BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

GARY YANDA, Claimant, vs. KIRKWOOD COMMUNITY COLLEGE, Employer, WEST BEND MUTUAL INSURANCE, Insurance Carrier, Defendants.	File No. 23700292.03 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, Gary Yanda.

The hearing for this alternate medical care claim was held on May 18, 2023. Claimant appeared through his attorney Matthew Dake. Defendants appeared through their attorney Edward Rose. 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 hearing record consists of:

- Claimant's exhibits 1-4;
- Defendants' exhibits A and B

Counsel for both parties provided argument. The record closed at the end of the alternate medical care telephonic hearing.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care in the form of:

- Authorization to treat with physiatrist, Stanley Matthew, M.D.

FINDINGS OF FACT

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

This is the third alternate medical care petition filed by the claimant for the accepted April 19, 2022 date of injury. The first petition went to hearing on April 13, 2023. The decision in that case contains a detailed explanation of claimant's injury and his prior medical treatment. The bulk of those facts will not be repeated in this decision. Claimant's second alternate care petition was dismissed on May 8, 2023.

In this petition, claimant is once again requesting that defendants authorize treatment with physiatrist, Stanley Matthew, M.D. Since the last hearing, claimant was evaluated by Christopher Vincent, M.D., an orthopedic surgeon. (Ex. 3). This took place on April 25, 2023. (Id.). Dr. Vincent diagnosed him with left sternoclavicular joint arthritis and arthralgia. (Id. at 3). His treatment note indicates that claimant's symptoms had already been treated with physical therapy, multiple anti-inflammatories, pain medicine, and sternoclavicular joint injections. (Id. at 3). According to the claimant, none of the conservative treatments lessened his pain. (Id.).

Dr. Vincent reviewed a CT scan of claimant's chest. (Id. at 2). He noted it showed the sternoclavicular joint was anatomically aligned with no anterior or posterior displacement, no soft tissue swelling or distention that would suggest inflammation or active arthritis, and no bony destruction or fractures. (Id.). Given these findings, Dr. Vincent recommended against surgery. (Id.). He placed claimant at maximum medical improvement (MMI) and opined that there was no further treatment which was likely to improve his function. (Id.). Dr. Vincent indicated claimant's cervical MRI showed degenerative changes and he could benefit from seeking a specialist for that, but the treatment would not be related to the April 19, 2022 injury date. (Id. at 3).

On April 21, 2023, four days prior to claimant's evaluation with Dr. Vincent, claimant's counsel wrote to Nicholas Bingham, M.D., claimant's authorized treating physician. (Ex. 2). In this letter, claimant's counsel indicated that claimant was experiencing daily pain and symptoms, but still did not have an appointment with Dr. Vincent or any knowledge of when an appointment date might be expected. (Id. at 1). Counsel requested that Dr. Bingham make a referral for claimant to treat with Dr. Matthew or Sunny Kim, M.D. (Id.). At the time of the hearing, claimant's counsel had not yet received a response from Dr. Bingham. (Hearing Testimony). However, counsel also indicated that claimant did not attempt to make a return appointment with Dr. Bingham or request such an appointment through defendants. (Id.).

In May 2023, defendants attempted to make claimant an appointment with Mark Kline, M.D., a pain medicine specialist with whom he has previously treated. (Ex. A). Dr. Kline declined to see claimant again. (Id.). After receiving his refusal, defendants contacted the University of Iowa (UIHC) Physical Medicine and Rehabilitation Clinic to see if a physiatrist there would treat claimant. (Ex. B; Hearing Testimony). The referral

request form from UIHC indicates the clinic generally takes 5-7 business days to address requests for treatment. (Ex. B). At the time of the hearing, defendants had not yet heard back from UIHC. (Hearing Testimony).

At hearing, claimant's counsel indicated that he had no objections to claimant treating with a physiatrist at UIHC and it was reasonable. (Hearing Testimony). However, counsel asked the agency to issue an order indicating that if defendants had not heard back from UIHC within seven days of the hearing, the agency was ordering defendants authorize treatment with Dr. Matthew. (Hearing Testimony). Defendants argued the statute gives them the right to direct care, they have voluntarily referred the claimant to UIHC for care with a physiatrist, and that is reasonable.

CONCLUSIONS OF LAW

Under Iowa law, an employer who has accepted compensability for a workplace injury has a right to control the care provided to the injured employee. Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 769 (Iowa 2016). The relevant statute provides as follows:

> For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. . . The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

Iowa Code § 85.27(4).

Defendants' "obligation under the statute is confined to *reasonable* care for the diagnosis and treatment of work-related injuries." Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995) (emphasis in original). In other words, the "obligation under the statute turns on the question of reasonable necessity, not desirability." Id. 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. See Iowa Code § 85.27(4). 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); Long, 528 N.W.2d at 124. Ultimately, determining whether care is reasonable under the statute is a question of fact. Long, 528 N.W.2d at 123.

No authorized providers have referred claimant to a physiatrist. Despite this, defendants have voluntarily referred claimant to UIHC for care with a physiatrist. At hearing, claimant's counsel admitted this treatment was reasonable. An employee's desire for a different "reasonable" treatment plan does not make the employer-authorized care unreasonable. See Long, 528 at 124. A finding that the treatment requested by the claimant is reasonable does not result in an implicit finding that the authorized treatment is unreasonable. (Id.). The employee must prove the care being offered by the employer is unreasonable to treat the work injury, not that another treatment plan is reasonable. Id.; See also Lynch Livestock, Inc. v. Bursell, 870 N.W.2d 274 (Table) (Iowa Ct. App. 2015). Claimant has not met this burden. Defendants' referral to UICH is reasonable and was promptly offered. Despite this, claimant is requesting an order that care be transferred to Dr. Matthew if UIHC does not provide defendants with a response in seven days. Every controversy brought before this agency is fact specific. The undersigned will not take away defendants' statutory right to control care by issuing an arbitrary deadline without the requisite fact-finding.

At this point in time, claimant has not shown that the care offered by defendants is unreasonable. Claimant's request for alternate care is denied.

THEREFORE, IT IS ORDERED:

Claimant's petition for alternate medical care is denied.

Signed and filed this __19th__ day of May, 2023.

Amanda Rutherford

AMANDA R. RUTHERFORD
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Matthew Dake (via WCES)

Edward Rose (via WCES)