BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SHEILA MOORE,

Claimant,

vs.

STRAWBERRY POINT LUTHERAN HOME COMMUNITY,

Employer,

and

IOWA LONG-TERM CARE RISK MANAGEMENT ASSN.,

Insurance Carrier,
Defendants.



File No. 5061417

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, Sheila Moore. Claimant appeared through her attorney, Mr. Andy Giller, appearing in place of Mr. Nate Willems. Defendants appeared through their attorney, Ms. Joni Ploeger.

The petition for alternate medical care came on for hearing on April 6, 2018. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's February 16, 2015 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 record contains claimant's exhibit 1, and defendants' exhibits A - D. No witnesses testified. Counsel provided argument.

**ISSUE**

Whether the medical treatment provided by defendants to claimant for her cervical spine injury is unreasonable.

Specifically, claimant seeks an order compelling defendants to authorize an evaluation with Dr. Abernathey and the disqualification of the nurse case manager and Dr. Kennedy from providing further participation in claimant's medical care.

## FINDINGS OF FACT

The undersigned having considered all of the evidence in the record finds:

Claimant sustained an accepted work injury on May 24, 2017, involving her cervical spine.

On December 7, 2017, claimant's authorized treating provider, Timothy Miller, M.D., examined claimant and stated: "I will speak with Dr. Kennedy regarding MRI of her neck following this I would recommend referral to a neurosurgeon perhaps Dr. Abernathy [sic] . . . ." (Ex. 1, p. 7) He also stated that considering claimant's poor response to steroid treatment that skipping steroid treatment would be reasonable and "[i]f [the] patient is not surgical I would suggest she is a [sic] currently at maximal medical improvement and could be rated . . . ." (Id.)

On December 8, 2017, Erin Kennedy, M.D., noted that Dr. Miller elected to not do an epidural steroid injection. Dr. Kennedy stated that: "I recommend that an IME with an orthopedist or neurosurgeon be arranged to facilitate any residual treatment options or case closure." (Ex. 1, p. 2)

On January 25, 2018, claimant was sent for an independent medical evaluation (IME) by defendants to David Field, M.D., an orthopedic physician. (Ex. C, p. 1) Dr. Field recommended a cervical MRI. (Id.)

The cervical MRI was completed on January 30, 2018. (Ex. D, p. 1) The MRI showed that: "the pattern of degenerative changes suggest probable irritation of the right C6 nerve root and possible irritation of the bilateral C7 nerve roots." (Id.) Dr. Field indicated in response to a letter from defense counsel that the MRI, in his opinion, showed nothing out of the ordinary. (Ex. C, p. 2)

On February 1, 2018, Dr. Miller stated that claimant would be reviewing the results of the MRI with Dr. Kennedy. (Ex. A, p. 2) He also stated that it did not appear that injections would be helpful. Dr. Miller recommended that claimant receive pain medication, proceed to a functional capacity evaluation (FCE), and an eventual termination of medication. (Ex. A, p. 2) It does not appear that after the cervical MRI, Dr. Miller continued to recommend a neurosurgical evaluation. This is supported by the fact that an FCE is not typically recommended if a specialist evaluation and possible treatment is also being considered.

On February 5, 2018, claimant met with Dr. Kennedy to review the results of the MRI. (Ex. 1, pp. 3-5) Dr. Kennedy noted that the possible C6 and C7 nerve root irritation was "consistent with Ms. Moore's reported distribution of symptoms," and that it was reasonable to conclude that the mechanism of injury irritated the nerve. (Ex. 1, p.

3) Dr. Kennedy concluded claimant is not a candidate for an epidural steroid injection (ESI). She has maximized physical therapy and no additional physical therapy is recommended. She is not a surgical candidate. Therefore, after reviewing the cervical MRI, Dr. Kennedy does not appear to continue to recommend a neurosurgical evaluation. (Ex. 1, p. 4) She confirmed the same in response to a letter of inquiry from defense counsel. (Ex. B, p. 2)

What lies at the heart of this petition for alternate care is a document dated February 2, 2018, which states that: "Ruth Ann will push Dr. Kennedy to not refer Sheila to Dr. Abernathy [sic] as so far all the doctors have indicated she is not surgical. If she is referred to Dr. Abernathy, [sic] the process will be longer since he will likely require chiropractic, injections, etc. prior to committing to surgery." (Ex. 1, p. 1) It is understood by the undersigned that Ruth Ann is the nurse case manager involved in this matter.

I note that there was no testimony from claimant alleging a breakdown in her relationship with any medical provider.

## 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. 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 14(f)(5); Bell Bros. Heating 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. 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). In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997), the court approvingly quoted Bowles v. Los Lunas Schools, 109 N.M. 100, 781 P.2d 1178 (App. 1989):

> [T]he words "reasonable" and "adequate" appear to describe the same standard.
>
> [The New Mexico rule] requires the employer to provide a certain standard of care and excuses the employer from any obligation to provide other services only if that standard is met. We construe the terms "reasonable" and "adequate" as describing care that is both appropriate to the injury and sufficient to bring the worker to maximum recovery.

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. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988).

Reasonable care includes care necessary to diagnose the condition, and defendants are not entitled to interfere with the medical judgment of its own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening, June 17, 1986).

It is entirely understandable that claimant would be rightly concerned if a nurse case manager is "pushing" a doctor to reach a particular predetermined conclusion. When a nurse case manager takes up the role of an advocate for the defense, their credibility is significantly eroded.

However, I must note that in this particular case, the document in question is unsigned and its author is unknown. It is also a statement "about" the nurse case manager, not a statement "from" the nurse case manager. It is a statement about a possible "future" event, not a record of a "past" event. It cannot be concluded from this single document whether or not the alleged behavior actually occurred.

Also, upon review of records of Dr. Kennedy's treatment and her opinions, I do not see any obvious indicia of improper influence from, or reliance upon, the nurse case manager. Rather, Dr. Kennedy's opinions appear to be essentially consistent with Dr. Miller's opinions concerning post-cervical MRI recommendations, which do not include a neurosurgical evaluation. I also note that Dr. Kennedy's original recommendation was for an evaluation with either an orthopedist or a neurosurgeon and that claimant was seen by Dr. Field, an orthopedist, in response to this recommendation. Dr. Kennedy confirmed to defense counsel in response to a letter of inquiry that Dr. Field fulfilled her recommendation for claimant to be seen by a specialist and that further referral at this time is not needed. (Ex. B, p. 2)

Although the document regarding the nurse case manager is disconcerting, I cannot say from the evidence presented that the medical care that claimant is presently receiving is unreasonable. I also note that there is presently no current recommendation for a neurosurgical evaluation post-cervical MRI. Also, and for the same reasons I decline to issue an order removing Dr. Kennedy or the nurse case manager from this case.

However, I encourage defendants to take heed that given the concern raised by claimant and the note indicating the possibility that the nurse case manager may act as an advocate for the defendants, her credibility will likely be significantly scrutinized by the presiding deputy at an arbitration hearing. The nurse case manager and defendants are also reminded of the "strict ethical implications for the nurse as to her relationship with the employee," and her duties and obligations because "[n]urse case managers are foremost nurses and therefore have a nurse-patient relationship with an injured employee for whom they are charged with providing care." Winn v. Sunopta Food Ingredients, File No. 5031718 (App. December 12, 2012)

I conclude that claimant has failed to carry her burden of proof that she is entitled to alternate care.

**ORDER**

IT IS THEREFORE ORDERED that claimant's petition for alternate care is denied.

Signed and filed this 9th day of April, 2018.

TOBY J. GORDON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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