BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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| RACHEL LOVAN,<br><br>Claimant,<br><br>vs.<br><br>BROADLAWNS MEDICAL CENTER,<br><br>Employer,<br><br>and<br><br>SAFETY NATIONAL CASUALTY CORPORATION,<br><br>Insurance Carrier,<br>Defendants. | FILED<br>MAY 15 2018<br>WORKERS COMPENSATION | File No. 5058435<br><br>ALTERNATE MEDICAL<br><br>CARE DECISION<br><br>HEAD NOTE NO: 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, Rachel Lovan. Claimant appeared telephonically and through her attorney, Richard Schmidt. Defendants appeared through their attorney, Valerie Landis.

The alternate medical care claim came on for hearing on May 14, 2018. 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 and 2 and Defendants' Exhibits A through D. Claimant provided testimony. No other witnesses were called. Counsel offered oral arguments to support their positions.

## ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of authorization of and treatment with Eugene Cherny, M.D.

## FINDINGS OF FACT

The undersigned, having considered all of the testimony and evidence in the record, finds:

This case originally proceeded to hearing in arbitration on March 20, 2018. At the arbitration hearing, defendants admitted claimant sustained an injury to her bilateral upper extremities but denied whether claimant's ongoing symptoms were causally related to her work injury. (Arbitration Decision, pages 2, 10) The denial was based primarily upon the causation opinion of Benjamin Paulson, M.D. (Arb. Dec., p. 10) Because claimant was unhappy with Dr. Paulson's causation opinion, claimant sought alternate medical care at the hearing. (Arb. Dec., p. 10) More specifically, claimant sought care with Dr. Cherny, her independent medical examination physician.

On March 30, 2018, Deputy Workers' Compensation Commissioner Erin Q. Pals issued an arbitration decision in which she concluded that claimant's ongoing upper extremity complaints were related to her work injury. (Arb. Dec., p. 12) With respect to claimant's request for alternate medical care at the arbitration hearing, the deputy decided as follows:

> Claimant is seeking alternate medical care for her upper extremities. Defendants have denied liability for Ms. Lovan's ongoing complaints. However, the undersigned has herein determined that her ongoing complaints are related to the work injury. As such, I find that defendants are responsible for the reasonable and necessary medical treatment related to the injury.

(Arb. Dec., p. 12)

Based on the arbitration decision, defendants now accept liability for claimant's ongoing bilateral upper extremity complaints for which claimant currently seeks alternate medical care. However, defendants argue that claimant's request for alternate medical care in the form of treatment with Dr. Cherny should be denied because the same request was previously denied in the arbitration decision, specifically in the above-stated paragraph.

Claimant, on the other hand, argues that the above-stated paragraph granted her request for alternate medical care with Dr. Cherny. Because it is claimant's position that the arbitration decision granted her request for alternate medical care in the form of treatment with Dr. Cherny, claimant argues that defendants' refusal to authorize care with Dr. Cherny is unreasonable. Thus, the initial inquiry to be decided is whether the arbitration decision granted claimant's request for alternate medical care.

The arbitration decision did not specifically grant claimant's request for alternate medical care in the form of treatment with Dr. Cherny. The deputy was aware of claimant's dissatisfaction with Dr. Paulson, noting claimant "no longer wants to treat with

Dr. Paulson," but the deputy found only that "defendants are responsible for the reasonable and necessary medical treatment related to the injury." (Arb. Dec., pp. 10, 12) Later in the decision, the deputy concluded that defendants "shall authorize reasonable and necessary treatment related to the work injury." (Arb. Dec., p. 14) The order similarly states that defendants must "provide reasonable and necessary medical treatment causally connected to the work injury." (Arb. Dec., p. 15) At no point in the decision, including the findings of fact, conclusions of law, or order, did the deputy indicate that claimant's request for treatment with Dr. Cherny was granted. It is therefore found that the arbitration decision did not grant claimant's request for alternate medical care.

Defendants, however, were ordered in the arbitration decision to provide reasonable and necessary medical treatment for claimant's ongoing bilateral upper extremity complaints. Since the arbitration decision was issued, defendants have authorized and offered treatment with Dr. Paulson. (Defendants' Exhibits A, B) Thus, the next inquiry to be decided is whether the offered treatment with Dr. Paulson is unreasonable.

Claimant testified she does not want to receive treatment with Dr. Paulson. (Claimant Testimony) Her dissatisfaction stems from Dr. Paulson's causation opinion. Claimant explained she believed Dr. Paulson was of the opinion that her complaints were work related based on comments he made during his examination, so she was surprised when she read otherwise in his report. (Cl. Testimony) Because of what claimant believes to be an about-face by Dr. Paulson, she testified she no longer trusts him. (Cl. Testimony)

According to claimant, it is not Dr. Paulson's treatment recommendations that are unreasonable. In fact, Dr. Paulson, like Dr. Cherny, previously recommended injections as a possible treatment option, and claimant's counsel conceded that injections are reasonable. Instead, it is claimant's position that the unreasonableness arises out of defendants' attempt to "have it both ways." Claimant takes issue with the fact that defendants have now authorized the same physician that provided the basis for their earlier denial of liability.

