

Order, the undersigned has been delegated authority to issue a final agency decision in this alternate medical care proceeding. Therefore, this decision 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 a professional statement by claimant's counsel and the testimony of claimant, Sabri Juma.

ISSUE

The issue presented for resolution is whether the claimant is entitled to authorization of treatment by a spine specialist.

FINDINGS OF FACT

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

Sabri Juma, claimant, sustained a work related injury of the back on May 13, 2020. As a result of that back injury, claimant requires ongoing medical care and treatment. Claimant seeks referral to and authorization of treatment with a spine specialist.

Mr. Juma testified that the employer directed his medical care after this injury. Specifically, the employer directed claimant to be evaluated by Concentra Medical Center. Claimant estimates that he has been evaluated by a physician or other medical professional at Concentra Medical Center approximately four times. He has also participated in physical therapy recommended by Concentra's medical provider. Unfortunately, his symptoms continue and he has required emergency room treatment on or about July 9, 2020 as a result of ongoing symptoms.

Mr. Juma testified that his treating physician at Concentra ordered an MRI in late May or early June 2020. The Concentra physician re-evaluated him on June 6, 2020. Mr. Juma testified that the Concentra physician noted abnormalities in the MRI report and recommended that claimant see a spine surgeon.

Claimant requested referral to and authorization of care through a spine specialist. Claimant has conveyed the basis for dissatisfaction to the insurance carrier's claims representative. In fact, claimant testified that he has left several voicemail messages for the insurance claims representative, seeking authorization of a referral to a spine surgeon. When defendants failed to return Mr. Juma's telephone calls for a period of two or more weeks, he enlisted the assistance of his attorney to seek authorization of an evaluation with a spine specialist.

Mr. Spaulding provided a professional representation at the hearing that he also has spoken with the claims representative for the insurance carrier about the desire to

have a spine specialist referral and authorization. In spite of the attempts made by Mr. Juma and Mr. Spaulding, defendants have not made a referral or authorized care with a spine specialist to date.

I find that defendants authorized Concentra Medical Center to provide medical care for claimant's back injury. I find that the treating physician at Concentra Medical Center recommended evaluation by a spine surgeon. I find that defendants failed to promptly authorize the referral and evaluation with a spine surgeon. I find that defendants' failure to promptly authorize a spine surgeon evaluation is unreasonable.

Claimant's counsel clarified at the end of the hearing that claimant is not seeking a specific surgeon. Claimant simply wishes to have an evaluation with a spine surgeon and is willing to attend an evaluation with a surgeon selected by defendants. Claimant's position and request is very reasonable.

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.

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).

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 1975).

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 selected the initial medical provider, Concentra Medical Center. The treating physician at Concentra Medical Center has recommended evaluation by a spine surgeon. Defendants' failure to authorize an evaluation with a spine surgeon is contrary to the recommendations of their selected physician and is not reasonable. Moreover the delay in providing such care violates Iowa Code section 85.27's requirement that care be provided promptly. For these reasons, I conclude that claimant is entitled to an order for alternate medical care.

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."

In this case, defendants authorized some medical care. That medical care has proven to be ineffective thus far. Claimant has requested alternate, more specialized medical care, which was recommended by defendants' chosen physician. Defendants offer no additional care at this time. No care is certainly less extensive, or inferior, to the recommended evaluation with a spine surgeon. Therefore, I also conclude claimant

has proven entitlement to his request for alternate medical care pursuant to Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 122 (Iowa 1997).

Claimant is not currently requesting an order that specifically designates a spine surgeon. Rather, claimant is willing to allow defendants to select the spine surgeon. He simply wants evaluation by a surgeon. Claimant's position is reasonable and I conclude that defendants continue to maintain the right to select a provider of their choosing, provided they act promptly to schedule and authorize the care ordered in this decision.

ORDER

THEREFORE IT IS ORDERED:

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

Within fourteen (14) days of the entry of this order, defendants shall identify a spine surgeon of their choosing and schedule an appointment for claimant to be evaluated at the earliest reasonable opportunity by said spine surgeon.

Failure to timely comply with this order may result in defendants losing the right to select the authorized medical provider moving forward.

Signed and filed this 21st day of July, 2020.



WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Christopher Spaulding (via WCES)

Allegis Group, Inc. (via regular and certified mail)
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Indemnity Ins. Co. of North America (via regular and certified mail)
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