

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JUSTIN STRODTMAN,

Claimant,

vs.

SMITH PROMOTIONAL ADVERTISING,

Employer,

and

FARM BUREAU PROPERTY AND
CASUALTY INSURANCE,Insurance Carrier,
Defendants.

File No. 22008646.01

ALTERNATE MEDICAL CARE
DECISIONHeadnote: 2701

On December 6, 2023, claimant filed an original notice and petition for alternate medical care under Iowa Code section 85.27, invoking the provisions of rule 876 IAC 4.48. On December 18, 2023, defendants filed an Answer accepting that claimant sustained an injury to his left knee, which arose out of and in the course of his employment on November 8, 2018.

This alternate medical care claim came on for hearing before the undersigned on December 18, 2023, at 10:30 a.m. The proceedings were recorded digitally and constitute the official record of the hearing. By an order filed by the workers' compensation commissioner, this decision is designated final agency action. Any appeal would be a petition for judicial review under Iowa Code section 17A.19.

The record consists of Claimant's Exhibits 1 and 2, which include a total of 6 pages, and Defendants' Exhibits A through C, which include a total of 9 pages. Mr. Strodtman was the only witness to provide testimony. Counsel for both parties provided argument.

ISSUE

The issue presented for resolution is whether claimant is entitled to alternate medical care consisting of a referral to either Amy Moore, M.D. or Susan Mackinnon, M.D., per the recommendation of an authorized treating physician.

FINDINGS OF FACT

Having considered all the evidence and testimony in the record, the undersigned finds:

Claimant, Justin Strodtman, sustained a work-related injury to his left knee on November 8, 2018. Defendants authorized medical care for the work injury with several providers, including William Jacobson, M.D., Timothy Vinyard, M.D., and Joseph Buckwalter, M.D. (Claimant's Testimony) Defendants have provided claimant reasonable and appropriate medical care to date, including three peroneal nerve decompressions. (See Exhibit B, page 2; Exhibit 1, page 1)

Dr. Buckwalter currently serves as claimant's authorized treating surgeon. Dr. Buckwalter performed the two most recent peroneal nerve decompressions on claimant's left knee. (See Ex. 1, p. 1) Dr. Buckwalter placed claimant at maximum medical improvement and assigned permanent work restrictions in November 2022. (See Ex. 1, p. 1) Unfortunately, claimant subsequently experienced an exacerbation of his symptoms. (See Ex. 1, p. 1)

When his symptoms continued, claimant reached out to the Mayo Clinic and Johns Hopkins for a medical records review. The Mayo Clinic denied claimant's request; however, Johns Hopkins agreed to review claimant's medical records and provide their opinion as to what additional treatment may be available. Ultimately, the medical team at Johns Hopkins reported that their specialists would not have anything to offer. Nevertheless, the team provided claimant with the names of at least two specialists that might be able to help. Amy Moore, M.D. and Susan Mackinnon, M.D. were two of the specialists recommended by Johns Hopkins. (Claimant's Testimony)

On June 9, 2023, defendants authorized a return visit to Dr. Buckwalter. (Ex. 2, p. 5) The appointment was scheduled for August 15, 2023. At the appointment, Dr. Buckwalter discussed additional treatment options and a referral to a different surgeon for a second opinion. (Ex. 1, p. 2) During the discussion, claimant relayed to Dr. Buckwalter that Johns Hopkins had recommended Dr. Moore and Dr. Mackinnon for a second surgical opinion. Dr. Buckwalter felt a referral was reasonable given claimant's continued symptoms and overall diminished quality of life. (Id.) He then expressly recommended a referral to either Dr. Moore or Dr. Mackinnon. (Id.)

On September 25, 2023, claimant was informed that the defendant insurer would not be authorizing additional referrals. (Ex. 2, p. 5) Two days later, claimant's counsel sought an explanation as to why the referrals of a treating physician were being denied.

Defendants contend the care claimant seeks is "state of the art" and exceeds the standard of care they are obligated to provide. Defendants further contend they have provided claimant with care that is appropriate to the injury and sufficient to bring the worker to maximum recovery.

I find that an authorized treating physician, Dr. Buckwalter, has recommended a referral to Dr. Moore or Dr. Mackinnon and that there is no medical opinion in contradiction thereto. I find that the recommendation is reasonable in light of claimant's

continued symptoms. I further find that the failure to authorize such recommended care is unreasonable. Claimant is entitled to receive medical care recommended by his authorized treating physicians without delay.

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).

To establish a claim for alternative medical care, an employee must show that the medical care furnished by the employer is unreasonable. Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010).

“Determining what care is reasonable under the statute is a question of fact.” Id. at 123. “[W]hen 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.” Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997).

Claimant seeks an order directing defendants to refer claimant's care to Dr. Moore at the Ohio State University Wexner Medical Center, or Dr. Mackinnon at Washington University in St. Louis, Missouri. In support of his request, claimant highlights the recommendation of Dr. Buckwalter.

Agency precedent has long held that defendants may not interfere with the medical judgment of an authorized treating physician and that a referral from a treating

physician does not require permission of the defendants. See Pote v. Mickow Corp., (Review-Reopening decision June 17, 1986).

Dr. Buckwalter serves as one of claimant's authorized treating physicians. He recommended that claimant present for a second opinion evaluation with Dr. Moore or Dr. Mackinnon. Although defendants criticize Dr. Buckwalter for complying with claimant's wishes, there is no showing the referral is medically inappropriate. Dr. Buckwalter has made a referral to specialists he feels are appropriate for claimant's condition. The recommendation of Dr. Buckwalter should have been timely authorized and provided to claimant. The lack of authorization for the recommended treatment of the defendants' authorized provider, Dr. Buckwalter, is unreasonable.

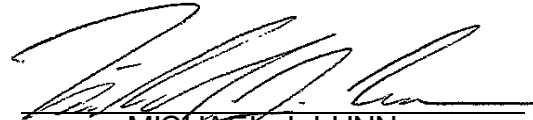
ORDER

THEREFORE, IT IS ORDERED:

Claimant's petition for alternate medical care is granted.

Defendants shall contact Dr. Moore or Dr. Mackinnon within 14 days of the filing of this order to make arrangements to have claimant evaluated.

Signed and filed this 20th day of December, 2023.



MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Mark Hedberg (via WCES)

James Russell (via WCES)