Through these arguments, claimant, while never specifically stating so, intimated that her distrust of Dr. Paulson rises to the level of a breakdown in the physician-patient relationship. While it is understandable that claimant is wary of Dr. Paulson because he rendered a causation opinion that was not beneficial to her legal claim, she offered no other evidence of a breakdown in the physician-patient relationship. Importantly, claimant's distrust has nothing to do with Dr. Paulson's actual evaluation of claimant or their interaction during the evaluation, and claimant acknowledges Dr. Paulson's treatment recommendations are reasonable. For these reasons, it is found that there has not been a sufficient breakdown in the physician-patient relationship to warrant an order of alternate medical care.

Claimant's preference to seek treatment with Dr. Cherny, a physician who provided her a more favorable opinion regarding causation, is appreciated. However,

because claimant acknowledges Dr. Paulson's treatment recommendations are reasonable and claimant failed to prove a breakdown in the physician-patient relationship, it is found that defendants' authorization of Dr. Paulson is reasonable.

## REASONING AND CONCLUSIONS OF LAW

Claimant makes the legal argument that defendants forever lost the right to control care when they denied liability at hearing for claimant's ongoing complaints. Claimant offers no legal authority for this proposition other than the general principle that employers lose the right to choose care upon denial of liability for the injury.

In Bell Bros. Heating and Air Conditioning v. Gwinn, the Iowa Supreme Court explained:

> [T]he employer has no right to choose the medical care when compensability is contested. . . . If the employee establishes the compensability of the injury at a contested case hearing, then the statutory duty of the employer to furnish medical care for compensable injuries emerges to support an award of reasonable medical care the employer should have furnished from the inception of the injury had compensability been acknowledged.

779 N.W.2d 193, 204 (Iowa 2010).

Presumably, therefore, once liability is established through an arbitration decision, the employer's burden to provide care also permits the employer to exercise its statutory right to select the necessary medical care (unless ordered otherwise), and the employee again bears the burden to establish that the care offered by the employer is not reasonable. Iowa Code section 85.27(4); Gwinn, 779 N.W.2d at 206 ("The statute only requires the employer to furnish reasonable medical care.").

Thus, claimant's contention that defendants lost the right to select the medical provider for the entirety of the claim, even after the arbitration decision established causation, is legally erroneous. As explained in the above findings of fact, the arbitration decision did not grant claimant's request for alternate medical care, meaning defendants were not ordered to authorize treatment with Dr. Cherny. Therefore, claimant must prove that the medical care offered by defendants, the authorization of Dr. Paulson, is unreasonable or not reasonably suited to treat her injury.

Defendants' obligation to provide medical care under Iowa Code section 85.27 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 turns on the question of reasonable necessity, not desirability." Id.

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 Rule of Appellate Procedure 14(f)(5); Long, 528 N.W.2d at 124.

As such, an application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. 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).

Determining whether care is reasonable under the statute is a question of fact. Long, 528 N.W.2d at 123.

In this case, claimant's only challenge to the reasonableness of the care offered by defendants is that she no longer trusts Dr. Paulson because of his causation opinion. This is interpreted to be an assertion of a breakdown in the physician-patient relationship.

This agency has held that a breakdown in the physician-patient relationship is a sufficient reason and basis to find offered medical care is no longer reasonable. Seibert v. State of Iowa, File No. 938579 (September 14, 1994); Nueone v. John Morrell & Co., File No. 1022976 (January 27, 1994); Williams v. High Rise Const., File No. 1025415 (February 24, 1993); Wallech v. FDL, File No. 1020245 (September 3, 1992) (aff'd Dist Ct June 21, 1993).

However, based on the above findings of fact, it is concluded that claimant failed to prove a breakdown in the physician-patient relationship. While claimant testified she distrusts Dr. Paulson based on his causation opinion, she also conceded her misgivings have nothing to do with his actual examination or his treatment recommendations. Defendants have made Dr. Paulson aware of this agency's findings regarding causation (Def. Ex. B), and Dr. Paulson has since agreed to provide treatment for claimant's ongoing upper extremity complaints. Thus, there should be no confusion on Dr. Paulson's part regarding his role as a treating physician going forward. Because the authorization of Dr. Paulson is found to be reasonable, claimant has not proven entitlement to alternate medical care.

Again, while claimant's desire to receive treatment with Dr. Cherny is understandable, and even reasonable, desirability of a certain course of action is not the legal standard utilized in an alternate medical care proceeding. Long, 528 N.W.2d at 124. To date, claimant has only been seen by Dr. Paulson once, so subsequent appointments and interactions with Dr. Paulson may paint a different picture than what is presented today. However, at this point, claimant has failed to prove a breakdown in the physician-patient relationship, and issues of Dr. Paulson's effectiveness or the extent of his treatment are not ripe for determination.

For these reasons, it is concluded that claimant failed to carry her burden of proof that the medical care offered by defendants is, at this time, unreasonable.

**ORDER**

THEREFORE IT IS ORDERED:

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

Signed and filed this 15th day of May, 2018.

STEPHANIE J. COPLEY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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