

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JERRY TUCKER,

Claimant,

vs.

COLONY HEARING &
AIR CONDITIONING,

Employer,

and

REGENT INSURANCE CO.,

Insurance Carrier,
Defendants.

File No. 1648828.04

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, Jerry Tucker. Claimant appeared personally and through his attorney, Mark Chipokas. Defendants appeared through their attorney, Tyler Lafin.

The alternate medical care claim came on for a telephonic hearing on July 13, 2021. 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.

Claimant offered exhibits 1-10, which include a total of 10 pages. Defendants offered Exhibit A, which includes 3 pages. Claimant testified on his own behalf. No other witnesses were called to testify. The evidentiary record closed at the conclusion of the alternate medical care hearing.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care. Specifically, claimant seeks an order of this agency authorizing trigger point injections and botox injections recommended by Stanley Mathew, M.D., and/or Roy Lidtke, D.P.M. Claimant seeks an order authorizing an MRI to be conducted at Unity Point. Claimant seeks an order authorizing some orthotic inserts, a compounding

cream, as well as physical therapy at Unity Point. Claimant also asserted a claim for an order compelling defendants to pay past medical mileage.

Defendants assert that the requested trigger point injections and botox injections are authorized. They consent to entry of an order authorizing those injections.

Defendants assert that they also authorize an MRI to be performed. However, defendants authorized the MRI to be performed at Steindler Orthopaedics Clinic instead of at Unity Point where claimant desires the MRI be performed. Defendants consent to entry of an order directing that an MRI be authorized but assert the location of the MRI is a disputed issue for resolution.

Defendants consent to entry of an order authorizing both the orthotic inserts and the compounding cream requested by claimant. Defendants also consent to an order for physical therapy. However, defendants seek to have physical therapy transferred from Unity Point to Athletico. Accordingly, the specific provider to be authorized for physical therapy is a disputed issue.

The undersigned rejected the request for past medical mileage, as this alternate medical care proceeding is prospective in nature. If necessary, claimant may file a petition for medical benefits using the standard original notice and petition (Form 100). However, that claim cannot be adjudicated in this expedited proceeding.

Accordingly, the remaining disputed issues for determination are:

1. Whether the requested MRI should be performed at Unity Point or Steindler Clinic.
2. Whether the requested physical therapy should be conducted at Unity Point or Athletico.

FINDINGS OF FACT

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

Claimant, Jerry Tucker, sustained injuries to his low back and lower extremities that arose out of and in the course of his employment on May 16, 2018. As a result of those injuries, claimant also developed deep vein thrombosis. Mr. Tucker requires ongoing medical care for these injuries. His treating medical providers, Dr. Stanley Mathew and Dr. Roy Lidtke, have ongoing recommendations for treatment.

Specifically, claimant's medical providers recommend he obtain and use a compounded cream for neuropathic pain. Defendants consent to entry of an order for this compounded cream. Claimant's providers recommend trigger point injections and botox injections. Defendants consent to entry of an order for these injections. Claimant seeks an order for a shoe insert recommended by his podiatrist. Defendants consent to entry of an order for this shoe insert.

Mr. Tucker seeks authorization of physical therapy at Unity Point. Claimant has previously obtained physical therapy at Unity Point. He seeks an order permitting him to return to the provider with whom he has established care for his future physical therapy. Defendants consent to and agree to authorize physical therapy. However, defendants seek to transfer claimant's physical therapy to a different provider, Athletico. Claimant testified that he has an established rapport with his physical therapist at Unity Point. He testified that he believes it is beneficial to remain with his established provider and that he desires to do so. Defendants offer no specific basis or reason for the transfer of care from Unity Point's physical therapy to Athletico for future physical therapy. I find that defendants' transfer of care from a previously authorized physical therapist is an interference of care and is unreasonable. It makes more sense and is reasonable for claimant to return to a physical therapist that knows his condition, past treatment, and to maintain continuity of care for claimant's physical therapist. Therefore, I find that the offer of physical therapy through Athletico via a transfer of care from a prior therapist is not reasonable.

Finally, claimant seeks authorization of an MRI recommended by Dr. Lidtke. Claimant seeks to have the MRI performed at Unity Point. He testified that driving causes him pain and that he would have to travel an additional 40-60 miles round-trip to submit to an MRI at Steindler Clinic as opposed to having the MRI performed at Unity Point. Claimant contends it is unreasonable for defendants to require him to travel this distance and that it is an interference of care by defendants to schedule the MRI at Steindler Clinic as opposed to Unity Point. Claimant further asserts that his podiatrist ordered an MRI without contrast but defendants are offering an MRI with contrast. Accordingly, claimant contends the offer of an MRI at Steindler Clinic is not reasonable and requests an order authorizing the MRI at Unity Point.

