BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BRENDA GOMEZ-SOLIS, Claimant, vs. LIMITED BRANDS (d/b/a VICTORIA'S SECRET), Employer, and SAFETY NATIONAL CASUALTY CORP., Insurance Carrier, Defendants.	File No. 5059357.02 ALTERNATE MEDICAL CARE DECISION Head Note No.: 2701

On May 25, 2022, claimant filed an original notice and petition for alternate medical care under Iowa Code section 85.27, invoking the provisions of rule 876 IAC 4.48. On June 6, 2022, defendants filed an Answer accepting that claimant sustained an injury to her right knee, which arose out of and in the course of her employment on August 10, 2015.

This alternate medical care claim came on for hearing before the undersigned on June 8, 2022, at 9:00 a.m. At the beginning of the hearing, defendants clarified that they were accepting liability for an injury to the left knee. Defendants also accepted liability for the injury date of August 10, 2015, and liability for the condition sought to be treated. The proceedings were recorded digitally and constitute the official record of the hearing. By an order filed by the workers' compensation commissioner, this decision is designated final agency action. Any appeal would be a petition for judicial review under Iowa Code section 17A.19.

The record consists of Claimant's Exhibits 1 through 5, which include a total of 12 pages. Defendants waived any objection to claimant exceeding the exhibit page limitation. Ms. Gomez Solis was the only witness to provide testimony. Counsel for both parties provided argument.

ISSUE

The issue presented for resolution is whether claimant is entitled to alternate medical care. More specifically, claimant seeks an order compelling defendants to authorize medical treatment with Cedric Ortiguera, M.D., including a recommendation for surgical intervention.

FINDINGS OF FACT

Having considered all evidence and testimony in the record, the undersigned finds:

Claimant, Brenda Gomez Solis, sustained a work-related injury to her left knee on August 10, 2015. Defendants authorized medical care for the work injury through Scott Schemmel, M.D. and Matthew Bollier, M.D.

Dr. Schemmel performed a left knee arthroscopy with partial meniscal removal in 2015. Two years later, Dr. Bollier performed a lateral meniscal transplant in claimant's left knee. (See Exhibit 2, page 1) Following a period of recovery, Dr. Bollier placed claimant at maximum medical improvement (MMI) and released her from care on April 23, 2018. (Exhibit 1, page 2) Dr. Bollier's medical records provide that future medical care could include non-steroidal anti-inflammatory medications, physical therapy, and knee replacement surgery.

Ms. Gomez Solis recovered well from her surgeries and had minimal symptoms for several years. (See Ex. 2, p. 1) Then, in February 2022, claimant began experiencing "popping associated with brief but short period of lateral knee pain." (Ex. 2, p. 1) She did not immediately request additional medical care from defendants.

Having moved from Iowa to Georgia, claimant was in need of a new treating physician. According to claimant, several physicians in the Augusta, Georgia area declined to evaluate her left knee condition due to workers' compensation's involvement. As a result, claimant sought medical treatment through the Mayo Clinic in Jacksonville, Florida.

Cedric Ortiguera, M.D., first evaluated claimant on April 14, 2022. (Id.) Given claimant's symptoms, Dr. Ortiguera expressed his concern for recurrent lateral meniscal tearing and ordered an updated MRI of the left knee. (Ex. 2, p. 2)

After reviewing the MRI, Dr. Ortiguera determined claimant likely sustained a tear of the lateral meniscal allograft posterior root and discussed the treatment options available to claimant. (Ex. 2, p. 4) Dr. Ortiguera noted that claimant could continue with observation or, if she was bothered by the popping in her knee, she could undergo another arthroscopy with either partial meniscectomy versus meniscus repair. (Id.) Dr. Ortiguera opined that if claimant chose to take the surgical route, he would recommend removing the hardware from her previous osteotomy. (Id.)

