

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JENNIFER BELL-GOBB,

Claimant,

vs.

HANDICAP DEVELOPMENT
CENTER (HDC),

Employer,

and

UNITED HEARTLAND,

Insurance Carrier,
Defendants.

File No. 1661209.04

ALTERNATE MEDICAL
CARE DECISION

HEAD NOTE NO: 2701

STATEMENT OF THE CASE

On September 3, 2020, claimant filed a petition for alternate medical care pursuant to Iowa Code 85.27(4) and 876 Iowa Administrative Code 4.48. The defendants failed to file an answer, nor did the defendants file an appearance.

The undersigned presided over the hearing held via telephone and recorded digitally on September 17, 2020. That recording constitutes the official record of the proceeding under 876 Iowa Administrative Code 4.48(12). Claimant participated personally, and through her attorney, MaKayla Augustine. The defendants participated through their attorney, Ed Rose. The evidentiary record consists of nine pages of exhibits from the claimant, and ten pages of exhibits from the defendants.

On February 16, 2015, the Iowa Workers' Compensation Commissioner issued an order delegating authority to Deputy Workers' Compensation Commissioners, such as the undersigned, to issue final agency decisions on applications for alternate care. Consequently, this decision constitutes final agency action, and there is no appeal to the commissioner. Judicial review in a district court pursuant to Iowa Code 17A is the avenue for an appeal.

ISSUE

The issue under consideration is whether claimant is entitled to alternate care under Iowa Code 85.27(4) in the form of a referral to orthopedic doctor, John Hoffman, M.D.

FINDINGS OF FACT

Claimant, Jennifer Bell-Gobb, sustained a work injury to her left knee on November 26, 2018. The work incident arose out of, and in the course of her employment with Handicap Development Center. Defendants accepted liability for the November 26, 2018, left knee injury in their answer, and verbally at hearing.

During the course of her post-incident treatment, Ms. Bell-Gobb visited authorized treating physician Matthew Bollier, M.D. On January 24, 2020, Ms. Bell-Gobb followed-up with Dr. Bollier. (Defendants' Exhibit A). Dr. Bollier noted that the claimant was 11 months post left knee anterior cruciate ligament (ACL) reconstruction, partial medial/lateral meniscectomy, and MMC microfracture surgery. (Def. Ex. A). Dr. Bollier noted that Ms. Bell-Gobb reached maximum medical improvement (MMI) on August 5, 2019. (Def. Ex. A). The claimant reported continued diffuse left knee pain. (Def. Ex. A). Ms. Bell-Gobb described her pain as being the same as it was prior to her surgery. (Def. Ex. A). Dr. Bollier completed a physical examination of Ms. Bell-Gobb, and discussed her condition with her. (Def. Ex. A). Dr. Bollier indicated that the claimant's knee and ACL were stable on examination, and that her pain was likely related to arthritis from her injury in her knee. (Def. Ex. A). Dr. Bollier explained to the claimant that her problem was difficult in that she was young and the degree of damage to her cartilage as seen during her previous surgery likely caused her pain. (Def. Ex. A). The cartilage damage could not be repaired. (Def. Ex. A). Dr. Bollier indicated to Ms. Bell-Gobb that she may be a candidate for a knee replacement in the future, which would be related to her work injury. (Def. Ex. A). Dr. Bollier recommended an injection to the left knee, and a functional capacity evaluation. (Def. Ex. A). Dr. Bollier provided her with work restrictions, and an impairment rating to the left knee, neither of which are relevant to this proceeding. (Def. Ex. A).

On February 13, 2020, Ms. Bell-Gobb returned to the University of Iowa Hospitals and Clinics for an ultrasound injection to the left knee by Lisa Woodroffe, M.D. (Def. Ex. A). She tolerated the procedure well. (Def. Ex. A).

