BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

VICKI COFFMAN,

Claimant,

vs.

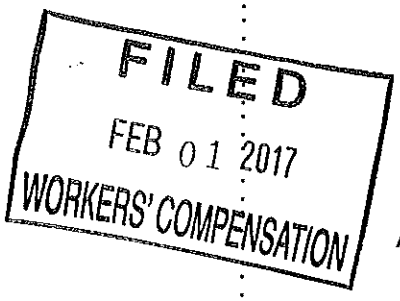
MAX I WALKER,

Employer,

and

EMC INSURANCE,

Insurance Carrier,
Defendants.



File No. 5063092

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. The expedited procedure of rule 876 IAC 4.48 is invoked by claimant, Vicki Coffman. Claimant appeared personally and through her attorney, John Kocourek. Defendants appeared through their attorney, Timothy Clarke.

The alternate medical care claim came before the undersigned for a telephonic hearing on February 1, 2017. 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 1-4, which include a total of 9 pages. The record also contains defendants' exhibits A through C, which contain 10 pages. All exhibits were received without objection. Claimant testified on her own behalf. No other witnesses were called to testify.

At the commencement of the hearing, claimant urged for an order directing defendants to provide alternate care for the right knee, left knee, and right elbow. Defendants declined to admit liability for the left knee and the right elbow. Defendants admitted liability for the right knee medial meniscus tear for which claimant seeks alternate medical care through Stephen R. Brown, M.D.

Prior to taking any testimony or hearing counsel's argument, the undersigned notified the parties that the agency lacks subject matter jurisdiction to hear and decide liability issues in the expedited alternate medical care proceeding. See R. R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 204 (Iowa 2003). Therefore, the parties were notified at the commencement of the hearing that the alternate medical care claims for the left knee and right elbow were being dismissed without prejudice.

ISSUE

The issue presented for resolution is whether the claimant is entitled to an order for alternate medical care that requires the defendants to authorize and pay for further treatment of claimant's right knee, including an arthroscopic surgical procedure to repair claimant's torn medial meniscus, through Stephen R. Brown, M.D.

FINDINGS OF FACT

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

Claimant, Vicki Coffman, sustained a right knee injury on March 16, 2016, as a result of and arising out of and in the course of her employment with Max I. Walker in Council Bluffs, Iowa. (Claimant's testimony; Ex. 1, p. 1) Ms. Coffman alleges that she sustained injuries to her right knee, left knee and right elbow as a result of a fall she sustained at work on March 16, 2016. Defendants decline to admit liability for the left knee and right elbow injuries asserted. However, defendants admit that the medial meniscus tear in claimant's right knee is compensable.

Following the March 16, 2016 fall, Ms. Coffman reported her injury to her supervisor. She was directed for medical care through Work Fit in Omaha, Nebraska. (Claimant's testimony; Ex. B) Work Fit physicians examined claimant and ordered an MRI of her right knee. (Ex. 2; Ex. B) On May 10, 2016, Thomas Dunbar, M.D., at Work Fit diagnosed claimant with a medial cartilage tear and referred her to an orthopaedic surgeon, Stephen R. Brown, M.D. (Ex. 3, pp. 2-3)

Dr. Brown evaluated Ms. Coffman on June 3, 2016 and diagnosed her with a complex medial meniscus tear in the right knee. Dr. Brown recommended surgical intervention to repair the meniscus tear. (Ex. 1)

Defendants scheduled Ms. Coffman to be evaluated by another orthopaedic surgeon, Kimberly A. Turman, M.D., on July 13, 2016. (Ex. A, pp. 5-6) Dr. Turman concurred with the diagnosis of a medial meniscus tear of the right knee. (Ex. A, p. 5) However, Dr. Turman recommended conservative care, including physical therapy, cortisone injections, and a knee brace, before considering surgical intervention. (Claimant's testimony; Ex. A, p. 6)

