BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

OZETT SPENCER, Claimant, vs. WALMART, Employer, and AIU INSURANCE CO., Insurance Carrier, Defendants.	File No. 23005433.02 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, Ozett Spencer.

The alternate medical care claim came on for hearing on September 28, 2023. Claimant appeared personally and through her attorneys Jeffrey Lipman and Shane Michael. Defendants appeared through their attorney Alison Stewart. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding.

Pursuant to the Commissioner's July 21, 2023, 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 1-3
- Defendants' Exhibit A

Claimant was the only witness to provide testimony. 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 Eric Reese, DPM, at the Iowa Clinic.

FINDINGS OF FACT

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

On April 30, 2023, claimant sustained a work-related injury at Walmart. (See Petition; Hearing Testimony). At the hearing, claimant testified she lost her footing and fell while mopping the floor. (Hearing Testimony). Claimant landed on her left side/bottom, injuring her left ankle. (Id.).

Claimant's supervisor took her to the emergency room immediately after the fall. (Hearing Testimony). The treatment note from the emergency room is not in evidence. (Id.). Claimant was referred to Doctor's Now for further care. (Id.). It is not clear what sort of treatment claimant received at Doctor's Now, but other records reference an ankle stirrup brace being prescribed. (See Claimant Exhibit, 2, page 1). The treatment notes from Doctor's Now are not in the hearing record.

Eventually, claimant's care was transferred to Blake Hale, DPM, at Iowa Ortho. (Hearing Testimony). According to the medical records, claimant's first appointment with Dr. Hale took place on June 20, 2023. (Cl Ex. 2, p. 1). Dr. Hale's treatment note indicates claimant was being evaluated for left ankle pain. (Id.). Dr. Hale diagnosed claimant with a significant sprain of the anterior talofibular ligament of the left ankle. (Id. at 3). He prescribed a more supportive ASO ankle brace and physical therapy. (Id.). His treatment note indicates he wanted her to return for a follow-up evaluation in two months. (Id.).

Claimant attended physical therapy at Select Therapy in June and July 2023. (Hearing Testimony). Claimant testified the physical therapy did not improve her left ankle pain. (Id.).

Claimant returned to see Dr. Hale on July 18, 2023. (Cl Ex. 1, p. 1). She reported continued pain along the lateral aspect of her left foot and ankle. (Id). Claimant also reported to Dr. Hale that she had seen Eric Reese, DPM, at the Iowa Clinic, and he ordered an MRI of her left ankle. (Id.). The MRI was taken a week prior, but it was not available for him to review. (Id.). Dr. Hale's treatment note states the following:

> We discussed her current condition. Since she has exhausted all treatment options . . . I recommend the next step would be to obtain the MRI. The MRI would be to evaluate for any tearing or soft tissue abnormalities that would explain her symptoms. Once we obtain the MRI we will develop a more definitive treatment plan. At this time since the

> patient has recently had an MRI a week ago and followed up with Dr. Reese in regards to her MRI. I will not obtain another MRI at this time. I'm going to coordinate with my Workers' Compensation department in regards to how to proceed with her current case.

(Id. at 3).

On July 20, 2023, claimant's counsel sent defense counsel a letter requesting that claimant's care be transferred from Dr. Hale to Dr. Reese. (Defendants' Exhibit A, p. 4). Defense counsel's email reply reads "I'll need to see these medical records but currently care is authorized with Dr. Hale and not Dr. Reece [*sic*]." (Id.). Claimant's counsel replied that Dr. Hale had been confrontational, dismissive, and unprofessional in his interactions with claimant. (Id.). Claimant's counsel also alleged that Dr. Hale was unresponsive to claimant's medical needs. (Id.). Defense counsel replied, "Dr. Hale is a qualified and appropriate doctor for her to see for these complaints." Defendants indicated they would ask Dr. Hale to review the MRI and make treatment recommendations. (Id.).

At the hearing, claimant testified that Dr. Hale yelled at her during the July 18th appointment and told her she "messed up" by going to another doctor. (Hearing Testimony). According to the claimant, Dr. Hale refused to answer her questions, telling her there was nothing more he could do for her and ended the appointment. (Id.). This is not reflected in Dr. Hale's treatment record. Claimant indicated she lost confidence in Dr. Hale's abilities after the July 18th appointment. (Id.).

On cross-examination, claimant admitted that she started treating with Dr. Reese in early May 2023—before her care was ever transferred to Dr. Hale. (Hearing Testimony). She testified that she sought out Dr. Reese on her own because the treating providers at Doctor's Now returned her to work without restrictions, but she was still in pain. (Id.). As stated above, the treatment notes from Doctor's Now are not in the hearing record. The record only contains one treatment note from Dr. Reese. (Cl Ex. 3, pp. 1-3). It is dated June 23, 2023, three days after her first appointment with Dr. Hale. (Id.). It indicates that claimant was seeing Dr. Reese to review "left foot MRI results." (Id.). Dr. Reese's treatment note indicates the MRI was taken on June 9, 2023, eleven days before claimant's first appointment with Dr. Hale. (Id. at 2). The MRI is not mentioned in Dr. Hale's June 20th treatment note. (Cl Ex. 2, p. 1). Neither is claimant's previous treatment with Dr. Reese. (Id.).