In August of 2020, Ms. Bell-Gobb reported increasing pain and difficulties with her left knee. She reached out to have additional care, which the defendants authorized on August 14, 2020, with Dr. Bollier. (Claimant's Exhibits). The claimant called Dr. Bollier's office and was informed that Dr. Bollier would not schedule an appointment for her. (Cl. Ex.). Dr. Bollier's office told Ms. Bell-Gobb that the only thing to offer is a knee replacement, otherwise she needed to learn to live with the pain. (Cl. Ex.). The claimant's attorney contacted defendants' attorney at this time and requested additional

care. (Cl. Ex.). In the interim, Ms. Bell-Gobb followed-up with her primary care physician, and obtained a referral to Dr. Hoffman, an orthopedic doctor. The defendants' attorney indicated that care with Dr. Hoffman would not be authorized, as Dr. Bollier, the authorized treating physician, indicated no additional care was necessary. (Cl. Ex.).

CONCLUSIONS OF LAW

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

For purposes of this section, the employer is obligated 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). See Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

“Iowa Code section 85.27(4) affords an employer who does not contest the compensability of a workplace injury a qualified statutory right to control the medical care provided to an injured employee.” Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 769 (Iowa 2016) (citing R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 195, 197 (Iowa 2003)). “In enacting the right-to-choose provision in section 85.27(4), our legislature sought to balance the interests of injured employees against the competing interests of their employers.” Ramirez, 878 N.W.2d at 770-71 (citing Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 202, 207; IBP, Inc. v. Harker, 633 N.W.2d 322, 326-27 (Iowa 2001)).

Under the law, the employer must furnish “reasonable medical services and supplies *and* reasonable and necessary appliances to treat an injured employee.” Stone Container Corp. v. Castle, 657 N.W.2d 485, 490 (Iowa 2003) (emphasis in original)). Such employer-provided care “must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee.” Iowa Code 85.27(4).

An injured employee dissatisfied with the employer-furnished care (or lack thereof) may share the employee’s discontent with the employer and if the parties cannot reach an agreement on alternate care, “the commissioner may, upon application

and reasonable proofs of the necessity therefor, allow and order the care.” Id. “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); Pirelli-Armstrong Tire Co., 562 N.W.2d at 436. As the party seeking relief in the form of alternate care, the employee bears the burden of proving that the authorized care is unreasonable. Long, 528 N.W.2d at 124; Gwinn, 779 N.W.2d at 209; Pirelli-Armstrong Tire Co., 562 N.W.2d at 436. Because “the employer’s obligation under the statute turns on the question of reasonable necessity, not desirability,” an injured employee’s dissatisfaction with employer-provided care, standing alone, is not enough to find such care unreasonable. Id.

The claimant argues that denying a referral to Dr. Hoffman for a second opinion or additional treatment is a constructive denial of liability pursuant to Iowa Code 85.38(2)(b), and that reasonable care would be a referral to Dr. Hoffman. The defendants argue that they are relying on the medical expertise of an authorized treating physician and that no additional care is necessary.

The claimant requests authorization for treatment with Dr. Hoffman.

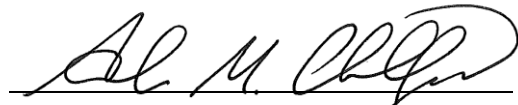
The defendants in this case are relying on the judgment of an authorized treating physician. Despite already achieving MMI in August of 2019, the defendants authorized a follow-up appointment with Dr. Bollier in January of 2020, and an injection in February of 2020. Additionally, the defendants authorized a referral to Dr. Bollier in August of 2020. It is Dr. Bollier that declined to examine the patient, as he noted no additional options were available for treatment. If Dr. Bollier felt it was medically appropriate, he could have made the recommendation that Ms. Bell-Gobb undergo the left knee replacement that will eventually be necessary according to his records. However, Dr. Bollier did not make this recommendation. While I empathize with Ms. Bell-Gobb’s predicament, the care authorized by the defendants is reasonable, and she has not met her burden of proving otherwise. Therefore, the petition is denied.

ORDER

IT IS THEREFORE ORDERED:

1. The claimant’s petition for alternate care is denied.

Signed and filed this 17th day of September, 2020.



ANDREW M. PHILLIPS
DEPUTY WORKERS’
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Nicholas Shaul (via WCES)

Edward J. Rose (via WCES)