Mark Taylor, M.D., performed an independent medical evaluation (IME) of claimant on April 25, 2022, at the request of claimant's attorney. (Ex. 3, p. 1) In his report, dated May 17, 2022, Dr. Taylor deferred to Dr. Ortiguera with respect to recommendations for further treatment. (Ex. 3, p. 2)

Claimant produced Dr. Ortiguera's medical records to defendants on or about May 6, 2022. On May 17, 2022, claimant produced Dr. Taylor's IME report and requested authorization to treat with Dr. Ortiguera. (Ex. 4, p. 1) Defendants' attorney responded to claimant's request on May 24, 2022, noting the updated medical records had been sent to the defendant insurer, and it was likely the same would be sent to Dr. Bollier for review. (Ex. 5, p. 1)

Claimant has expressed a desire to undergo the surgery recommended by Dr. Ortiguera. At hearing, claimant indicated that she would prefer to undergo surgery in the near future, before her workload increases significantly in the Fall. (Claimant's Testimony)

In their pre-hearing brief, defendants assert that they are "in the process of locating a qualified orthopedic physician geographically near to Claimant's current residence in Millen, Georgia (not in Jacksonville, Florida, more than 200 miles from her home) to evaluate her current complaints in relation to the 2015 injury under Iowa Code Section 85.39 and a provider to serve as an authorized provider under Iowa Code Section 85.27 should the requested care be found to be causally connected." (Emphasis added in defendants' brief)

Defendants note that they are not refusing to provide causally connected authorized care. Defendants are willing to do so; however, they assert they have not had reasonable opportunity to conduct the additional discovery necessary before securing an evaluation. Defendants further note that Dr. Ortiguera has not indicated the recommended surgery is immediately necessary.

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3).

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 & 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 or 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).

To establish a claim for alternative medical care, an employee must show that the medical care furnished by the employer is unreasonable. Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010).

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."

Claimant seeks an order directing defendants to authorize medical treatment through Dr. Ortiguera at the Mayo Clinic in Jacksonville, Florida, including surgical intervention. Claimant asserts defendants' failure to authorize Dr. Ortiguera and his recommendation for surgery is unreasonable.

Defendants argue that their actions upon receiving claimant's requests have been reasonable. Defendants further assert that they are not refusing to provide causally connected authorized care, and they have been diligently searching for a physician in claimant's geographical area.

It is difficult to attribute any delay in claimant's medical treatment to defendants at this time. The evidentiary record indicates that claimant did not seek medical treatment for her left knee between April 2018 and April 2022. Then, after not receiving a request for medical treatment in four years, defendants were notified that claimant had been presenting for unauthorized left knee treatment, that an orthopedic surgeon had discussed surgery as a possible treatment option, and that claimant had already obtained an IME report regarding her recent medical treatment.

Once notified of claimant's request for medical treatment, defendants initiated a good faith effort to investigate claimant's complaints and secure a new treating

physician for claimant's left knee condition. Defendants have the right to direct care under Iowa Code section 85.27 and an obligation to investigate claimant's request for medical treatment. Defendants must be permitted a reasonable amount of time to respond, particularly in this situation. Any disruption in claimant's care is largely due to the fact claimant sought additional medical treatment on her own without first requesting the same from defendants. It is also due, in part, to her move from Iowa to Georgia.

Defendants are not denying liability at this point in time. They are willing to authorize care through a provider of their choosing who is geographically close to claimant. I find defendants' desire to locate a physician geographically close to claimant is reasonable. I further find that the claimant's petition for alternate medical care does not state sufficient grounds at this time for the relief requested. Defendants maintain the right to identify, select, and authorize a provider of their choosing, provided they do so timely.

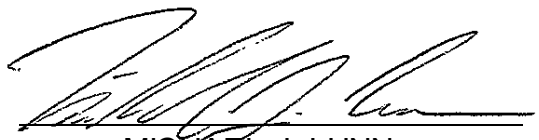
ORDER

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

Defendants retain the right to select the authorized medical provider. Within thirty (30) days of the entry of this order, defendants shall identify a physician of their choosing and schedule an appointment for claimant to be evaluated at the earliest reasonable opportunity by said physician.

Failure to timely comply with this order may result in defendants losing the right to select the authorized medical provider moving forward.

Signed and filed this 10th day of June, 2022.



MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Joseph Powell (via WCES)

Stephanie Techau (via WCES)