Defendants contend that the offer of an MRI at Steindler Clinic is reasonable and appropriate. Defendants point out that an MRI is an objective test that is performed on a one-time basis and that requiring claimant to travel approximately 60 miles round-trip is not unreasonable. Defendants' counsel asserts that no concerns about use of contrast were raised by claimant prior to the alternate medical care hearing but defendants concede the MRI should be performed as recommended by Dr. Lidtke.

With respect to the performance of an MRI, claimant asserted at the alternate medical care hearing that his treating providers referred the MRI and ordered it to be performed at Unity Point. However, the only evidence in the record documenting the order for an MRI is page 7 of Claimant's Exhibits. That exhibit is a June 3, 2021 order by Dr. Lidtke, which states, "It is my medical opinion that Jerry Dean Tucker Jr. is in need of an MRI due to symptoms consistent with soft tissue irritation at medial ankle. If you have any questions or concerns, please don't hesitate to call." In this note, Dr. Lidtke did not make a specific referral to Unity Point for the MRI. Claimant identified no other evidence that suggests an MRI performed at Unity Point is superior to an MRI performed at Steindler Clinic. I find that an MRI performed at Steindler Clinic is a reasonable offer of care by defendants. While claimant may desire to avoid travel to Steindler Clinic for the MRI, I find that the distance to be traveled to Steindler Clinic for a one-time MRI is reasonable. Claimant identified no medical evidence that indicates that travel to Steindler Clinic would be medically detrimental to claimant. Therefore, I find

that defendants' offer of an MRI at Steindler Clinic is a reasonable offer of medical care consistent with the June 3, 2021 order by Dr. Lidtke.

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 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).

"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).

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 19, 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).

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).

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).

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, the employer consents to an order granting the request for trigger point injections, botox injections, a compounding cream, and orthotic inserts. The employer's consent is reasonable and appropriate. An order will be entered for the requested treatments.

Claimant also seeks an order for physical therapy and an MRI. Defendants consent to both requests, but assert that they should be permitted to select the treating providers for both forms of treatment or diagnosis. Indeed, generally the defendants have the right to select the treating providers.

In this case, I found that claimant had an established prior treatment regimen with physical therapy at Unity Point. I found that it would be unreasonable to interfere with the rapport between claimant and his treating therapist. Instead, it makes more sense in this situation to maintain a continuity of care and to maintain therapy with Unity Point. I found that the physical therapy offered by defendants at Athletico, although generally permissible, would be unreasonable in this situation. Therefore, I conclude that claimant is entitled to an order directing that defendants provide physical therapy through Unity Point.

With respect to the request for an MRI, defendants reasonably consent to the MRI and assert that they have attempted to schedule the MRI several times with resistance from claimant. Claimant contends that the MRI should be provided at Unity Point, while defendants offer the MRI at Steindler Clinic. I found that the use of Steindler Clinic for a one-time MRI was reasonable. I found that the distance claimant would be required to travel is reasonable. Accordingly, I found that the MRI offered by defendants was reasonable, appropriate to diagnose or treat the injury, and within defendants' prerogative. Therefore, I conclude that the request for alternate medical care should be denied with respect to the MRI and that claimant should submit to the MRI at Steindler Clinic.

Claimant also raised concerns about and requested an order directing defendants to pay past medical mileage expenses. Claimant introduced no evidence of past medical mileage that is outstanding. Moreover, alternate medical care proceedings are prospective in nature. Claimant has a remedy available to pursue a claim for past

medical mileage, if he desires to do so. Claimant must use a Form 100 Original Notice and Petition and utilize typical litigation processes before this agency, rather than the expedited procedures of an alternate medical care proceeding. Therefore, I conclude that any request for past medical mileage must be rejected in this alternate medical care proceeding.

ORDER

THEREFORE, IT IS ORDERED:

The claimant's petition for alternate medical care is granted in part and denied in part.

Defendants shall immediately authorized and make arrangements for claimant to obtain recommended trigger point and botox injections with Dr. Mathew and/or Dr. Lidtke.

Defendants shall immediately authorize and make sure that arrangements are made for claimant to obtain the compounding cream recommended by claimant's authorized medical providers.

Defendants shall immediately authorize and arrange for claimant to receive the shoe inserts recommended by claimant's authorized medical providers.

Defendants shall immediately authorize and arrange for claimant to obtain recommended physical therapy through Unity Point's therapy department as recommended by claimant's authorized medical providers.

Defendants shall immediately authorize and arrange for an MRI at Steindler Clinic pursuant to the recommendations of claimant's authorized medical providers, including confirmation of whether the MRI should be conducted with or without contrast.

Defendants shall pay claimant for medical mileage to attend or receive all of the above ordered medical care.

Claimant's request for an order directing payment of past medical mileage expenses is dismissed without prejudice.

Signed and filed this 13th day of July, 2021.

A handwritten signature in black ink, reading "William H. Grell". The signature is written in a cursive style with a large, sweeping initial "W".

WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Mark Chipokas (via WCES)

L. Tyler Laflin (via WCES)