

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RAMONA RYAN,

Claimant,

vs.

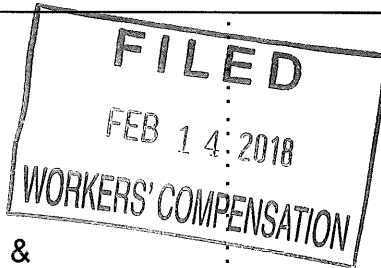
TURKEY CREEK LODGE &
RV PARK, LLC,

Employer,

and

MARKEL INSURANCE COMPANY,

Insurance Carrier,
Defendants.



File No. 5061281

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, Ramona Ryan. Claimant appeared personally and through her attorney, Erik Bair. Defendants appeared through their attorney, L. Tyler Laflin.

The alternate medical care claim came on for hearing on February 14, 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 record consists of the testimony of the claimant, claimant's exhibits 1 through 2, and defendants' exhibits A through C, which were received without objection. The defendants filed an answer and confirmed at the commencement of hearing that they do not dispute liability for claimant's January 16, 2017, work injury.

ISSUE

The issue presented for resolution is whether the claimant is entitled to a referral to a neurosurgeon made by her authorized treating physician.

FINDINGS OF FACT

The claimant sustained an injury to her back on January 16, 2017, while working for the employer in this case. She had some neck pain, but it appears (in this record)

most of the treatment has been lower in her spine (thoracic and lumbar). She was initially treated by Michael Longley, M.D., at Nebraska Spine + Pain Center. (Defendants' Exhibit C) Some type of diagnostic imaging test was performed a few days after the injury on January 19, 2017. The report demonstrated the following:

Vertebral bodies are normal in stature and alignment. Intervertebral disc spaces are maintained. There is no fracture, subluxation, or destructive lesion. There is C6-7 right facet hypertrophy. The neural foramen remain patent bilaterally. The paravertebral soft tissues and pulmonary spaces are unremarkable.

(Ex. B)

In March 2017, Dr. Longley made no diagnosis in claimant's cervical spine. (Def. Ex. C, p. 5) He diagnosed a fracture in the thoracic spine and lumbago, as well as some preexisting conditions. (Def. Ex. C, p. 5)

In approximately May 2017, claimant moved to Mauriceville, Texas to be closer to her family. The defendants directed her care and she has been treated by Michael Kaldis, M.D., in Houston. Claimant testified it is an hour and forty-five minute drive from her home in Mauriceville to see Dr. Kaldis. Her husband drives and she testified the travel is difficult.

On October 31, 2017, Dr. Kaldis referred claimant to see a neurosurgeon in Houston, John Berry, M.D. (Cl. Ex. 1) The defendants have refused to authorize this visit. In January 2018, a claims examiner for the insurance carrier specifically denied this referral stating that she would fly Ms. Ryan back to Nebraska for evaluation with Dr. Longley. (Def. Ex. A, p. 1) At hearing, defendants offered to pay for the transportation, including a direct flight from Houston to Omaha, which would theoretically be shorter than her round-trip drive from Mauriceville to Houston.

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. Assmann 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 January 31, 1994).

When a designated physician refers a patient to another physician, that physician acts as the defendant employer's agent. Permission for the referral from defendant is not necessary. Kittrell v. Allen Memorial Hospital, Thirty-fourth Biennial Report of the Industrial Commissioner, 164 (Arb. November 1, 1979) (aff'd by industrial commissioner). See also Limoges v. Meier Auto Salvage, I Iowa Industrial Commissioner Reports 207 (1981).

I conclude that it is unreasonable for the defendants to switch the care back to a Nebraska physician at this time. The defendants have taken the position that claimant should be evaluated by Dr. Longley in Nebraska, instead of by the physician recommended by their authorized treating physician in Houston. The defendants provide no basis for this, and instead, simply state that this is reasonable care under the circumstances. I disagree.

The defendants could seek the medical opinions they desire from their authorized physician, Dr. Kaldis. Dr. Kaldis made the referral in October 2017. Based upon the record before me, the defendants have taken no steps to offer any treatment until claimant's counsel specifically requested the care in January 2018.

The defendants offered a number of arguments about the reasonableness of bringing claimant back to Iowa for evaluation by Dr. Longley. It may be reasonable to require her to come back to Iowa/Nebraska for an independent medical evaluation (although I am not specifically ruling on that issue). It is not reasonable, however, for the claimant to have to wait for this to simply have treatment.

Defendants emphasized the amount of driving time claimant has to get to her appointments with Dr. Kaldis (1 hour and 45 minutes each way). Claimant testified that this trip causes her great discomfort. She testified she is "down" after she makes such a trek. Defendants even pointed out that there are direct flights to Omaha, which are shorter than her round-trip drives. The reality is, however, the claimant would probably

have to drive to Houston to fly directly back to Omaha. It is possible she could drive to Beaumont, Texas, or Lake Charles, Louisiana, which would be much closer, but she certainly would not get a direct flight to Omaha from those locations. She would have to be at the airport at least an hour before her flight. She would then have to have transportation from the airport to Dr. Longley's office in Omaha. At some point, she would have to return to her home in Texas as well. This is a great deal of travel beyond an hour and 45 minutes. It is not reasonable to require her to do this to simply get treatment.

Even if it were reasonable, it was not reasonable for the defendants to fail to arrange any of this this prior to the petition for alternate medical care being filed. Once the referral to Dr. Berry was made by Dr. Kaldis, the clock was ticking for the defendants to authorize reasonable treatment. Based upon the record before me, the defendants did not even try to work this out until January 2018. The referral was made on October 31, 2017. Thus, the delay itself was unreasonable.


Finally, Dr. Kaldis made the referral to a specific physician, Dr. Berry. This referral is a medical judgment by the authorized physician of the best treatment for Ms. Ryan. The insurance carrier should not interfere with the specific medical judgment of its own authorized treating physician. This is unreasonable. Under Section 85.27, the defendants get to choose the medical provider, not the care. While it may be perfectly reasonable for the defendants to approach Dr. Kaldis to consider referral to Dr. Longley, or some other course of action, it is not reasonable to override his medical judgment for some reason which is not even in the record.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is GRANTED. The defendants shall immediately authorize the referral made by Dr. Kaldis.

Signed and filed this 14th day of February, 2018.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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