

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

REBECCA MASTROFSKI,

Claimant,

vs.

CASEY'S GENERAL STORE,

Employer,

and

EMCASCO INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 21700462.02

ALTERNATE MEDICAL CARE
DECISION

Head Note No: 2701

This is a contested case proceeding under Iowa Code chapters 85 and 17A. The expedited procedures of rule 876 IAC 4.48, the "alternate medical care" rule, are invoked by claimant, Rebecca Mastrofski.

This alternate medical care claim came on for hearing on July 23, 2021. 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 by petition for judicial review under Iowa Code section 17A.19.

The record in this case consists of Claimant's Exhibits 1, Defendants' Exhibits A-E, and the testimony of claimant and her friend, Patricia Miles.

ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of a referral to Zachary Ries, M.D.

FINDINGS OF FACT

Defendants accept liability for a work-related injury occurring on October 3, 2020.

On June 3, 2021, claimant was evaluated by William Goble, D.O. Claimant was assessed as having a neck strain, shoulder strain and upper extremity radiculopathy. Claimant requested to be seen by Zachary Ries, M.D. Dr. Ries is an orthopedic surgeon specializing in spinal injuries and disorders. Dr. Goble indicated he would discuss the referral with claimant's physical therapist. (Exhibit A)

Patricia Miles testified she is a close friend of claimant and was at the June 3, 2021 appointment with claimant. Claimant said Ms. Miles suggested to Dr. Goble claimant see a spine specialist.

Claimant testified she had done "research" into both Dr. Ries and David Boarini, M.D. She said she heard very positive things about Dr. Ries. She said she heard and read Dr. Boarini had poor communication skills, but treatment with Dr. Boarini had good results. She said she wanted to see Dr. Ries.

Both claimant and Ms. Miles testified that, Dr. Goble agreed and said he would try to get a referral from the insurer for Dr. Ries.

Claimant said she had difficulty with symptoms after that visit. As a result, claimant was again evaluated by Dr. Goble on June 14, 2021. Claimant's counsel indicated he has not been able to obtain treatment records for that visit.

Claimant and Ms. Miles both testified that, at the June 14, 2021 visit, they asked about the referral to Dr. Ries. Both claimant and Ms. Miles testified Dr. Goble told them he had put in a referral for Dr. Ries.

In a June 21, 2021 letter, claimant's counsel inquired about defendants' authorization of a referral to Dr. Ries. (Ex. 1)

In a June 23, 2021 email, defendants' counsel indicated claimant was approved for additional physical therapy and was referred to David Boarini, M.D. Dr. Boarini is a neurosurgeon. (Ex. B)

In a June 23, 2021 letter, claimant's counsel was informed claimant had an appointment with Dr. Boarini on July 12, 2021. (Ex. C)

Claimant testified she never received notice of the appointment with Dr. Boarini because the email function on her phone was not operating correctly.

In a July 12, 2021 letter, defendants' counsel wrote claimant's counsel indicating claimant failed to show at her July 12, 2021 appointment with Dr. Boarini. Another appointment was scheduled with Dr. Boarini on July 26, 2021. (Ex. D)

On July 16, 2021, claimant returned to Dr. Goble. Claimant was assessed as having a neck strain and radiculopathy. Claimant was told she had an appointment with Dr. Boarini. (Ex. E)

Claimant testified that Dr. Goble appeared irritated at the July 16, 2021 visit and complained about having to deal with the insurance company on his day off. She said Dr. Goble initially said he never agreed to a referral to Dr. Ries. Claimant said Dr. Goble later said he made the referral, but the insurer wanted claimant to see Dr. Boarini. Claimant said Dr. Goble was angry at her for not being at the appointment with Dr. Boarini.

Claimant testified she will go to the July 26, 2021 appointment with Dr. Boarini. She said she wants to be referred to Dr. Ries.

CONCLUSION 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)(e).

Iowa Code section 85.27(4) provides, in relevant part:

For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. . . . The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

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, File No. 866389 (Declaratory Ruling, May 19, 1988).

The record indicates that on June 3, 2021, claimant and her friend suggested to Dr. Goble that claimant be seen by Dr. Ries. They both testified Dr. Goble said he would make that referral.

The record in evidence does not support that testimony. The record in evidence indicates Dr. Goble noted he would consider the referral after talking to the physical therapist. It also notes Dr. Goble spoke with the insurer. The record in evidence does not say Dr. Goble recommended claimant to see Dr. Ries. (Ex. A)

Claimant and her friend both testified Dr. Goble told them, on June 14, 2021, he made a referral for Dr. Ries. There is no record in evidence for the June 14, 2021 visit.

Claimant missed an appointment with Dr. Boarini. Claimant testified she did not miss the appointment on purpose, but did not get communication of the appointment due to cell phone problems. I believe claimant's testimony regarding accidentally missing the appointment. However, it is the responsibility of claimant and her counsel to ensure claimant receives communication about treatment.

Claimant testified that when she returned to Dr. Goble on July 16, 2021, Dr. Goble first said he did not make a referral for Dr. Ries. She testified Dr. Goble recanted that statement, and later said he did make the referral but the insurer asked that claimant be seen by Dr. Boarini.

The record in evidence again does not indicate Dr. Goble made a referral to Dr. Ries. Even accepting claimant's heresy conversation with Dr. Goble, it is uncertain if Dr. Goble ever made a referral for Dr. Ries.

I do not doubt the testimony of claimant and Ms. Miles. However, the records in evidence indicate Dr. Goble never made a referral for Dr. Ries. Even accepting the testimony of claimant and Ms. Miles, the record is uncertain if Dr. Goble ever made a referral for Dr. Ries, or merely told claimant he did to placate her. Given this record, claimant has failed to carry her burden of proof Dr. Goble made a referral for Dr. Ries, but that referral was denied by the insurer.

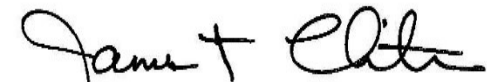
There is no record claimant communicated dissatisfaction with her care until she filed her alternate medical care petition. The record indicates claimant's dissatisfaction with Dr. Boarini is she has heard Dr. Boarini has poor communication skills. Given this record, claimant has failed to carry her burden of proof she is entitled to alternate medical care.

ORDER

THEREFORE IT IS ORDERED:

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

Signed and filed this 23rd day of July, 2021.



JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Christopher Spaulding (via WCES)

Gregory Taylor (via WCES)

Stephen Brown (via WCES)