

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MICHAEL RECTOR,

Claimant,

vs.

PEOPLEASE CORPORATION,

Employer,

and

ARCH INSURANCE,

Insurance Carrier,
Defendants.

FILED

MAR 30 2017

WORKERS COMPENSATION

File No. 5037407

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapters 17A and 85. The expedited procedure of rule 876 IAC 4.48, the "alternate medical care" rule, is requested by claimant, Michael Rector. Claimant filed a petition on March 16, 2017. The alternative medical care claim came on for hearing on March 28, 2017. The proceedings were recorded digitally and constitute the official record of the hearing. Defendants did not dispute liability for the medical condition sought to be treated by this proceeding. The evidentiary record consists of claimant's exhibit 1, defendants' exhibits A through C, and the testimony of the claimant.

By an order filed February 16, 2015 by the workers' compensation commissioner, this decision is designated final agency action. Any appeal would be by petition for judicial review under Iowa Code section 17A.19.

ISSUE

The issue presented for resolution is whether claimant is entitled to alternate medical care in the form of authorization of diagnostic labs, imaging and testing; timely refills of prescriptions; and prompt reimbursement for medical mileage.

FINDINGS OF FACT

The undersigned, having considered all of the testimony and evidence in the record, finds:

Claimant is a resident of Exeter, California. (Claimant's testimony) Claimant suffered a stipulated work related injury on June 14, 2010. Claimant's course of treatment included lumbar decompression, fusion, and implantation of multiple spinal cord stimulators. At one point in his treatment, claimant developed a post-operative infection, resulting in osteomyelitis. (Claimant's testimony; Exhibit A, page 6)

The parties entered into a compromise settlement pursuant to Iowa Code sections 85.35(3) and 85.35(6) whereby the parties resolved claimant's entitlement to indemnity benefits, but left claimant's right to medical benefits under section 85.27 open for the duration of claimant's lifetime. The settlement documents were approved by this agency on November 12, 2013.

Claimant continued to suffer with ongoing symptoms and Paul Ky, D.O. was authorized to provide pain management services. Claimant treated with Dr. Ky during intermittent periods dating to 2010. Claimant continued under Dr. Ky's care on the date of evidentiary hearing and receives multiple prescription medications, including Lyrica and a narcotic pain medication. Claimant testified Dr. Ky informed claimant that he will not order any labs or testing unless prompted to do so by defendant-insurance carrier. (Claimant's testimony) The evidentiary record contains no written documentation from Dr. Ky supporting claimant's testimony in this regard.

In order to facilitate ongoing care, claimant was also assigned a nurse case manager. (Claimant's testimony) On March 7, 2016, the nurse case manager authored a letter to claimant identifying nine medical providers with whom she had spoken regarding providing primary treatment services and/or a second opinion. One listed provider was Ali Najafi, M.D. of Fresno, California. The nurse case manager requested claimant's input into a preferred provider. (Ex. A, p. 4)

Also on March 7, 2016, claimant authored email correspondence to defendants' counsel, requesting that he not be contacted by the nurse case manager or third-party administrator. He indicated he would be "filing another petition" and issues would be resolved by the court. (Ex. A, p. 5) Claimant testified he authored this email after becoming frustrated with changes in the adjuster assigned to his claim and also with his nurse case manager. Claimant testified the nurse case manager did not possess claimant's medical records, lacked knowledge of his settlement, and repeatedly asked claimant what she could do to assist him. Claimant testified he became upset with her lack of knowledge of his claim; during hearing, claimant described the nurse case manager as "weird" and a "fruit loop." (Claimant's testimony)

As recommended by the then-assigned nurse case manager, on June 6, 2016, claimant was evaluated by neurosurgeon, Ali Najafi, M.D. (Claimant's testimony) Following examination, Dr. Najafi opined claimant would benefit from revision and replacement of his spinal cord stimulator electrodes with placement of a surgical lead laminectomy paddle. Dr. Najafi also opined claimant would benefit from treatment of lumbar pseudoarthrosis, which would include revision of the lumbar fusion, "for which I will refer to UC San Francisco for a second opinion." (Ex. A, p. 7)