Defendants obtained a supplemental report from Dr. Turman on January 31, 2017. Dr. Turman opines that conservative care is a reasonable starting point, but notes that it is "not mandatory." (Ex. A, p. 2) Dr. Turman notes that conservative care

is "Reasonable, not mandatory and in part based on patient preference." (Ex. A, p. 3) Ms. Coffman clearly prefers to proceed with surgical intervention by Dr. Brown and not seek conservative care through Dr. Turman. (Claimant's testimony)

Ms. Coffman testified that she does not trust and does not feel safe submitting to medical care with Dr. Turman or any surgeon at Dr. Turman's office. Claimant's husband had prior back surgery through a different physician at Dr. Turman's office and did not have a positive result or experience. Claimant admits that she had an "attitude" when examined by Dr. Turman and testified that she does not want care through Dr. Turman or her office. (Claimant's testimony)

Review of Dr. Brown's surgical recommendation discloses that it is a reasonable treatment option in this case. At the time of his evaluation, Dr. Brown was an authorized medical provider on referral from Work Fit. Dr. Brown appears to have claimant's best interests at heart and Dr. Turman concedes that it is reasonable to proceed to surgical intervention if it is consistent with the patient's preference. Therefore, I specifically find Dr. Brown's recommendation for surgical intervention to be a reasonable medical option in this case.

Rather than accept the opinions and proceed with care as recommended by the authorized surgeon, Dr. Brown, defendants questioned his medical judgment and requested evaluation by Dr. Turman. Defendants offer no specific explanation or justification for their refusal to accept the opinions of their authorized surgeon in June 2016. Rather, defendants simply de-authorized Dr. Brown and offered care through Dr. Turman because defendants believed the care recommended by Dr. Turman to be more appropriate or more to their preference.

Dr. Turman's recommendations for conservative attempts before consideration of surgical intervention appear to be a reasonable medical approach. Typically, conservative measures are attempted before surgical intervention is attempted in similar situations. On the other hand, the relationship between claimant and Dr. Turman was strained from the very beginning. Claimant's distrust is likely irrational and not based on the actual qualifications and abilities possessed by Dr. Turman. Defendants had no legitimate basis or reason to question or decline the medical recommendations of Dr. Brown, an authorized surgeon in June 2016.

Dr. Turman likely would provide claimant competent and appropriate medical care if she treated Ms. Coffman. However, Ms. Coffman does not believe this to be true and, based on the results of her husband's prior care through the same clinic, Ms. Coffman is fearful of submitting to treatment through Dr. Turman or her clinic. While this fear may not be warranted, it clearly exists.

Under the specific circumstances of this case, I find that the care offered by defendants, while generally reasonable and appropriate in most cases, is not reasonable because of claimant's fears. It is clearly reasonable to proceed with surgical intervention through a previously authorized surgeon, Dr. Brown. It is not reasonable to

require claimant to submit to treatment with a surgeon that claimant is fearful of being treated by. Therefore, while I find the care offered by defendants would otherwise be reasonable, I find that it is unreasonable in this case and the result of defendants' refusal to simply honor the recommendations of the authorized surgeon in June 2016.

I find that the most reasonable and appropriate medical care in this case would be to order care be provided through Dr. Brown. Similarly, given claimant's fears of treatment through Dr. Turman, I find that the care offered by defendants is inferior to the care being recommended by Dr. Brown. I find that defendants had no legitimate basis in June 2016 to challenge or question the surgical recommendations offered by the authorized orthopaedic surgeon, Dr. Brown.

REASONING AND CONCLUSIONS OF LAW

Ms. Coffman's initial request of this agency sought to have an order entered directing defendants to provide care for her alleged left knee and right elbow injuries resulting from the March 16, 2016 work incident. In this case, defendants declined to admit liability for the left knee or the right elbow injury claims. "[i]f the employer contests the compensability of the injury following notice, the statutory responsibility of the employer to furnish care to the employee ... is not imposed until the issue of compensability is resolved in favor of the employee." Barnett, 670 N.W.2d at 204.

