BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KATIE R. BOYLE, Claimant, vs. VENUWORKS OF CEDAR RAPIDS, L.L.C., Employer, and AMERICAN AUTOMOBILE INSURANCE COMPANY, Insurance Carrier, Defendants.	File No. 20700184.01 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. By filing an original notice and petition for alternate medical care, claimant, Katie Boyle, invoked the expedited procedure of rule 876 IAC 4.48. Claimant's original notice and petition contains proof of service upon the employer. It is found that the petition was properly served via certified mail upon the employer. Nevertheless, the defendants have not entered an appearance or responded in any way to the pending petition for alternate medical care.

The alternate medical care claim came on for telephonic hearing on March 4, 2020. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Claimant appeared through her attorney, Nate Willems. Defendants failed to appear for the hearing.

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. Any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code section 17A.

The evidentiary record consists of claimant's exhibit A.

ISSUE

The issue presented for resolution is whether the claimant is entitled to an evaluation performed by a physician specializing in obstetrics and gynecological medicine.

FINDINGS OF FACT

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

Claimant sustained an injury to her left lower extremity, which arose out of and in the course of her employment with Venuworks of Cedar Rapids, L.L.C., on January 21, 2020. Defendants accepted that claim and authorized medical treatment through an occupational medicine specialist, Cindy Hanawalt, M.D. Dr. Hanawalt made a referral for a one-time OB-GYN consultation secondary to claimant's deep vein thrombosis after she sustained trauma and immobilization as a result of the January 21, 2020 work injury. Defendants have not authorized the referral. The record contains no evidence that defendants have offered alternate medical care.

I find that defendants' failure to authorize the recommended medical care and referral from Dr. Hanawalt is unreasonable. I find that the care recommended by Dr. Hanawalt is reasonable and necessary. In failing to authorize the care recommended and the referral made by Dr. Hanawalt, defendants have not offered prompt medical care, nor have they offered reasonable medical care that is suited to treat claimant's work injury.

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 and Air Conditioning 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. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). 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 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).

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).

In this case, defendants have not authorized the reasonable medical care recommendation and referral of their authorized medical provider, Dr. Hanawalt. Defendants have not authorized prompt medical care or care that is reasonably suited to treat claimant's injury. Therefore, I conclude that claimant has established entitlement to alternate medical care.

Defendants were permitted to select the authorized medical provider, Dr. Hanawalt. Iowa Code section 85.27(4). Having exercised that right to select the authorized provider, defendants may not ignore Dr. Hanawalt's recommendations and referrals. Defendants may not interfere with Dr. Hanawalt's professional medical judgment, whether by design or delay. Referral to an OB-GYN expert for diagnostic purposes or for consultation purposes is reasonable and should be authorized.

Moreover, once Dr. Hanawalt makes the referral, she acts as the defendants' agent in making the referral. Permission from the defendants is not required, rather the referral in essence is authorization by defendants. Therefore, I conclude that claimant established entitlement to a one-time consultation with an OB-GYN medical specialist. Defendants have not selected or authorized such a specialist. Defendants did not appear for hearing. Therefore, I conclude it is appropriate to permit claimant to select an OB-GYN physician of her own choosing and require defendants to pay for those services.

ORDER

THEREFORE, IT IS ORDERED:

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

Claimant is permitted to select an OB-GYN physician to conduct a one-time evaluation and defendants shall promptly pay for such services.

Signed and filed this __3rd__ day of March, 2020.

WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Nate Willems (via WCES)

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