Defendants authorized and claimant underwent the recommended stimulator procedure with Dr. Najafi. (Claimant's testimony) Per Dr. Najafi's recommendation, on November 4, 2016, claimant scheduled an appointment at the University of California – San Francisco (UCSF). (Ex. A, p. 8) This appointment was authorized by defendants. Claimant testified he did not schedule the appointment at a sooner date, as he was engaged in settlement discussions with defendants. When those discussions broke down, claimant called to schedule an appointment at the earliest available date and time. (Claimant's testimony)

The appointment at UCSF was set with Harald Berven, M.D., on November 28, 2016 at 2:15 p.m. UCSF records reveal claimant checked-in for the appointment at 1:20 p.m. and cancelled the appointment at 2:53 p.m. for "Personal Reasons/Transportation/Too Late for Appt (Patient couldn't wait)." (Ex. A, p. 8) Claimant testified he elected to leave Dr. Berven's office at approximately 3:00 p.m., as his wife, who had driven him to the appointment, worked that evening and the two had an approximately six-hour drive home. Claimant noted the patient with the 1:30 p.m. appointment remained in the waiting room when claimant made the decision to leave. (Claimant's testimony)

On February 6, 2017, claimant's counsel authored a letter to the adjuster administering claimant's claim and copied defendants' counsel to the correspondence. By the letter, claimant's counsel expressed dissatisfaction with the treatment offered by defendants and with delays in medical mileage reimbursement. Consequently, counsel requested approval and/or authorization of several items with respect to claimant's medical treatment. First, counsel requested assignment of a nurse case manager, with that individual being tasked with locating an orthopedic physician or neurosurgeon to perform a second opinion evaluation as recommended by Dr. Najafi. It was requested that this physician be located at a reasonable distance from claimant's home, as opposed to a previously authorized evaluation located 480 miles round-trip from claimant's residence. Second, counsel indicated claimant required "a provider where labs and imaging" could be regularly undertaken to monitor a prior diagnosis of osteomyelitis. Third, counsel indicated claimant requested a "medical determination" as to the reason for non-fusion and authorization of ongoing treatment of this condition. Counsel represented this step was necessary prior to undergoing any further surgical intervention. (Ex. 1, p. 1) Fourth, claimant requested authorization of a more geographically desirable physician to manage his pain medication, given the 150 mile round-trip to his authorized provider and purported delay in reimbursement of medical mileage. Finally, claimant noted that in the event an alternate medical care petition were filed, he would seek an order that mileage reimbursement be made within 10 days of receipt of claimant's request for payment. (Ex. 1, p. 2)

On February 16, 2017, defendants' counsel authored a responsive letter to claimant's counsel. With respect to claimant's mileage reimbursement request, defendants' counsel indicated a check had been issued on February 8, 2017 for pending requests, with the exception of mileage attendant to the appointment with Dr. Berven at UCSF. Counsel explained mileage would not be paid for this appointment as

claimant left prior to being seen. (Ex. A, pp. 1-2) With respect to assignment of a nurse case manager, counsel noted a nurse case manager had previously been assigned, but claimant had notified defendants' counsel that the nurse case manager should not contact him. As claimant now requested a nurse case manager, counsel indicated defendants had reached out to the former nurse case manager and requested she re-open her file. The case manager declined and described claimant as "non-cooperative and verbally abusive." As a result, defendants had contacted MedInsights for assignment of a new nurse case manager. (Ex. A, p. 2) Finally, with respect to claimant's requests relative to medical providers, counsel noted claimant had been seen by neurosurgeon, Dr. Najafi, who recommended surgery and a second opinion at UCSF. Counsel noted both the recommended treatment and second opinion had been authorized by defendants, but claimant declined surgery and left the second opinion appointment prior to being seen. Counsel noted claimant had not supplied any suggestions as to local providers to fulfill his request and defendants had been unsuccessful in locating a local physician willing to provide treatment. Counsel indicated defendants anticipated discussing potential providers with a nurse case manager, but indicated defendants were willing to consider recommendations by claimant. (Ex. A, pp. 2-3)

On March 9, 2017, defendants' counsel authored a letter to claimant's counsel. Defendants' counsel explained that defendants had sought assignment of a new nurse case manager, but had received inquiry questioning claimant's desire to work with a nurse case manager given "previous difficulties" and his request that he not be contacted by the prior nurse case manager. Defendants' counsel requested confirmation that claimant desired and intended to cooperate with a new nurse case manager. Counsel also inquired if claimant had any suggestions regarding a more geographically desirable medical provider. (Ex. B)

Claimant filed an alternate care petition referencing his February 6, 2017 letter on March 16, 2017.

