

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BARBARA KELLEY,

Claimant,

vs.

HOME INSTEAD SENIOR CARE,

Employer,

and

PINNACLEPOINT INS. CO.,

Insurance Carrier,
Defendants.

File No. 20700927.07

ALTERNATE MEDICAL CARE

DECISION

Headnote: 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, Barbara Kelley. Claimant appeared through her attorney, MaKayla Augustine. Defendants appeared through their attorney, Bryan Brooks.

The alternate medical care claim came on for hearing on December 27, 2022. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's February 16, 2015, 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, which includes a total of 7 pages. No witnesses were called to testify. Counsel were permitted an opportunity to argue their cases, and the record closed on December 27, 2022.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of authorizing care from Theodore Kleikamp, M.D., including his referral to Oregon Health and Science University Long Covid Clinic. Claimant is also seeking an order removing the right to direct care from defendants.

FINDINGS OF FACT

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

Barbara Kelley sustained a work-related injury on March 31, 2020. More specifically, claimant contracted COVID-19 while caring for a patient in Bettendorf, Iowa. Defendants accepted the injury and provided medical care. It is worth noting that this is claimant's fifth petition for alternate medical care involving the March 31, 2020, work injury.

Review of the agency file and the evidentiary record in this proceeding reveals claimant has expressed dissatisfaction with the care provided by defendants and filed for alternate care on five separate occasions. The first three petitions were dismissed without prejudice after defendants agreed to authorize the requested care. The last two petitions have gone to hearing.

In her the February 3, 2022, petition for alternate medical care, claimant sought authorization of the referrals and recommendations of an authorized treating physician. The matter proceeded to an alternate care hearing and the undersigned issued an alternate medical care decision, granting claimant's petition, on February 17, 2022. The petition for alternate medical care was granted, in part, because of defendants' delay in authorizing treatments recommended by an authorized treating physician. Defendants were ordered to authorize the treating physician's recommendations, which included two different types of inhalers, diagnostic testing of the thyroid and liver, and additional pulmonary function tests.

Shortly after the February 17, 2022, decision ordering defendants to authorize various forms of treatment, claimant informed defendants of her intention to move to Portland, Oregon.

Claimant's current petition is similar to the petition she filed on February 3, 2022. Both petitions seek authorization of treatment recommended by Patrick Hartley, M.D., of the Pulmonary and Occupational Disease Clinic at University of Iowa Hospitals & Clinics, and ordered by claimant's authorized treating physicians.

Dr. Hartley conducted an independent medical evaluation of claimant on May 19, 2021. In his report, Dr. Hartley recommended claimant present for additional treatment consisting of methacholine challenge, repeat spirometry, and negative inspiratory force to evaluate for persistent post-viral bronchial hyperreactivity and possible respiratory muscle weakness.

Following her move to Portland, Oregon, defendants scheduled claimant to participate in a telephonic examination with Dr. Hartley on June 30, 2022. Dr. Hartley produced his updated IME report on August 14, 2022. The report is not in evidence; however, the parties agree that Dr. Hartley made various recommendations for additional testing and treatment.

Following receipt of Dr. Hartley's updated report, defendants produced an electronic correspondence to claimant on August 23, 2022. (See Ex. 1, p. 7) The correspondence is not in evidence.

On August 30, 2022, claimant's counsel responded to defendants' correspondence and notified defendants that Ms. Kelley had established care with a new treating physician, Theodore Kleikamp, M.D. The correspondence provides: "The recommendations made by Dr. Hartley have not yet been discussed with her primary care physician (as we just received his IME report and his recommendations in writing) and have not yet been put into motion." (Ex. 1, p. 7) Claimant's counsel provided defense counsel with Dr. Kleikamp's contact information and inquired as to whether defendants were going to authorize treatment through Dr. Kleikamp or a physician of their choosing in the Portland, Oregon area. (Id.)

Claimant's counsel sent a follow-up correspondence on October 12, 2022. (Ex. 1, p. 6) On October 14, 2022, defense counsel responded, noting that his client had no interest in finding an alternative physician in the Portland, Oregon area. (Ex. 1, p. 5) He provided that defendants would pay for "any treatment rendered consistent with Dr. Hartley's recommendations[.]" (Id.)

Later that morning, claimant's counsel confirmed with defense counsel that Ms. Kelley, "[S]hould go ahead and get the tests recommended by Dr. Hartley scheduled, through whatever means necessary (i.e. on her own or through her primary care physician), as this is authorized and have the bills submitted to Defendants?" (Id.) If defense counsel agreed with claimant's counsel's statement, he was instructed to provide specific information regarding the authorization, the contact information claimant should provide to her medical providers in Oregon, and where claimant's medical bills should be sent. Defense counsel responded, "Will do" and referenced an insurance card that was originally provided to claimant by defendants shortly after the work injury. Claimant's counsel would later refer to this card as the "Brickstreet insurance card."