The Iowa Supreme Court has held:

> We emphasize that the commissioner's ability to decide the merits of a section 85.27(4) alternate medical care claim is limited to situations where the compensability of an injury is conceded, but the reasonableness of a particular course of treatment for the compensable injury is disputed.
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> . . . .
>
> Thus, the commissioner cannot decide the reasonableness of the alternate care claim without also necessarily deciding the ultimate disputed issue in the case: whether or not the medical condition Barnett was suffering at the time of the request was a work-related injury.
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> . . . .
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> Once an employer takes the position in response to a claim for alternate medical care that the care sought is for a noncompensatory injury, the employer cannot assert an authorization defense in response to a subsequent claim by the employee for the expenses of the alternate medical care.

R. R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 197-198 (Iowa 2003).

Given the denial of liability for the left knee and right elbow conditions, claimant's original notice and petition for alternate medical care must be dismissed with respect to those claims. Given their denial of liability for the left knee and right elbow conditions, defendants lose their right to control the medical care claimant seeks during their period of denial and the claimant is free to choose that care. Bell Bros. Heating v. Gwinn, 779 N.W.2d 193 (Iowa 2010).

As a result of the denial of liability for the left knee and right elbow conditions sought to be treated in this proceeding, claimant may obtain reasonable medical care from any provider for this treatment but at claimant's expense and seek reimbursement for such care using regular claim proceedings before this agency. Haack v. Von Hoffman Graphics, File No. 1268172 (App. July 31, 2002); Kindhart v. Fort Des Moines Hotel, I Iowa Industrial Comm'r Decisions No. 3, 611 (App. March 27, 1985). "[T]he employer has no right to choose the medical care when compensability is contested." Bell Bros. Heating v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010). Therefore, defendants are precluded from asserting an authorization defense as to any future treatment for the left knee and/or right elbow during their period of denial.

Defendants admitted liability for the right knee medial meniscus tear for which claimant seeks treatment, including the request for arthroscopic surgery to be provided by Dr. Brown. Given this admission of liability, claimant's request for alternate medical care of the right knee can be considered.

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).

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 1975).

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, I Iowa Industrial Commissioner Reports 207 (1981).

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).

Reasonable care includes care necessary to diagnose the condition and defendants are not entitled to interfere with the medical judgment of its own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening Decision June 17, 1986).

It was found at the hearing and is now concluded that Dr. Brown was an authorized medical provider at the time he evaluated claimant and rendered his surgical opinion. Defendants specifically selected Work Fit as the authorized medical provider. Work Fit made a formal referral to Dr. Brown on May 10, 2016. (Ex. 3, p . 3)

No further authorization was required by the defendants to make that referral effective. Rather, the Work Fit physician acted as an agent of defendants and made the necessary referral to Dr. Brown. Dr. Brown was clearly an authorized physician when he evaluated claimant on June 4, 2016. Pursuant to Iowa Code section 85.27(4), Dr. Brown remained an authorized physician until defendants notified claimant that Dr. Brown was no longer authorized.

Thereafter, on September 23, 2016, defendants provided written notification that Dr. Brown was not authorized. (Ex. C) This does not change Dr. Brown's status as an authorized provider prior to September 23, 2016, regardless of the content of the September 23, 2016 correspondence.

As an authorized physician, Dr. Brown recommended surgical intervention in June 2016. Given his status as an authorized surgeon at that time, no further authorization should have been required to proceed with surgery. However, due to defendants' attempts to secure another medical evaluation, surgery did not proceed.

Then, after receipt of Dr. Turman's opinions, defendants sought to transfer care to Dr. Turman and reject the opinions of the previously authorized surgeon, Dr. Brown. Permitting defendants to pick and choose between these opinions essentially permits defendants to determine how claimant should be treated and interferes with the professional judgment of Dr. Brown, who was an authorized surgeon at the time of rendering his opinion. But see Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988); Pote v. Mickow Corp., File No. 694639 (Review-Reopening Decision June 17, 1986).