On March 18, 2017, a new nurse case manager was assigned to claimant's claim. The information was conveyed to claimant's counsel on March 23, 2017. On March 27, 2017, defendants' counsel authored a letter to claimant's counsel further identifying the newly assigned nurse case manager and providing her contact information. Counsel also represented that the nurse case manager had attempted to contact claimant and was awaiting response in order to discuss her local provider recommendations. (Ex. C)

On or about Friday, March 24, 2017, claimant testified he spoke with the newly assigned nurse case manager and she identified options for potential medical providers, including one pain management physician and two occupational medicine physicians. Claimant testified he informed the nurse case manager he was willing to see one of the occupational medicine physicians; the selected physician is located approximately 20 miles from his home. He hopes this provider will order labs and testing relative to his conditions. Claimant testified he believed the nurse case manager would be reaching out to the provider regarding evaluating claimant. (Claimant's testimony)

Claimant testified he currently fills his prescriptions at a Costco location approximately 30 miles round trip from his house. He elects to utilize this pharmacy as it is continually supplied with the opioid medication he is prescribed. However, claimant testified filling his prescriptions often requires multiple trips, as defendants insist on authorizing each prescription individually. As a result, he incurs additional mileage expense and at times, is left without certain medications for a few days. Claimant requested implementation of a mechanism whereby all his prescriptions could be filled at the same time, preferably between the 28th and 30th day of each prescription, or in the alternative, a service be utilized to provide his prescriptions. (Claimant's testimony)

Claimant testified he desires to undergo the surgery recommended by Dr. Ky; however, he wishes to undergo further diagnostic testing prior to surgical intervention. Claimant explained he hopes to receive an explanation for his poor response to prior surgeries before agreeing to another procedure. (Claimant's testimony)

The alternate care matter proceeded to telephonic hearing on March 28, 2017. At the undersigned's request, claimant's counsel specified the relief sought by claimant. Claimant's counsel represented claimant sought to have: (1) Dr. Ky entrusted with authorization to order appropriate labs and imaging; (2) medical mileage reimbursed promptly; (3) prescription refills be authorized in a timely fashion; and (4) designation of a physician to perform any appropriate testing. Defendants' counsel objected to consideration of the requests pertaining to Dr. Ky and prescription refills on the grounds these requests were not referenced in claimant's February 6, 2017 letter, the basis of the alternate care petition.

Claimant's testimony during evidentiary hearing was, at times, difficult to follow. Undoubtedly, a large portion of this confusion is due to the remote date of claimant's injury, his protracted course of care, and his geographic location. These factors also surely played a role in claimant's clear frustration with the handling of his claim. However, what I assume to be claimant's frustration has also impacted the administration of his claim. At claimant's request, a nurse case manager was assigned to claimant's claim; shortly after her assignment to the case, claimant requested she not contact him. Records in evidence indicate the nurse case manager viewed claimant as "non-cooperative and verbally abusive." During hearing, claimant referred to this nurse case manager in a dismissive fashion, despite acknowledgement that she repeatedly asked claimant how she could assist him. Claimant also appeared to second-guess medical recommendations, while also requesting additional medical treatment. No evidence was offered to indicate defendants have denied any recommended treatment. Given claimant's testimony was at times unclear, unresponsive and argumentative, I am unable to provide significant weight to his testimony without further supportive evidence.

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).

Iowa Code section 85.27(4) provides, in relevant part:

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.

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).

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).

"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).

