

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CARLOS GUERRERO,

Claimant,

vs.

JOMAX CONSTRUCTION,

Employer,

and

ZURICH AMERICAN INS. CO.,

Insurance Carrier,
Defendants.

File No. 21011022.02

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, Carlos Guerrero.

The alternate medical care claim came on for hearing on February 7, 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 3 and Defendants' Exhibits A through E. All exhibits were offered without objection and received into evidence. No 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 claimant is entitled to alternate medical care consisting of ongoing care through claimant's current treating physician, Gabriel Pitman, M.D. Defendants resist this request and, instead, desire to redirect claimant's care to a new neurologist.

FINDINGS OF FACT

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

Carlos Guerrero, claimant, sustained a work-related injury on June 22, 2021. Claimant asserts the work injury affected his head, neck, left shoulder, left upper extremity, and whole body. Defendants admitted liability for the alleged work injury and directed claimant's medical treatment.

In August 2021, defendants authorized medical treatment through neurologist Gabriel Pitman, D.O. Dr. Pitman's office is located in Oklahoma City, Oklahoma, which is approximately 210 miles from claimant's home in Hutchinson, Kansas. Claimant's wife drives him to all of his appointments.

It is undisputed that Dr. Pitman has served as an authorized treating physician since August 11, 2021. Dr. Pitman has made several referrals since August 11, 2021, and he continues to prescribe numerous medications to address claimant's ongoing symptoms.

Defendants seek to transfer claimant's care to a different neurologist. In their response to claimant's petition for alternate medical care, the defendants assert that claimant has been treating with Dr. Pitman for approximately 18 months and has shown no functional improvement. In support of their explanation, defendants assert claimant's symptoms have stayed the same since the date of injury and claimant does not believe there are any jobs he can do at this time. Defendants also assert that the transfer of care would be to claimant's benefit, as claimant would no longer have to drive to Oklahoma City, Oklahoma for treatment. Importantly, claimant has never complained about the distance he has to travel in order to present to Dr. Pitman.

Defendants produced a letter, dated December 5, 2022, to Dr. Pitman. In the letter, defendants posed several questions regarding his treatment plan and recommendations. Dr. Pitman was asked to list which treatments have helped claimant and which treatments have been unsuccessful. Dr. Pitman was also asked to assess claimant's level of improvement since the date of injury. Additionally, the report asked Dr. Pitman to address the opinions of "Dr. Arias." Unfortunately, most of Dr. Pitman's answers are illegible. That being said, Dr. Pitman clearly noted claimant has experienced "mild to moderate" improvement since the start of treatment. Dr. Pitman also clearly estimated that claimant would reach maximum medical improvement 1-2 years after the date of injury. (Exhibit C) Claimant will be two years out from the date of injury on June 22, 2023.

Defendants notified claimant's counsel on January 6, 2023, that claimant's neurological care was going to be transferred from Dr. Pitman to a different neurologist in or around Hutchinson, Kansas. (Exhibit A) At the time, defendants had not located a new neurologist. (Id.) On January 25, 2023, defendants notified claimant that a new,

unnamed neurologist had agreed to see claimant at Hutchinson Neurology. Defendants then directed claimant to present to Hutchinson Neurology's walk-in clinic to receive a referral on or before February 3, 2023.

Claimant is dissatisfied with the transfer of care and desires to continue treating with Dr. Pitman. Claimant essentially asserts a transfer of care at this point in time would be an interference with the medical judgment of Dr. Pitman.

Ultimately, it appears defendants are challenging the medical judgment and recommendations of the authorized treating physician, Dr. Pitman. Without imposing claimant's burden onto defendants, it is notable that defendants' assertion that the care provided by Dr. Pitman has not been effective is not supported by the evidentiary record. At his December 28, 2022, deposition, claimant testified that his headaches, neck pain, and dizziness have improved since the date of injury. (Ex. 2, Depo. pp. 18-19) He further testified that his tinnitus is the only condition that has not improved over time. (Ex. 2, Depo. p. 22)

There is similarly no evidence that Dr. Pitman's recommendations to date have been unreasonable or inappropriate. There is no evidence that Dr. Pitman has failed to effectively communicate with defendants. There is no evidence that Dr. Pitman has been unresponsive or provided untimely opinions. Lastly, there is no evidence that Dr. Pitman is in any way unqualified to treat claimant's conditions.

After nearly 18 months of treatment, it is fair to say claimant has an established rapport with Dr. Pitman. Dr. Pitman is familiar with claimant and knows his medical history well. Transferring claimant's care at this point would require claimant to undergo an initial evaluation and establish care with an entirely new physician. This would create additional delay in claimant's treatment in order to obtain an alternate medical opinion that may or may not differ from the opinions and recommendations of Dr. Pitman.

In this case, I find that defendants' attempt to transfer care is an interference with the medical judgment of its own treating physician. Defendants' attempt to redirect claimant's care to Hutchinson Neurology, although generally permissible, would be unreasonable in this situation.

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 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).

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. Assman v. Blue Star Foods, declaratory ruling, File No. 866389 (May 18, 1988). The employer is not entitled to interpose its judgment in contravention of the recommendation of the authorized treating physician. The employer's failure to follow recommendations of an authorized physician is a failure to provide reasonable treatment pursuant to Iowa Code section 85.27. Boggs v. Cargill, Inc., File No. 1050396 (Alt. Care January 31, 1994).

Defendants are attempting to exercise their right to select the medical provider. Defendants seek to transfer care from the authorized neurologist, Dr. Pitman, to another, unnamed neurologist. Claimant resists the transfer of care and expresses a desire to continue with Dr. Pitman.

In this case, I found that it would be unreasonable to interfere with the established rapport between claimant and Dr. Pitman simply because claimant's progress has been slow by defendants' standards. Dr. Pitman has characterized claimant's progress as mild to moderate, and claimant has testified that his symptoms have improved since the date of injury. A transfer of care at this point in time would only serve to further delay claimant's progress.

It is not as though defendants transferred claimant's care following Dr. Pitman's initial evaluation. Rather, defendants are attempting to transfer care after nearly 18 months of treatment. Defendants did not produce any evidence to demonstrate that Dr. Pitman's treatment or treatment recommendations have been unreasonable or inappropriate to treat claimant's numerous conditions. Similarly, defendants have not produced the name of a new neurologist, let alone any evidence that the new neurologist has superior qualifications to justify a transfer of care. Defendants' attempt to transfer care is an interference with the medical judgment of its own treating

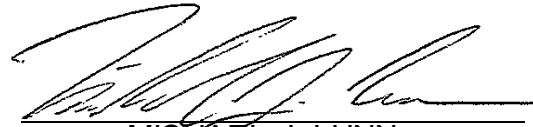
physician. Therefore, I conclude that claimant is entitled to an order directing that defendants provide ongoing medical treatment through Dr. Pitman.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's petition for alternate medical care is granted. Defendants are ordered to provide ongoing treatment through Dr. Pitman.

Signed and filed this 9th day of February, 2023.



MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Gary Nelson (via WCES)

Abigail Wenninghoff (via WCES)