

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ADAM CHEESMAN,

Claimant,

vs.

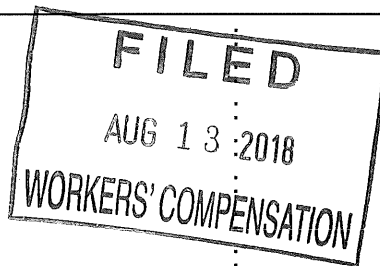
A.D. HUESING CORPORATION,

Employer,

and

CONTINENTAL WESTERN  
INSURANCE COMPANY,

Insurance Carrier,  
Defendants.



File No. 5064573

MEMORANDUM DECISION  
OF ALTERNATE MEDICAL CARE

On August 1, 2018, claimant filed an application for alternate medical care under Iowa Code section 85.27, invoking the provisions of rule 876 IAC 4.48. In his application, claimant requested surgery as recommended by Todd Ridenour, M.D. In their answer, defendants did not check the box on the form denying liability, but they indicated in an addendum to their answer that they are not yet in a position to admit or deny liability for the proposed surgery.

The alternate medical care claim came on for hearing on August 13, 2018. The proceedings were digitally recorded. Claimant appeared telephonically and through his attorney, Andrew Bribriesco. Defendants appeared through their attorney, Matt Phillips.

At the start of the hearing, before taking any testimony, counsel for defendants was asked by the undersigned to clarify whether defendants admit or deny liability for the condition for which Dr. Ridenour recommended surgery. Counsel explained the May 15, 2018 injury is an admitted injury, but defendants are waiting for a causation opinion from Michael Dolphin, D.O., before admitting liability for the proposed surgery. Defendants' counsel further explained Dr. Ridenour does not address causation for workers' compensation claims, which is why defendants are seeking the opinion of Dr. Dolphin.

Claimant's counsel was made aware of defendants' position but indicated to defendants' counsel that he wanted to proceed with his application for alternate medical care instead of dismissing his application and waiting for Dr. Dolphin's causation

opinion. It is claimant's position that causation has already been sufficiently addressed by a nurse practitioner and Sunil Bansal, M.D. I make no specific findings regarding causation, however, because an application for alternate medical care is not the proper vehicle for determining causation.

Before any benefits can be ordered, including medical benefits, compensability of the claim must be established, either by admission of liability or by adjudication. The summary provisions of Iowa Code section 85.27, as more particularly described in rule 876 IAC 4.48, are not designed to adjudicate disputed compensability of a claim.

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.

....

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.

....

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).

In the instant case, defendants take the position that they currently have insufficient information to admit or deny liability for the surgery for which claimant seeks. I find that for purposes of claimant's application for alternate medical care, this refusal to admit liability is tantamount to a denial of liability.

Given defendants' denial of liability, claimant's original notice and petition for alternate medical care must be dismissed. Given their denial of liability for the condition sought to be treated in the petition for alternate medical care, 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. Brewer-Strong v. HNI Corp., 913 N.W.2d 235 (Iowa 2018); Bell Bros. Heating v. Gwinn, 779 N.W.2d 193 (Iowa 2010).

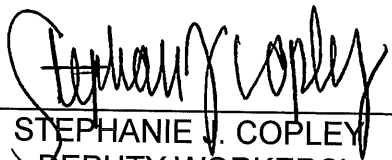
As a result of the denial of liability for the condition sought to be treated in this proceeding, claimant may obtain reasonable medical care from any provider for this treatment, but at claimant's expense, and claimant may seek reimbursement for such care using regular claim proceedings before this agency. Haack v. Von Hoffman Graphics, File No. 1268172 (App. July 31, 2002); Kindhart v. Fort Des Moines Hotel, 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 during their period of denial.

IT IS, THEREFORE, ORDERED:

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 condition 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.

Signed and filed this 13<sup>th</sup> day of August, 2018.

  
STEPHANIE J. COPLEY  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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