

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

HAROLDINE WEST,

Claimant,

vs.

DURHAM SCHOOL SERVICES, L.P.,

Employer,

and

OLD REPUBLIC INS. CO.,

Insurance Carrier,
Defendants.

FILED

JAN 28 2019

WORKERS' COMPENSATION

File No. 5067082

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapters 17A and 85. The expedited procedure of rule 876 IAC 4.48, the "alternate medical care" rule, is requested by claimant, Haroldine West. Claimant filed a petition for alternate medical care on January 14, 2019. Claimant filed proof of service of the petition upon defendant-employer on January 16, 2019 and upon defendant-insurance carrier on January 15, 2019. On January 15, 2019, the Division of Workers' Compensation mailed notice of hearing to claimant, defendant-employer, and defendant-insurance carrier, setting the matter for telephonic hearing on January 28, 2019 at 10:30 a.m.

Despite service of the petition upon defendant-employer and defendant-insurance carrier, as well as mailing of notice of hearing, defendants filed no answer or appearance in this matter.

The alternative medical care claim came on for hearing as scheduled on January 28, 2019. The undersigned initiated the hearing by telephoning claimant's counsel; claimant was present. As defendants filed no responsive pleading and provided no contact information, defendants were not contacted. At the time of the scheduled hearing, claimant elected to have the alternate care petition decided upon the written records submitted, in lieu of an oral record. The evidentiary record consists of claimant's exhibits 1 through 2.

ISSUE

The sole issue presented for resolution is whether claimant is entitled to alternate medical care in the form of authorization of evaluation and treatment of psychological symptoms related to an injury of February 21, 2018.

FINDINGS OF FACT

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

Claimant suffered a traumatic injury in a fall at work on February 21, 2018. Both prior to and following the injury, claimant has been seen by primary care provider, John Carstensen, M.D. Dr. Carstensen has served as claimant's primary care provider for approximately 10 years, during which time, he monitored various health conditions including treatment and monitoring of claimant's depression. (CE1, p. 3) Dr. Carstensen referred to claimant's preexisting depression as major depressive disorder and opined the condition was stable and/or in stages of remission. (CE1, p. 4)

Following the February 2018 injury, Dr. Carstensen continued to evaluate and treat claimant. On December 19, 2018, Dr. Carstensen opined claimant suffered with an increase in symptoms, as well as potentially additional symptoms/conditions. (CE1, p. 4) While not all of claimant's depression symptoms were causally related to the February 2018 injury, Dr. Carstensen opined claimant's increased symptoms and potentially new anxiety/PTSD-type condition were related in significant part to the February 2018 injury. (CE1, pp. 4-5) As a result of this change in symptomatology, Dr. Carstensen recommended claimant receive further evaluation and treatment. (CE1, p. 4) Specifically, Dr. Carstensen recommended claimant be evaluated and treated by a mental health professional. (CE1, p. 5)

On December 20, 2018, claimant's counsel authored correspondence to the claims adjuster assigned by defendant-insurance carrier's third party administrator. Thereby, counsel attached Dr. Carstensen's written opinion and inquired if defendants were willing to authorize care for claimant's psychological complaints. (CE1, p. 2) On January 4, 2019, the claims adjuster acknowledged receipt of this correspondence. (CE2, p. 1)

Claimant filed the instant alternate care petition on January 14, 2019. Claimant filed proofs of service establishing service of the petition upon defendant-employer and defendant-insurance carrier. On January 15, 2019, this agency mailed notice of hearing to defendant-employer and defendant-insurance carrier. No answer or responsive pleading was filed by defendants.

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 1975).

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).

In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997), the supreme court held that "when evidence is presented to the commissioner that the employer-authorized medical care has not been effective and that such care is 'inferior or less extensive' than other available care requested by the employee, . . . the commissioner is justified by section 85.27 to order the alternate care."

"Determining what care is reasonable under the statute is a question of fact."
Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995).

Claimant suffered an injury on February 21, 2018. Dr. Carstensen opined the injury resulted in increased mental health symptomatology and potentially, new mental health conditions. Dr. Carstensen specifically recommended further care by a mental health professional. Dr. Carstensen's opinions are unrebutted in the evidentiary record.

Despite claimant's request for authorization of appropriate care, defendants have failed to authorize care and have not denied or disputed liability for the underlying injury or the mental health conditions at issue in this alternate care proceeding. Defendants did not participate in hearing and provide any rationale or justification for the failure to authorize care. It is inappropriate to allow defendants to continue to be unresponsive to claimant's request for care.

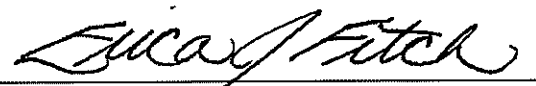
It is found defendants have failed to provide prompt care which is reasonably suited to treat claimant's injury. Claimant's request for care with a mental health professional is reasonable and better suited to treat claimant's complaints than defendants' lack of authorization for any mental health evaluation or treatment.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's application for alternate medical care is granted. Claimant may select, at defendants' cost, a mental health professional to provide mental health evaluation and treatment for symptoms and conditions which are causally related to the February 21, 2018 injury.

Signed and filed this 28th day of January, 2019.



ERICA J. FITCH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Thomas J. Berg
Attorney at Law
2423 Ingersoll Ave.
Des Moines, IA 50312
Tom.berg@sbsattorneys.com

Durham School Services, L.P.
605 University Ave.
Waukee, IA 50263
U.S. MAIL

Old Republic Insurance Company
307 N. Michigan Ave., 17th Floor
Chicago, IL 60601
U.S. MAIL

EJF/sam