

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MIKE DARRAH,	FILED	
	SEP 01 2017	
Claimant,		File No. 5063438
vs.	WORKERS COMPENSATION	ALTERNATE MEDICAL
DUPONT-PIONEER,		CARE DECISION
Employer,		
Self-Insured,		
Defendant.		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. Claimant appeared through his attorney. Defendant appeared through its attorney.

The alternate medical care claim came on for hearing on August 31, 2017. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Iowa Workers' Compensation 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 exhibits 1 through 4 and defendant's exhibits A through E. Claimant testified on his own behalf. Ms. Darcy Darrah, spouse, also testified. Defendant did not call any witnesses to testify.

FINDINGS OF FACT

The parties admit claimant sustained a work-related injury on February 28, 2017. He fell from a ladder and sustained a head injury. Steven Adelman, D.O., a neurologist, treated claimant for: headaches, memory loss, numbness and confusion. Dr. Adelman also noted claimant had depression, anxiety, and emotional problems. (Exhibit 1, page 2) In his summary for July 18, 2017, Dr. Adelman wrote in his clinical notes:

Assessment

1. Emotional lability (799.24) (R45.86)

Discussion/Summary

Mr. Darrah is a 54-year-old man who suffered a cerebral concussion in February 2017, and did have a normal neurologic examination and CT scan of his brain. His posttraumatic headaches are somewhat improved. He still will have occasional ability headaches.

His major issues continue to be subjective memory disturbance and emotional lability. Although it is quite possible that these symptoms were present premorbidly both he and his wife deny this. He also has a history of heavy alcohol consumption. Formal neuropsychological testing did not show evidence of cognitive dysfunction but did show evidence of significant anxiety, depression, and stress. We have recommended counseling. The patient and his wife are not necessarily convinced that he does not have significant cognitive issues but I have attempted to reassure him. I would like to see them once they have started counseling.

Claimant had previously undergone an outpatient neuropsychological evaluation by James Levy, Ph.D., a licensed neuropsychologist. Dr. Levy authored a report detailing the results of the neuropsychological evaluation. Dr. Levy recommended the following:

IMPRESSIONS AND RECOMMENDATIONS: Michael Darrah is a 54-year-old male who sat for a valid neuropsychological evaluation. The neurocognitive profile is marked by significant and severe anxiety, depression, and overall level of stress. The neurocognitive profile is noteworthy for its lack of significant findings: A score was in the borderline range, which is considered testing error, especially since they didn't occur within a single domain of testing. What I suspect is a pre-morbid, but largely silent/dormant, predisposition to convert the physical stress of the post-concussion syndrome into psychological distress. The good news is that it can be circumvented, as in the testing process itself, and there appears to be no significant problem with memory and concentration in a neutral and encouraging environment. The trouble is that the real world is not always neutral and encouraging, especially Mr. Darrah's work setting. As a result, the anxiety, agitation, and depression come out and they block his ability to focus and encode new information.

The primary recommendation is for Mr. Darrah to see a counselor/therapist who can work with him on specific behavioral processes to reduce his anxiety and depression, but who can also be supportive while he figures out what is going on at work.

Ms. Darcy Darrah, spouse of claimant, testified, Dr. Adelman recommended claimant see a psychiatrist. However, she could not remember the name of the

psychiatrist. Ms. Darrah testified she called the doctor's office but could not get an appointment for her husband until late October. As a consequence, Ms. Darrah did not book an appointment for her spouse. Upon questioning from the undersigned, the witness was adamant Dr. Adelman said the referral was to be to a psychiatrist and not to a counselor.

After the hearing, claimant's counsel sent an e-mail message to defense counsel and to the undersigned. Ms. Darrah had contacted Dr. Adelman's office for the name of the psychiatrist that had been the subject of the referral. Ms. Darrah learned the referral was to either Charles Jennisch, M.D. or to C. Scott Jennisch, M.D., both of whom practice psychiatry at Iowa Psychiatry in Urbandale, Iowa.

Ms. Darrah testified she next contacted Dr. Adelman's office to inquire whether Dr. Adelman would refer claimant to James Gallagher, M.D., a psychiatrist who practices in Windsor Heights, Iowa. Ms. Darrah did not speak with Dr. Adelman. She spoke with "a nurse" in the office who said Dr. Gallagher would be fine. Ms. Darrah made an appointment for Mr. Darrah with Dr. Gallagher for September 21, 2017. The appointment with Dr. Gallagher was not authorized by defendant. Counsel for claimant notified defense counsel of the request for treatment with Dr. Gallagher on July 31, 2017. Then on August 10, 2017, counsel for claimant notified defense counsel of the upcoming appointment with Dr. Gallagher in September.