Several requests have been issued by claimant with respect to his ongoing treatment. Given the multiple requests, the undersigned requested claimant's counsel specify claimant's requests for relief at the time of telephonic hearing. In response, claimant's counsel provided an excellent synopsis of the specific care requested by claimant. Counsel indicated claimant sought to have: (1) Dr. Ky entrusted with authorization to order appropriate labs and imaging; (2) medical mileage reimbursed promptly; (3) prescription refills be authorized in a timely fashion; and (4) designation of a physician to perform any appropriate testing. Only these requests for relief will be considered in this decision and shall be addressed individually.

Claimant's first stated request for relief pertained to the breadth of authority entrusted to Dr. Ky to order appropriate labs and imaging. Defendants objected to consideration of this request for relief, as it was not identified in the February 6, 2017 letter which formed the referenced basis for claimant's alternate medical care claim. It

is true that Dr. Ky was not mentioned specifically in the February 6, 2017 letter; however, claimant did request that a provider be assigned who had the ability to order labs and imaging. As defendants possessed notice of the substance of claimant's request, I will consider claimant's request for relief.

Claimant specifically requests that Dr. Ky be notified he possesses the authority to issue labs and imaging. However, the evidentiary record contains no documentary evidence that Dr. Ky is expressly limited in his authority by defendants or self-limits due to belief that he is not authorized to order such testing. Claimant levied a similar complaint regarding constraints on Dr. Ky at an alternate care hearing on February 5, 2016. The presiding deputy in that proceeding also noted claimant lacked supportive documentation for his allegations. Given claimant supplied no documentary evidence to support his contention that Dr. Ky is limited in his authority to order labs and imaging, I find an award of alternate care unwarranted regarding this request.

Second, claimant requests an order that medical mileage be reimbursed promptly. Again, I am troubled by a lack of documentary evidence demonstrating the purported delay in reimbursement by defendants. I am cognizant of the distances required in claimant's travel to authorized providers; however, I was presented with no documentary evidence demonstrating defendants failed to promptly issue payment to claimant following request. I am also troubled by the prospect of issuing an order requiring defendants to issue reimbursement within a specific timeframe of claimant's request, as there may be factual disagreements regarding claimant's entitlement to reimbursement for claimed mileage. Such a disagreement has already surfaced with respect to claimant's entitlement to reimbursement for mileage related to the UCSF evaluation. It is my understanding that the only claimed mileage which remained unreimbursed at the time of hearing was related to this appointment. On these facts, an award of alternate care is unwarranted on this request for relief.

Third, claimant requests an order regarding timely authorization and/or filling of prescriptions. Claimant's request is a legitimate one. Leaving a patient with chronic conditions without his required medications is unacceptable and defendants should be tasked with identifying a mechanism for filling of prescriptions which would not require claimant to be without his medications or required to make multiple, unnecessary trips to receive all his medications. However, claimant did not identify dissatisfaction with the circumstances of his prescription refills by his alternate care petition and referenced February 6, 2017 letter. Under these circumstances, an award of alternate medical care is inappropriate, as defendants are entitled to the opportunity to investigate and attempt to address claimant's request prior to intervention of this agency.

Finally, claimant requests designation of a physician to perform any appropriate testing. Following claimant's request of February 6, 2017, defendants began the process of identifying claimant's specific request and attempted to locate providers to satisfy claimant's request. Defendants sought to reappoint claimant's prior nurse case manager in an effort to locate appropriate providers; however, she declined to re-open her case. Defendants then requested the service provide another nurse case manager, but the service questioned claimant's willingness to cooperate with a nurse case

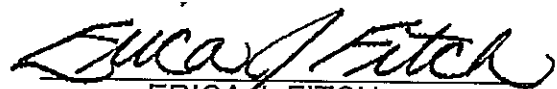
manager. In the interim, defendants requested any recommendations claimant may have for potential providers; claimant offered no suggestions. Ultimately, a new nurse case manager was assigned to claimant's claim. She has since made contact with claimant and claimant has expressed willingness to see one of the recommended providers. At the time of hearing, scheduling of an evaluation with this provider was pending. On these facts, it cannot be said that the care offered by defendants is unreasonable, unduly inconvenient, or improperly delayed. Accordingly, no award of alternate care is made on this request for relief.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's request for alternate medical care is denied.

Signed and filed this 30th day of March, 2017.



ERICA J. FITCH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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