

review in a district court under the Iowa Administrative Procedure Act, Iowa Code chapter 17A.

ISSUE

The issue under consideration is whether Wilson is entitled to alternate care in the form of the bilateral total knee replacement recommended by Jason Stanford, D.O.

FINDINGS OF FACT

The defendants accept liability for Wilson's alleged bilateral knee injury of July 13, 2015. The defendants previously provided care for Wilson's injuries via Dr. Gorsche. The parties agreed to settle the case. Under the settlement agreement, the defendants agreed to continue to provide care for Wilson's knee injuries.

For a time following the settlement, Wilson did not need care. In September of 2019, Wilson's attorney emailed defense counsel and requested care for Wilson's knee injuries. Defense counsel requested a list of healthcare providers that had provided care to Wilson and an executed authorization to release information so that the records from the identified care could be requested and reviewed.

The defendants used the list and authorization to obtain medical records. The records did not reflect Wilson complained of knee issues during the care they documented. The defendants consequently refused to authorize any additional care for her bilateral knee injuries.

Wilson sought care on her own after the defendants' refusal to authorize any additional care. She saw Dr. Stanford, who recommended the bilateral total knee replacement at issue. (Ex. 1; Ex. A) Wilson's attorney sent an email to defense counsel requesting authorization for the surgery. (Ex. 2)

Because the defendants did not authorize the requested bilateral knee replacement surgery, Wilson filed a petition seeking alternate care in the form of the surgery recommended by Dr. Stanford. The defendants did not dispute liability for the alleged injury. They want more time to investigate Wilson's complaints and the recommended care. This process will include an examination by Dr. Gorsche. The defendants have already contacted his office regarding scheduling an appointment.

Wilson believes that the defendants had ample time to investigate her physical condition and care needs in response to her September 2019 request for additional care. According to Wilson, the defendants could have scheduled an appointment with Dr. Gorsche in response to her request for care in order to see what care was appropriate in his opinion. But rather than do so, the defendants rejected her request, which necessitated her obtaining care with Dr. Stanford.

CONCLUSIONS OF LAW

“Iowa Code section 85.27(4) affords an employer who does not contest the compensability of a workplace injury a qualified statutory right to control the medical care provided to an injured employee.” Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 769 (Iowa 2016) (citing R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 195, 197 (Iowa 2003)). Under the law, the employer must “furnish reasonable medical services and supplies *and* reasonable and necessary appliances to treat an injured employee.” Stone Container Corp. v. Castle, 657 N.W.2d 485, 490 (Iowa 2003) (emphasis in original). Such employer-provided care “must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee.” Iowa Code § 85.27(4).

An injured employee dissatisfied with the employer-furnished care (or lack thereof) may share the employee’s discontent with the employer and if the parties cannot reach an agreement on alternate care, “the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.” Id. “Determining what care is reasonable under the statute is a question of fact.” Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995); Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 436 (Iowa 1997). As the party seeking relief in the form of alternate care, the employee bears the burden of proving that the authorized care is unreasonable. Id. at 124; Gwinn, 779 N.W.2d at 209; Reynolds, 562 N.W.2d at 436; Long, 528 N.W.2d at 124. Because “the employer’s obligation under the statute turns on the question of reasonable necessity, not desirability,” an injured employee’s dissatisfaction with employer-provided care, standing alone, is not enough to find such care unreasonable. Id.

In the current case, the defendants responded to Wilson’s request for care in September of 2019 by refusing to authorize any care. Under Iowa Code section 85.27(4), the employer must offer care promptly and the care must be reasonably suited to treat the injury without undue inconvenience to the employee. Offering no care is the same as offering no care reasonably suited to treat an injury. Thus, the defendants’ actions are unreasonable here because they did not offer care at all in response to Wilson’s September 2019 request, let alone offer care promptly that was reasonably suited to treat Wilson’s bilateral knee injuries. The defendants’ decision constitutes a refusal to offer care reasonably suited to treat Wilson’s injury.

The defendants asserted at hearing that they need additional time to investigate Wilson’s condition in the form of an examination by Dr. Gorsche. The problem with the defendants taking this position in April of 2020 is that they could have arranged such an examination in September of 2019, in response to Wilson’s initial request for additional care. Doing so would have allowed Dr. Gorsche to provide prompt care reasonably suited to treat Wilson’s knees. It also would have allowed the defendants to obtain a timely medical opinion. Instead, the defendants denied the requested care and, in doing so, denied themselves the ability to get more information regarding Wilson’s condition. The denial was therefore unreasonable.

The defendants' September 2019 denial forced Wilson to seek alternate care. She did so with Dr. Stanford, who has recommended a bilateral total knee replacement. This care is reasonable given the defendants' decision to deny care in September 2019 without an examination by a medical professional such as Dr. Gorsche. Dr. Stanford's care has been necessary and beneficial as evidenced by the recommended treatment. Allowing the defendants to regain control of care now and further delay Wilson's care would be unreasonable.

ORDER

IT IS THEREFORE ORDERED:

- 1) Wilson's application for alternate care is GRANTED.

- 2) The defendants shall authorize the bilateral total knee replacement as recommended by Dr. Stanford as soon as practicable under the Governor's proclamation limiting nonessential medical services in order to preserve personal protective equipment (PPE) for treatment of individuals stricken with COVID-19.

Signed and filed this 7th day of April, 2020.


BENJAMIN G. HUMPHREY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

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