Defendants' counter this argument, urging that the care currently being recommended is reasonable and appropriate. Defendants' urge that the proper standard is whether the care being offered is reasonable and assert that they are offering reasonable care, including conservative treatment options before considering surgical intervention. Indeed, the Iowa Supreme Court has stated that the proper standard in an alternate medical care proceeding is whether the employer-authorized care is reasonable and whether the care offered is inferior to or less extensive than the care sought by claimant. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997).

Ms. Coffman also offers testimony and argument that suggest there may have been a breakdown in the physician-patient relationship. Claimant certainly does not trust Dr. Turman or any other physician at Dr. Turman's clinic. Claimant's concern is perhaps irrational, but is based upon her husband's past experiences with the clinic. Obviously, a past interaction with a different physician does not mean that treatment with Dr. Turman would not provide adequate and appropriate medical care.

Dr. Turman's suggestions and recommendations for care do not appear to be unreasonable or inappropriate generally. On the other hand, I found that it would be unlikely that claimant would be able to set aside her fears, concerns, and preconceived notions about Dr. Turman and her medical clinic. Proceeding with care through a distrusted physician under these circumstances may not provide terribly beneficial results for either party. Therefore, I found the offered care to be inferior to the care recommended by Dr. Brown.

Ultimately, the explanation offered by Dr. Turman that the conservative care options being recommended are not mandatory and are subject to, in part, to patient preference, is the evidence that tips the balance in this case. (Ex. A, pp. 2-3) In this situation, claimant is adamantly opposed to obtaining treatment through Dr. Turman. The relationship between Dr. Turman and claimant is obviously not positive. The recommended medical treatment offered by Dr. Turman is not mandatory and is clearly contrary to the patient preference. Dr. Turman appears to suggest that proceeding directly to arthroscopic intervention is a reasonable medical choice.

Therefore, being mindful that both surgeons were authorized when rendering their opinions, the arthroscopic surgery recommended by Dr. Brown is consistent with patient preference and is clearly reasonable. The conservative care option

recommended by Dr. Turman, while reasonable in most circumstances, becomes unreasonable and inferior in this circumstance because it is not mandatory, because it is contrary to patient preference, and because it would have to be performed by a physician with whom claimant has no trust or relationship. Having found that the care offered through Dr. Turman is unreasonable and inferior only under the circumstances of this case, I found the care requested by claimant through Dr. Brown is a reasonable and superior option. Therefore, I conclude that claimant has established entitlement to an order for alternate medical care and specifically an order transferring care to Dr. Brown to perform the arthroscopic right knee surgery he has recommended.

ORDER

THEREFORE IT IS ORDERED:

With respect to the claims for treatment of the left knee and right elbow, claimant's original notice and petition for alternate medical care is hereby dismissed without prejudice.

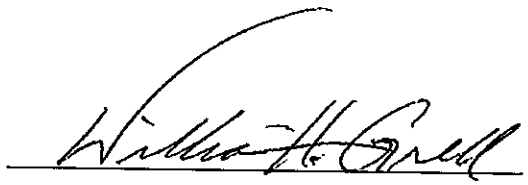
If claimant seeks to recover the charges incurred in obtaining care for the left knee and/or right elbow conditions for which defendants denied liability, defendants are barred from asserting lack of authorization as a defense to those charges during the period of their denial.

With respect to claimant's alleged right knee condition, the claimant's petition for alternate medical care is granted.

Medical care for claimant's right knee injury is transferred to Stephen R. Brown, M.D.

Defendants shall authorize and pay for the recommended arthroscopic surgical procedure on claimant's right knee through Dr. Brown, as well as any pre-operative care or testing needed and all necessary and reasonable post-surgical care.

Signed and filed this 1st day of February, 2017.



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