

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DANIEL KVIDAHL,

Claimant,

vs.

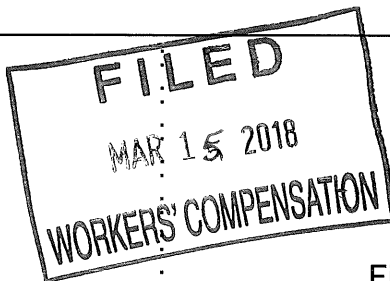
SKILLED TRADES, INC.,

Employer,

and

ZURICH AMERICAN INS. CO.,

Insurance Carrier,
Defendants.



File No. 5063647

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, Daniel Kvidahl. Claimant appeared personally along with through his wife and guardian, Christina Kvidahl and through attorney, Bill Nicholson. Defendants appeared through their attorney, Bill Lamson.

The alternate medical care claim came on for hearing on March 15, 2018. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's 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 parties stipulated to many of the facts in this case. The record consists of these stipulations as well as Claimant's Exhibits 1 through 4 and Defendants' Exhibit A, which were received without objection, as well as the sworn testimony of Christina Kvidahl. The defendants do not dispute liability for claimant's January 17, 2017, work injury.

ISSUE

The issue presented for resolution is whether the defendants have interfered with the claimant's medical care through their failure to timely pay medical bills, and if so, what is the remedy.

FINDINGS OF FACT

Daniel Kvidahl sustained a traumatic brain injury as the result of an injury which arose out of and in the course of his employment on January 17, 2017. There was not much discussion of the severity of this injury at hearing, however, it is severe enough that claimant's spouse, Christina Kvidahl has been named his guardian and conservator.

At some point in 2017, Sunny Kim, M.D., was authorized by the defendants to provide treatment for Mr. Kvidahl. The treatment provided for Mr. Kvidahl is best described as hyperbaric oxygen therapy (HBOT). The treatment began and at some point, Dr. Kim's office ceased treatment due to nonpayment of his bills. On January 31, 2018, claimant's counsel placed defendants on notice of the cessation of treatment. (Claimant's Exhibit 3) On February 5, 2018, defense counsel wrote to claimant's counsel indicating his understanding that there had been some disputes which were now resolved.

Claimant's counsel wrote again the following day, indicating "Dr. Kim continues to decline to schedule any care for Mr. Kvidahl until appropriate payment is received." (Cl. Ex. 3, p. 3) He followed up again on February 19, 2018. On March 1, 2018, Ms. Kvidahl prepared an affidavit. Therein, she testified that Dr. Kim's office was refusing treatment until the bills were paid in advance.

At hearing, defense counsel made an opening statement, which is interpreted as a professional statement that Dr. Kim's office is not particularly experienced in dealing with insurance and this has been a source of problems in paying the bills. It was his understanding from speaking with a representative of Dr. Kim's office that an agreement had been reached for payment recently. I have no doubt defense counsel was acting in good faith to resolve the medical care issues in order to ensure Mr. Kvidahl's care could be resumed. Ms. Kvidahl testified that she called Dr. Kim's office this morning and spoke with a different representative who stated the bill was still not paid and therefore, he could not schedule an appointment.

REASONING AND CONCLUSIONS OF LAW

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. Iowa Code Section 85.27 (2013).

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See 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. Id. 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 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 statutory right is to select the providers of care and the employer may consider cost and other pertinent factors when exercising its choice. Long, at 124. An employer (typically) is not a licensed health care provider and does not possess medical expertise. Accordingly, an employer does not have the right to control the methods the providers choose to evaluate, diagnose and treat the injured employee. An employer is not entitled to control a licensed health care provider's exercise of professional judgment. Assman v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988). An employer's failure to follow recommendations of an authorized physician in matters of treatment is commonly a failure to provide reasonable treatment. Boggs v. Cargill, Inc., File No. 1050396 (Alt. Care Dec. January 31, 1994).

Based upon the record before me, I have no doubt that defense counsel was making reasonable and appropriate efforts to resolve the billing issues with Dr. Kim's office. Nevertheless, Mr. Kvidahl's treatment has been cut off. I have no idea in this record exactly how damaging this is for Mr. Kvidahl, but I presume it is not good. He has a right to this treatment by the authorized physician and the delay in providing the treatment to him is unreasonable. If Mr. Kvidahl had alternate care arranged who would see him immediately, I would award it. For their part, Mr. and Mrs. Kvidahl are simply asking that the bill be paid up to date so he can resume treatment.

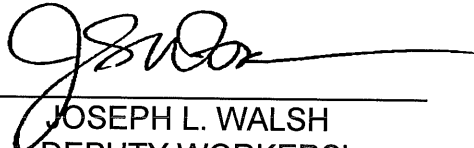
ORDER

THEREFORE IT IS ORDERED:

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

defendants shall immediately take all necessary steps to assure HBOT treatments with Dr. Kim are resumed.

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



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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