The case manager for defendant, Jeri Griffiths, RN, CCM, contacted Dr. Adelman about therapy for claimant. Nurse Griffiths sent the following letter to Dr. Adelman:

In regards to the recommended therapy that is recommended by Dr. Miller, Dr. Levy, and you.

I am in the process of setting up an appointment with a local therapy group, Hearthstone therapy. They provide general therapy services.

I have referred to Paul Lambakis, LISW, with over 30 years of experience in practice of psychotherapy.

He is board certified in clinical social work and clinical hypnosis. He specializes in treatment of anxiety, depression, work/life stress and loss of relationship.

He also practices and teaches meditation.

Does this plan meet your expectations?

(Exhibit A, page 1) Dr. Adelman replied, "yes" to the inquiry. (Ex. A, p. 1)

Daniel Miller, D.O., another of claimant's authorized treating physicians, agreed treatment with a therapy group would be fine for claimant. (Ex. B, p. 2) He did not indicate a psychiatrist was required.

Claimant testified he has had thoughts of harming himself. He stated he will treat with anyone who can help him improve his emotional state.

CONCLUSIONS OF LAW AND RATIONALE

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).

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).

The employee bears the burden to establish what care is reasonable and it is a question of fact. Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995). The determination will be based on what is reasonably necessary. Long, at 124.

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).

Dr. Adelman, Dr. Miller and Dr. Levy all agree claimant needs counseling and therapy. Originally, Dr. Adelman referred claimant to a psychiatrist. Ms. Darrah did not book an appointment with that doctor at Iowa Psychiatry. Ms. Darrah thought claimant needed to see a doctor of psychiatry before the end of October. As a result, claimant's spouse asked people she knew for the name of another doctor of psychiatry. Someone mentioned the name of Dr. James Gallagher. Neither claimant nor his wife knew anything about Dr. Gallagher. Ms. Darrah contacted Dr. Adelman's office to solicit his opinion about Dr. Gallagher. Dr. Adelman was unavailable for consultation. "A nurse" in the office said Dr. Gallagher was fine. Ms. Darrah scheduled claimant for an appointment on September 21, 2017. Defendant had no knowledge of the appointment at the time the appointment was arranged.

The facts in this case show Dr. Adelman initially referred claimant to Iowa Psychiatry in Urbandale and to one of two doctors named Jennisch. Claimant's spouse did not make the appointment per the referral. Someone else in Dr. Adelman's office said Dr. Gallagher would be fine for a referral. No one knows who this other person was, or the qualifications of the person making the determination.

In general, psychiatrists prescribe medication for their patients. They do not usually engage in counseling and therapy. Counselors, social workers, and psychologists engage in all types of counseling and therapy. Defendants have arranged for claimant to engage in psychotherapy with Ms. Rachel Lomen, LISW, at Hearthstone Counseling on September 25, 2017 at 10:30 a.m. The treatment is reasonable, given the opinions of Dr. Adelman, Dr. Miller and Dr. Levy. Claimant's medical records shall be forwarded to Ms. Lomen prior to the September 25, 2017 appointment.

Because Dr. Adelman initially made a referral to a psychiatrist who is a medical doctor, I am authorizing a one-time evaluation of claimant by James Gallagher, M.D. Claimant's medical records should be forwarded to Dr. Gallagher prior to claimant's appointment on September 21, 2017. If Dr. Gallagher should prescribe medication for claimant it will be defendant's responsibility to pay for the prescriptions prescribed on September 21, 2017.

ORDER

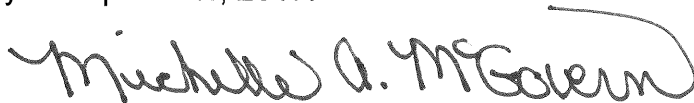
THEREFORE, IT IS ORDERED:

Treatment at Hearthstone Counseling is reasonable.

Defendant shall provide a one-time evaluation of claimant by James Gallagher, M.D., on September 21, 2017.

If Dr. Gallagher should prescribe medication for claimant, defendant is liable for the cost of the prescription drugs.

Signed and filed this 1st day of September, 2017.



MICHELLE A. MCGOVERN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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