

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LISA KRUSER,

Claimant,

vs.

AREA RESIDENTIAL CARE,

Employer,

and

WEST BEND MUTUAL INSURANCE
COMPANY,

Insurance Carrier,
Defendants.

FILED
AUG 06 2019
WORKERS' COMPENSATION

File No. 5061914

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, Lisa Kruser.

This alternate medical care claim came on for hearing on August 6, 2019. 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 in this case consists of Claimant's Exhibit 1, and the testimony of claimant.

ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of a second opinion for treatment from Scott Owen, M.D. at the University of Iowa Hospitals and Clinics (UIHC).

FINDING OF FACTS

Claimant was punched in the face by a resident on May 22, 2016 that broke her nose.

Claimant testified she had her first nasal surgery with Roger Ott, M.D. in Dubuque, Iowa. Claimant said the surgery was not successful. She said defendants then transferred her care to the University of Wisconsin Hospitals and Clinics (UWHC).

On January 26, 2017 claimant was evaluated by Benjamin Marcus, M.D. at the UWHC. Claimant had open septorhinoplasty surgery. Claimant developed a nasal infection after surgery. Claimant had received IV and other antibiotic treatment for the infection. Claimant had scarring from the infection that limited the nasal airway. A debridement of the scarring was discussed and chosen as a treatment option. (Exhibit 1, pages 1-2)

Claimant testified she was hospitalized for approximately four days for her nasal infection and that she was given IV antibiotics. She testified that, at one point, because of the severity of the infection, amputation of her nose was discussed.

Claimant was evaluated by Kari Doefler, RN at the UWHC. Claimant had surgery to remove scar tissue. Claimant had improved but still had some occlusion on the right. Claimant had a lesion on her nose that was removed and treated. (Ex. 1, p. 3)

On April 27, 2018 claimant requested a referral for a therapist. Claimant had nightmares and believed she had PTSD due to surgeries and the nose fracture. (Ex. 1, p. 8)

Claimant returned to Dr. Marcus on May 7, 2018. Claimant's right nostril still had scar tissue in the nasal valve. Debridement was discussed and chosen as a treatment option. (Ex. 1, p. 4)

Claimant was seen by Stephanie Faucher, APNP on July 13, 2018. Claimant had the right side of her nose splinted. Records indicate claimant's most recent surgery had improved her condition. (Ex. 1, p. 5)

On August 24, 2018, claimant returned to Dr. Marcus. Claimant had increased nasal valve stenosis on the right. Another re-excision of the scar tissue and grafting was recommended. Dr. Marcus noted the potential failure for future grafting. (Ex. 1, p. 6)

Claimant testified that, at her last exam with Dr. Marcus, Dr. Marcus told her the most recent surgery was a failure and staff would have to begin again with another grafting surgery.

On April 11, 2019 claimant was evaluated by Timothy McCulloch, M.D. at the UWHC for a second opinion regarding management of the scarring in the right nasal passage. Several different types of grafting and potential complications were discussed. Dr. McCulloch noted once circular scar bands occur in the nasal cavity, new tissue would likely need to be introduced. The potential of fascial scarring and further infection was discussed. Claimant was told further grafting externally would be

noticeable on her face. Benefits and risks of different procedures were discussed. (Ex. 1, p. 7)

In a May 30, 2019 letter, claimant's counsel requested that, given the minimal success and multiple infections claimant incurred with surgeries at the UWHA with Dr. Marcus, claimant requested a second opinion with Dr. Owen at the University of Iowa Hospitals and Clinics. (Ex. 1, p. 9)

Claimant testified that on or about August 1, 2019 she was evaluated by a Dr. White (no first name given). She said Dr. White is retired.

In a professional statement, defendants' counsel indicated Dr. White's evaluation was for a second opinion. Defendants' counsel indicated records from Dr. White were not available at the time of hearing.

Claimant testified she wants to see Dr. Owen for a second opinion. She said given the lack of success and the infections from surgery, she has no confidence in any further care at the UWHC.

CONCLUSION OF LAW

The party who would suffer loss if an issue were not established ordinarily has the burden of proving that issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.14(6)(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).

Alternate care includes alternate physicians when there is a breakdown in a physician/patient relationship. Seibert v. State of Iowa, File No. 938579 (September 14, 1994); Nueone v. John Morrell & Co., File No. 1022976 (January 27, 1994); Williams v. High Rise Const., File No. 1025415 (February 24, 1993); Wallech v. FDL, File No. 1020245 (September 3, 1992) (aff'd Dist Ct June 21, 1993).

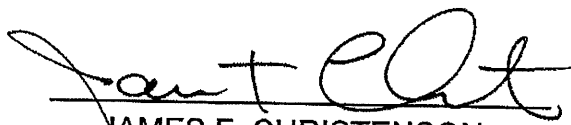
Claimant sustained a fracture to her nose over three years ago. Claimant has had four nasal surgeries. She was hospitalized for approximately four days for a nasal infection. Claimant's un rebutted testimony is the infection was so severe amputation of her nose was discussed as a treatment option for the infection. After all this treatment, claimant still has an occluded nasal passage. Claimant's un rebutted testimony is her right nasal passage has collapsed. Claimant credibly testified that, given this record, she has no confidence in further treatment of the UWHC, or with Drs. Marcus or McCulloch.

Given this record, and the facts as detailed above, claimant has carried her burden of proof that the care she has received is not reasonably suited to treat the injury, and the care that has been offered is unduly inconvenient to her. She has also carried her burden of proof there is a breakdown in the physician/patient relationship. As a result, claimant has carried 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 granted. Defendants are ordered to authorize claimant to be seen by Dr. Scott Owen at the UIHC.

Signed and filed this 6th day of August, 2019.


JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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