

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MATTHEW SHOOK,

Claimant,

vs.

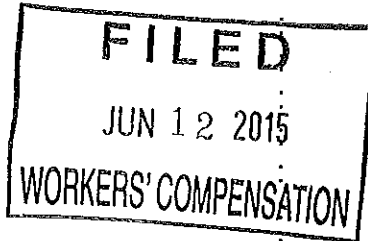
USIC LLC,

Employer,

and

LIBERTY MUTUAL INSURANCE,

Insurance Carrier,
Defendants.



File No. 5053218

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, Matthew Shook. Claimant appeared personally and through his attorney, Nate Willems. Defendants were properly served but did not appear.

The alternate medical care claim came on for hearing on June 11, 2015. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's 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 1 through 2. All exhibits were offered without objection and received into evidence.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care. Claimant seeks an order authorizing back surgery.

FINDINGS OF FACT

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

The record is limited because the defendants did not appear. Based upon claimant's exhibit 2, the defendants were both properly served and received timely notice of the claim. Due notice of the hearing was sent to the defendants from the agency as well, setting the hearing for 10:30 a.m., Thursday June 11, 2015. The undersigned informed claimant's counsel that the record would be held open for an hour in the event the defendants called in late for the hearing or otherwise contacted the agency. No contact was made prior to the issuance of this decision.

The claimant, Matthew Shook, suffered a work-related injury on August 4, 2014. According to the professional statement of claimant's counsel, Chad Abernathey, M.D., was authorized to treat Mr. Shook's condition. On February 16, 2015, Dr. Abernathey stated the following:

Mr. Matthew Shook clinically presents with right sciatica consistent with right L4-L5-S1 lateral recess stenosis and calcified disc protrusion. I discussed the risks, goals, and alternatives of conservative management vs. surgical intervention with the patient in detail. . . . He states he fully understands the breadth of our conversation and wishes to proceed with lumbar decompression and microdiscectomy in the coming days.

(Cl. Ex. 1, p. 3) Dr. Abernathey provided a causation opinion on February 20, 2015, stating that Mr. Shook's presentation is "100% related to his 8-4-14 work injury." (Cl. Ex. 1, p. 2) He forwarded the request for surgery to Mary Burke from the insurance carrier without any delay. (Cl. Ex. 1, p. 1)

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. Iowa Code Section 85.27 (2013).

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See 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. Id. 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 statutory right is to select the providers of care and the employer may consider cost and other pertinent factors when exercising its choice. Long at 124. An employer (typically) is not a licensed health care provider and does not possess medical expertise. Accordingly, an employer does not have the right to control the methods the providers choose to evaluate, diagnose and treat the injured employee. An employer is not entitled to control a licensed health care provider's exercise of professional judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988). An employer's failure to follow recommendations of an authorized physician in matters of treatment is commonly a failure to provide reasonable treatment. Boggs v. Cargill, Inc., File No. 1050396 (Alt. Care January 31, 1994).

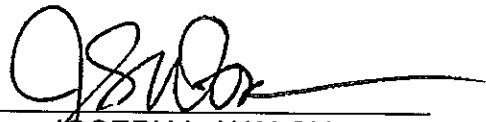
The burden is on the claimant to prove that the care offered by defendants is not reasonable. This case is troublesome. His injury was accepted and the employer directed treatment. Mr. Shook was injured in August 2014. In February 2015, Dr. Abernathey, an authorized treater, recommended surgery. The defendants have not authorized surgery. There is no explanation. Consequently, this recommended treatment has been delayed for nearly four months. This is an inexcusable delay of treatment. I order the defendants to immediately authorize and pay for all treatment, including the back surgery, recommended by Dr. Abernathey.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is GRANTED as set forth above.

Signed and filed this 12th day of June, 2016.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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