BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

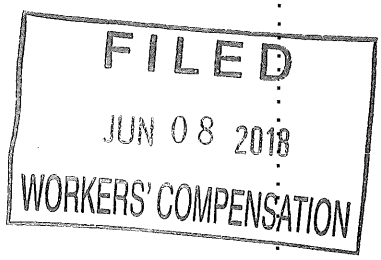
MISTY HUFFMAN,

Claimant,

vs.

NORDSTROM, INC.,

Employer,
Self-Insured,
Defendant.



File No. 5064011

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, Misty Huffman. Claimant appeared through her attorney, Emily Anderson. Defendant appeared through its attorney, James Peters.

The alternate medical care claim came on for hearing on June 8, 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 consists of defendant's exhibits A through E. No witnesses were called. Counsel offered oral arguments to support their positions.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care to treat her ongoing bilateral arm complaints.

FINDINGS OF FACT

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

Claimant sustained injuries to her bilateral arms as a result of her work activities on November 1, 2017. Defendant admitted liability for this injury and the current condition for which claimant seeks alternate medical care.

James W. Milani, D.O., is currently the authorized treating physician in this case. Prior to Dr. Milani, defendant authorized treatment through other occupational medicine clinics.

Claimant was last seen by Dr. Milani on February 7, 2018, when she reported improving but continuing pain in her bilateral elbows. (Defendant's Exhibit A:4) Leading up to that appointment, claimant had participated in physical therapy at Dr. Milani's direction. Dr. Milani noted physical therapy was helping, but claimant was still unable to perform a full range of activities due to her wrist and elbow pain. (Def. Ex. A:5) Based on his exam, however, it was Dr. Milani's opinion that claimant had no structural abnormalities that should have been keeping her from physically performing activities. (Def. Ex. A:6) As a result, Dr. Milani indicated he had nothing to offer claimant in terms of additional treatment. (Def. Ex. A:6)

Claimant contends she has ongoing symptoms and needs more treatment, though her attorney acknowledged at the outset of the hearing that no physician is making specific recommendations for ongoing care at this point in time. Defendant contends, in light of the fact no further medical treatment is being recommended, that it has provided all reasonable and necessary medical care.

Review of the evidence in this record reveals that claimant continues to complain of ongoing symptoms in her bilateral elbows. However, the evidence demonstrates (and claimant concedes) that no further medical care is being recommended. For this reason, I find claimant failed to prove that any additional medical treatment exists that is likely to improve her condition or reduce her symptoms. Therefore, I find defendant has provided all reasonable medical care recommended to date.

REASONING AND CONCLUSIONS OF LAW

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.

Iowa Code § 85.27(4).

Defendant's "obligation under the statute is confined to *reasonable* care for the diagnosis and treatment of work-related injuries." Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995) (emphasis in original). In other words, the "obligation turns on the question of reasonable necessity, not desirability." Id.

Similarly, 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. See Iowa Code § 85.27(4). Thus, 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); Long, 528 N.W.2d at 124.

Ultimately, determining whether care is reasonable under the statute is a question of fact. Long, 528 N.W.2d at 123.

In this case, claimant produced no evidence to establish that the care offered by defendant to date has been inferior or less extensive than other available care. In fact, claimant failed to prove that any alternative medical care is available or recommended for her conditions. The evidentiary record establishes that claimant continues to have symptoms. However, the current evidentiary record also establishes that no further medical care is recommended.

Claimant does not request specific alternate medical care because no specific alternate medical care has been recommended. Given claimant's continued complaints, the absence of any recommendations for additional treatment is undoubtedly frustrating. However, no treatment or diagnostic tests have been denied by defendant to date. Claimant does not allege any breakdown of the physician-patient relationship with the authorized physicians. At this stage, claimant appears to seek authorization of care with an unknown doctor in the hopes he or she would provide treatment that would prove beneficial. While I appreciate claimant's position, it does not warrant an award of alternate medical care at this juncture.

Therefore, I conclude claimant has failed to prove that the care offered by defendant has been unreasonable. Claimant has failed to prove that there is alternate medical care available that is more extensive or superior to the care that has been offered by defendant. I conclude claimant has failed to establish her claim for alternate medical care on the record presented.

ORDER

THEREFORE IT IS ORDERED:

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

Signed and filed this 8th day of June, 2018.

STEPHANIE J. COPLEY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Emily Anderson
Attorney at Law
425 2ND St SE, Ste. 1140
Cedar Rapids, IA 52401
eanderson@fightingforfairness.com

James M. Peters
Attorney at Law
115 Third St., SE, Ste. 1200
Cedar Rapids, IA 52401-1266
jpeters@spmblaw.com

SJC/kjw