BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RUSTY MARTIN,

Claimant,

vs.

HICKORY PARK, INC.,

Employer,

and

CONTINENTAL WESTERN INSURANCE,

Insurance Carrier,
Defendants.

File No. 5052956

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, Rusty Martin. Claimant appeared personally and through his attorney, Philip Miller. Defendants appeared through their attorney, Patrick Waldron.

The alternate medical care claim came on for hearing on September 14, 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 exhibits A-C and defendants' exhibits 1-3 in addition to the sworn testimony of the claimant and claims representative for Continental Western, Laura Courtney. All exhibits were offered without objection and received into evidence.

Prior to hearing Mr. Miller had subpoenaed Ms. Courtney to appear at his office with certain papers. Ms. Courtney appeared by phone and did not produce the documents requested. I find that, in the context of an expedited alternate care telephone hearing, it is appropriate for a witness employed by the defendants to appear in the same manner as other witnesses appear, by telephone. It is unreasonable to require a witness to appear at counsel's office.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care. Claimant seeks an order denying defendants the right to control and direct the medical care.

FINDINGS OF FACT

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

The parties agree and stipulate that the claimant, Rusty Martin, suffered an injury to his back which arose out of and in the course of his employment on May 5, 2014. He fell from a four-foot ladder and has been in pain ever since. Mr. Martin testified credibly about the treatment which has occurred. His treating physician is Sarkis Kaspar, M.D. Dr. Kaspar recommended a back brace early on in the treatment regimen. Mr. Martin testified it took six weeks for Continental Western to approve the back brace, which was helpful once he received it. In February 2015, Dr. Kaspar performed a surgery called L2 kyphoplasty. Mr. Martin testified that the surgery had been delayed for a little over a month because the insurance carrier did not timely authorize it. He also testified payments were late, at least prior to hiring legal counsel in June 2015.

On August 4, 2015, Dr. Kaspar documented in an office note that Mr. Martin was having significant symptoms of pain and disability, making it difficult for him to walk. His diagnosis at that time, was: 1. Compression deformity of vertebra and 2. Spinal stenosis. He recommended and opined the following: "We'll update the lumbar MRI for stenosis (not for injury), and Refer for LESI (lumbar epidural steroid injection) for degenerative stenosis L2-5 region." (Defendants' Exhibit 1)

On August 6, 2015, claimant's counsel met with Dr. Kaspar and obtained a medical report which established medical causation for the lumbar stenosis. (Claimant's Ex. C, p. 2) Claimant's counsel forwarded this report to the claims representative, Laura Courtney, on August 13, 2015. She found the opinion to be unclear. I find that the opinion is couched in medical and legal terminology, in addition to being wordy and covering a variety of topics, however, it is not truly unclear. Ms. Courtney felt it was appropriate to refer this to legal counsel for clarification. She did so several days later. She turned the file over to legal counsel, Patrick Waldron, who attempted to communicate with Dr. Kaspar and receive a report clarifying the medical causation issues.

On August 28, 2015, claimant's counsel wrote a second letter to Ms. Courtney, again expressing dissatisfaction. (Cl. Ex. B) On August 31, 2015, Mr. Martin filed this alternate medical care petition. Defense counsel wrote to claimant's counsel on September 11, 2015. In the letter, he stated "I have tried to seek an opinion as to whether the underlying condition was, to a reasonable degree of medical certainty, materially aggravated, accelerated, worsened or lit up by the work injury." (Def. Ex. 2)

On the same date, Dr. Kaspar provided an opinion which the defendants deemed clearer. The injections were authorized at that time.

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. Assman 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 Dec. January 31, 1994).

The specific treatment being sought has now been authorized. It was authorized just prior to hearing. Claimant, however, argues that defendants should entirely lose control of the care due to the unreasonable delays. (See Alternate Care Petition, attachment) This remedy was actually specified in the claimant's petition. Defendants strenuously objected, arguing the specific care sought was authorized. The objections were overruled. I find that where a claimant proves an unreasonable interference with medical care, this agency may enter an order that the defendants lose control of the care, even if they finally authorize specific care prior to hearing.

In this case, the claimant alleges that the defendants delayed the treating physicians' request for epidural steroid injections beginning on August 13, 2015. It is undoubtedly true that the injections were delayed. In fact, at the time of hearing, September 14, 2015, the appointment had not yet been arranged, even though the treatment was authorized. The central question in this case revolves around the reasonableness of that delay.

Defendants argue that the August 6, 2015, report, particularly when read in conjunction with the August 4, 2015, office note, was somewhat unclear or murky. I already found that the report was not truly unclear. From their perspective, the defendants simply sought a clarification from their own legal counsel. The problem in this case is that it takes time, often substantial time, to obtain such a report in the medical/legal bureaucratic world of workers' compensation. In reality, there is very little difference between the opinions obtained by legal counsel. (*Compare* Cl. Ex. C *with* Def. Ex. 3) In the meantime, Mr. Martin is suffering. He testified he has daily pain which is so bad, he is often forced to sleep in his bathtub. Hot baths are one of the only activities that Mr. Martin can control which relieves his pain. At the beginning of August 2015, Dr. Kaspar documented that his pain was so bad he was having difficulty ambulating. His life is not normal right now. He needs immediate treatment. I find that the reasonableness of the delay must be measured in part by the urgency and necessity of the treatment. Mr. Martin simply cannot wait for treatment at this time. I find that, under all of the circumstances, the delay was unreasonable.

Having stated this, I do not find, at this time, that the appropriate remedy is to deny the defendants' right to control and direct the medical care. First, such a remedy is extreme and should be reserved for the most significant interference or delay/denial cases. Second, it could actually slow his treatment down at this point. The specific care sought was authorized before the hearing and the appointments are in the process of being arranged. There is no evidence in the record that there is a different appointment which has already been arranged which could happen immediately or even quicker than that which has already been authorized by defendants. Simply stated, the delay in treatment was not so unreasonable as to warrant such a drastic remedy at this time. Finally, based upon the record before me, the extent to which Mr. Martin was suffering and the urgency for his treatment may not have been entirely clear to the defendants.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is GRANTED, IN PART. The defendants shall, as agreed just prior to hearing, authorize the specific treatment recommendations of Dr. Sarkis Kaspar, including the epidural steroid injections.

FURTHER, at this time I decline to remove the defendants' authority to direct and control the medical care, however, any future unreasonable delays or interference with the claimant's care may result in such an order.

Signed and filed this 15th day of September, 2015.

JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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