether care is reasonable under the statute is a question of fact. Long, 528 N.W.2d at 123.

In his petition, claimant requested ongoing care with Dr. Ruxton. Claimant, however, underwent a cervical fusion. Given his course of treatment, it stands to reason that he should receive follow-up care from an orthopedic doctor trained in the procedure and its recovery. Defendants have offered follow-up care with Dr. Estivo. Dr. Estivo is an orthopedic specialist. Dr. Ruxton is a family provider/general practitioner.

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." There is no evidence in the record indicating that the care offered by Dr. Estivo is inferior or less extensive than that being sought with Dr. Ruxton. Dr. Estivo is an orthopedic specialist and defendants have indicated he is authorized to proscribed medications and oversee claimant's course of physical therapy. Under this record, claimant has not met his burden to prove that the care offered by defendants is unreasonable.

Claimant makes two other requests in this alternate medical care proceeding: 1) a ruling from the agency declaring that defendants cannot change his authorized providers, and 2) a follow-up appointment with Dr. Moufarrij. Claimant's request for a follow-up appointment with Dr. Moufarrij is not on his alternate care petition; thus it is not properly before the agency in this proceeding. See, e.g., 876 IAC 4.6. Additionally, Iowa Code section 85.27(4) requires an employee to notify defendants of his or her dissatisfaction with care before applying to the agency for alternate medical care. According to the statute, this requirement is intended to give the parties an opportunity

to reach an understanding on future care for the employee, before asking the agency to intervene. There is no evidence claimant requested a follow-up appointment with Dr. Moufarrij prior to making the verbal request at hearing, let alone that he expressed dissatisfaction with defendants' response. At the hearing, defendants agreed to authorize a return appointment with Dr. Moufarrij, if requested by claimant, making this issue moot and an order unnecessary. Given this, claimant's request that the agency order a follow-up appointment with Dr. Moufarrij is denied.

The undersigned finds claimant's request for an order declaring that defendants cannot change his authorized providers problematic. Every controversy brought before this agency is fact specific. The undersigned cannot issue a blanket prohibition on defendants' ability to authorize new providers before claimant has even established facts showing it necessary. The language of Iowa Code section 85.27(4) empowers the agency to "order other care," upon reasonable proof of necessity. Claimant, however, is not asking the agency to order other care; he is asking for an order constraining defendants' legal right to direct care without proof of necessity. This request appears to be outside the statutory authority provided in Iowa Code section 85.27(4). Claimant's request for an order declaring that defendants cannot change his authorized providers is denied. If claimant feels defendants have denied a specific treatment or failed to provide reasonably medically necessary care, he can file a petition for alternate medical care under Iowa Code section 85.27, requesting the agency order that specific treatment/care.

Under this record, claimant has not met his burden to prove the care offered by defendants is unreasonable. Claimant's petition for alternate care is denied.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's petition for alternate care is DENIED.

Signed and filed this 27th day of September, 2023.

AMANDA R. RUTHERFORD
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Nick Cooling (via WCES)

Tyler Block (via WCES)