

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

AMANDA DAWSON,

Claimant,

vs.

DEEP LAKE OUTSOURCING, LLC,

Employer,

and

TECHNOLOGY INSURANCE CO.,

Insurance Carrier,
Defendants.

File No. 22013953.02

ALTERNATE MEDICAL CARE

DECISION

Head Note: 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, Amanda Dawson. Claimant appeared personally and through her attorney, Connor Mulholland. Defendants appeared through their attorney, Nicholas Pellegrin.

The alternate medical care claim came on for hearing on September 14, 2023. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's July 21, 2023 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 Claimant's Exhibit A, which includes a total of three pages, and Defendants' Exhibit 1, which also consists of three pages. Amanda Dawson was the only witness called to testify. The record closed at the conclusion of the September 14, 2023 hearing.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of authorizing the mental health counseling recommended by Daniel Tranel, Ph.D. and Daniel Miller, D.O.

FINDINGS OF FACT

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

Amanda Dawson sustained a work-related injury on December 8, 2022. More specifically, Ms. Dawson was present at the defendant employer's Marengo, Iowa plant when it exploded on December 8, 2022. Since the date of injury, claimant has struggled with post-traumatic stress disorder. Defendants accepted the injury and provided medical care.

Ms. Dawson first presented for treatment with Daniel Miller, D.O. on or about May 23, 2023. (Claimant's Testimony) She continues to present to Dr. Miller on a monthly basis. (Claimant's Testimony)

On June 21, 2023, Ms. Dawson presented for an evaluation with Daniel Tranel, Ph.D. at the University of Iowa Hospitals and Clinics. (See Exhibit A, page 1) According to claimant, the evaluation lasted approximately six hours. (Claimant's Testimony; see Ex. A, p. 1) Following his evaluation of claimant, Dr. Tranel recommended claimant present for counseling to address her post-traumatic stress disorder. Dr. Tranel's report was not introduced into evidence at the September 14, 2023, hearing.

On June 22, 2023, Ms. Dawson presented for a follow-up appointment with Dr. Miller. (Ex. A, p. 1) During the appointment, Ms. Dawson described several events that cause her significant anxiety. For instance, claimant relayed that she cannot light a stove yet due to the noise it makes when the gas ignites. Additionally, claimant struggles with getting out of the house, driving on the interstate, and participating in group activities. (Ex. A, pp. 1-2) Following the examination, Dr. Miller ordered counseling as recommended by Dr. Tranel. (Ex. A, p. 2)

Claimant's counsel contacted defendants at 2:14 p.m. on August 31, 2023, and notified the same that his client was still waiting on the authorization and scheduling of the counseling recommended by Dr. Tranel and Dr. Miller. (Exhibit 1, p. 2) The electronic correspondence noted claimant's dissatisfaction with the unreasonable delay in authorizing the recommended care. (Id.) The correspondence also relayed claimant's intention to file a petition for alternate medical care. (Id.)

Approximately 30 minutes later, counsel for defendants replied to claimant's electronic correspondence. (Id.) Counsel for defendants relayed that he was unaware of the issue, but assured claimant's attorney that the recommended care is authorized. He further relayed that he reached out to his client to check on the status of the care being scheduled. (Id.) Counsel for defendants then inquired as to whether there was a specific counselor claimant wanted to see for treatment. (Id.)

According to the administrative record, claimant filed the current petition 11 minutes after receiving defendants' correspondence.

On September 11, 2023, claimant's counsel replied to defendants, noting that Ms. Dawson wanted to be seen by Kelli Switzer of Switzer Counseling Services in Marengo, Iowa. (Ex. 1, p. 1) Claimant's counsel ended the correspondence by asking whether an appointment with Ms. Switzer would be authorized and scheduled by defendants. (Id.)

The next day, counsel for defendants informed claimant's counsel that Ms. Switzer had been authorized, and his client had requested that Ms. Dawson be scheduled for an appointment with Ms. Switzer. At the September 14, 2023, hearing, counsel for defendants indicated that his client had not yet received a date and time for the appointment. (Id.)

Defendants assert that Ms. Switzer has been authorized as a treating counselor. Defendants further assert that the recommendations of Dr. Tranel and Dr. Miller have been authorized and defendants are in the process of scheduling the counseling sessions with Ms. Switzer.

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. 6.904(3)(e); 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 18, 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 well established that 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, Iowa Industrial Commissioner Reports 207 (1981).

The matter at hand is fairly straightforward. Claimant argues defendants have failed to provide reasonable care by unreasonably delaying the authorization of medical treatment recommended by an authorized treating physician for her post-traumatic stress disorder. Claimant is requesting the undersigned order defendants to authorize and schedule the recommended counseling services. Claimant is not requesting that the undersigned strip defendants of their right to direct claimant's medical treatment at this time.

Two physicians have recommended mental health counseling to address claimant's post-traumatic stress disorder. While the report is not in evidence, it appears Dr. Tranel recommended mental health counseling on June 21, 2023. Dr. Miller subsequently recommended mental health counseling on June 22, 2023. Defendants did not authorize and/or schedule the recommended mental health treatment between June 22, 2023, and August 31, 2023.

According to the evidence in the record, claimant first expressed dissatisfaction with the delay in authorization/scheduling on August 31, 2023. Defense counsel promptly responded that the recommended care is authorized and he would follow-up with his client regarding the same. In the meantime, defense counsel inquired as to whether there was a specific counselor claimant wanted to see. Once notified of claimant's preference for Ms. Switzer, defendants authorized Ms. Switzer and requested that Ms. Dawson be scheduled for an appointment with Ms. Switzer.

I find defendants consented to authorizing counseling services on August 31, 2023. I further find defendants consented to authorizing Ms. Switzer as a treating counselor on September 12, 2023. It is unnecessary for the undersigned to order defendants to authorize the recommendations of Dr. Tranel and Dr. Miller as the specific care sought was authorized by defendants prior to the September 14, 2023 hearing, and the counseling sessions are in the process of being arranged.

Ms. Dawson, through her testimony, has presented herself as a reasonable and patient individual under the circumstances. I empathize with her situation. She has desired counseling services for quite some time, and defendants did not immediately authorize and schedule her for the same following recommendations from her authorized treating physicians. The two-month delay is clearly unreasonable under the

circumstances. Fortunately, the record indicates her wait may finally be coming to an end. While I find it unnecessary to order defendants to authorize the requested care at this juncture, I strongly encourage defendants to secure an appointment with Ms. Switzer within 14 days from the date of this decision.

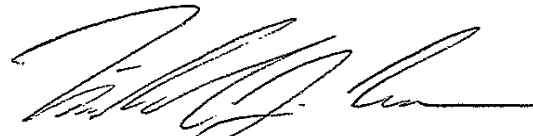
Notably, claimant is not asserting that defendants have abandoned care and should be stripped of their right to direct claimant's medical treatment at this time. However, if the pattern of delay and lack of communication described during the September 14, 2023, hearing continues, I will not hesitate to find defendants' pattern of delay equivalent to inappropriate interference with their medical professionals and tantamount to an abandonment of care.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's petition for alternate medical care is denied.

Signed and filed this 15th day of September, 2023.

A handwritten signature in black ink, appearing to read 'Michael J. Lunn', is written over a horizontal line.

MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Connor Mulholland (via WCES)

Nick Pellegrin (via WCES)