Claimant subsequently scheduled herself for an appointment with Dr. Kleikamp on November 28, 2022. (See Ex. 1, p. 2) Following the examination, Dr. Kleikamp referred Ms. Kelley to Oregon Health and Science University Long Covid Clinic. (Ex. 1, p. 1)

Claimant's counsel produced Dr. Kleikamp's referral order to defense counsel via e-mail on December 1, 2022. (Ex. 1, p. 2) She asked defense counsel to notify her once the referral had been authorized so Ms. Kelley could move forward with scheduling the same. (Id.) Lastly, claimant's counsel relayed her intent to file a petition for alternate medical care if the referral was not authorized in a timely fashion. (Id.)

Defendants assert that Dr. Kleikamp has been authorized as a treating physician. Defendants further assert that the referral to the Long Covid Clinic has been or will be authorized, and claimant is currently scheduled to present to the Long Covid Clinic in

March of 2023. Lastly, defendants stressed that they intend to authorize additional testing through Dr. Kleikamp and any additional treatment recommended by the physicians at the Long Covid Clinic.

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).

Claimant contends an order of alternate care is warranted, despite defendants authorizing Dr. Kleikamp as a treating physician and his referral to the Long Covid Clinic, the precise relief requested in the alternate medical care petition. Claimant argues defendants have failed to provide reasonable care by a pattern of repeated delays tantamount to an abandonment of care. Claimant therefore requests the undersigned terminate defendants' right to direct care and award claimant the right to

manage her own medical treatment.

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).

After moving to Portland, Oregon, Ms. Kelley established care with Dr. Kleikamp. Claimant's counsel notified defendants of the same and inquired as to whether defendants planned on authorizing treatment through Dr. Kleikamp or whether they would be referring claimant to a different physician in the Portland, Oregon area. Defendants notified claimant that they had no intention of finding a physician(s) in Portland, Oregon and that defendants would pay for any treatment rendered consistent with Dr. Hartley's recommendations.

Claimant's counsel sought clarification of defendants' authorization and asked defense counsel to confirm that Ms. Kelley could get the tests recommended by Dr. Hartley scheduled, through whatever means necessary, and submit the bills to defendants for payment. If defense counsel agreed with claimant's counsel's statement, he was instructed to provide specific information regarding the authorization, the contact information claimant should provide to her medical providers in Oregon, and where claimant's medical bills should be sent. Defense counsel responded, "Will do" and referenced an insurance card that was provided to claimant by defendants shortly after the work injury. Claimant's counsel would later refer to this card as the "Brickstreet insurance card."

I find defendants consented to authorizing Dr. Kleikamp as a treating physician on October 14, 2022. I further find that defendants authorized claimant to utilize the Brickstreet insurance card for treatment rendered consistent with Dr. Hartley's recommendations.

There is no evidence that defendants required claimant to seek authorization prior to scheduling appointments with Dr. Kleikamp once he was authorized as a treating physician. Indeed, claimant was able to schedule the November 28, 2022, appointment with Dr. Kleikamp utilizing the Brickstreet insurance card.

At hearing, defendants acknowledged that Dr. Kleikamp is an authorized treating physician, and they intend to authorize additional appointments with Dr. Kleikamp. Defendants are authorizing Dr. Kleikamp's referral to the Long Covid Clinic and intend to authorize the treatment recommendations of the various providers at the Long Covid Clinic. Given this information, I cannot find that defendants have abandoned care. The undersigned denies claimant's petition for alternate care insofar as claimant requests removal of defendants' ability to direct care. It is unnecessary for the undersigned to order defendants to authorize Dr. Kleikamp as a treating physician, or the referral to

OHSU Long Covid Clinic, as defendants have already authorized the same.

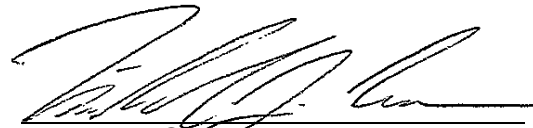
The undersigned recognizes that some delay is attributable to defendants as they did not respond to claimant's counsel's August 30, 2022, correspondence for six weeks. Some delay can be expected, particularly in this situation where the defendants are attempting to locate and authorize an out-of-state physician. That being said, the undersigned is not convinced six weeks of deliberation was necessary given defense counsel's response that his client "has no interest in finding a doctor in Portland." I strongly encourage defense counsel to improve upon his communication skills, including his response time when responding to questions posed by claimant's counsel. If, in the future, the pattern of delay described in the February 17, 2022, alternate medical care decision, or delay attributable to defense counsel's failure to respond in a timely manner, the undersigned will find defendants' pattern of delay equivalent to inappropriate interference with its 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 30th day of December, 2022.



MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

MaKayla Augustine (via WCES)

Bryan Brooks (via WCES)