At the June 23, 2023 appointment, Dr. Reese diagnosed claimant with plantar fasciitis, peroneal tendinitis of the left lower extremity, and a sprain of the left anterior talofibular ligament. (Cl Ex. 3, p. 2). He recommended surgery—a PF/TT release, lateral ankle stabilization, and peroneal tendon repair. (Id.). Claimant agreed to proceed with the surgery. (Id. at 3; Hearing Testimony). The exact date of the surgery is unknown. Dr. Reese's surgical notes are not in the hearing record.

At the hearing, claimant testified that she attempted to make a follow-up appointment with Dr. Hale in late July or early August 2023. (Hearing Testimony).

According to claimant's petition, this was after she had already undergone surgery with Dr. Reese. (See Petition, p. 2). Claimant stated that both Dr. Hale's office and Sedgwick told her they were not authorized to schedule any further appointments. (Hearing Testimony). Defendants have indicated Sedgwick is not involved with this claim. (Id.). On cross-examination, claimant clarified that she actually called One Call, a third-party scheduling company, and an individual named Cheryl Foster at WCS. (Id.). According to claimant, Ms. Foster told her she was unable to speak with her directly because she was represented by counsel. (Id.).

Claimant filed this alternate care petition on September 18, 2023. (See Petition). In it, she requested authorization to receive future follow-up care from Dr. Reese.[1] (Id.). Claimant testified that she is still treating with Dr. Reese. (Hearing Testimony). She saw him last week and has another follow-up appointment in early October 2023. (Id.). At the hearing, defendants indicated that they still do not have copies of Dr. Reese's treatment records. (Hearing Testimony). They, however, have offered a return visit to Dr. Hale for treatment.[2] (Ex. A, p. 6). They are working to get that scheduled. (Id.).

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

[1] Claimant's petition also requests treatment for her left hip, left shoulder, low back, neck, right wrist, a tooth, vision issues, vertigo, and headaches. (See Petition). Defendants have denied liability for these conditions. (Hearing Testimony). They are not a proper subject of the expedited procedures under Administrative Rule 876—4.48. They will not be addressed in this ruling.

[2] Defendants have also scheduled an appointment with Dr. Mooney for October 27, 2023. (Hearing Testimony).

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.

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 v. Bursell, 870 N.W.2d 274 (Table) (Iowa Ct. App. 2015). Determining whether care is reasonable under the statute is a question of fact. Long, 528 N.W.2d at 123.

In her petition, claimant requested authorization to receive future follow-up care from Dr. Reese. Dr. Reese is not an authorized provider for claimant's injury. While claimant may prefer to treat with Dr. Reese, she hasn't produced sufficient evidence that the care provided by Dr. Hale was unreasonable. Claimant started treating with Dr. Reese in May 2023. This was before defendants even authorized treatment with Dr. Hale. There is no evidence in the record indicating that claimant expressed dissatisfaction with the care defendants provided prior to seeking treatment with Dr. Reese. Claimant's counsel first expressed dissatisfaction with the care provided by Dr. Hale on July 20, 2023. This, however, was almost a month after claimant had already agreed to proceed with the surgery recommended by Dr. Reese. This timeline is concerning.

Claimant testified that Dr. Hale told her there was nothing more he could do for her at the July 18th appointment. This statement is not supported by the records in evidence. Dr. Hale's July 18th treatment note states "I recommend the next step would be to obtain the MRI . . . to evaluate for any tearing or soft tissue abnormalities that would explain her symptoms. Once we obtain the MRI we will develop a more definitive treatment plan." (Cl Ex. 1, p. 3). It, however, does not appear that Dr. Hale was ever provided with the MRI taken by Dr. Reese. According to the records, claimant decided to undergo surgery with Dr. Reese before even meeting with Dr. Hale on July 18, 2023. Claimant's decision to accept Dr. Reese's treatment plan does not make Dr. Hale's request to review the MRI prior to making a more definitive treatment plan unreasonable. Dr. Hale's suggested plan of action appears reasonable; claimant, however, chose to seek other treatment.

The employer's right to control medical care attaches under the statute when the employer acknowledges compensability following notice and furnishes care to the employee, and it remains with the employer under the statute until the employer denies

the injury is work-related, withdraws authorization of the care, or until the commissioner orders alternative care. Iowa Code § 85.27; Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 207 (Iowa 2010). None of those have occurred in this case. At hearing, defendants verbally accepted liability for claimant's current left ankle symptoms and offered a follow-up appointment with Dr. Hale. (Hearing Testimony). Under this record, I find that reasonable. Claimant has not met her burden to prove that the care offered by defendants is unreasonable.

Claimant's petition for alternate care is denied.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's petition for alternate care is DENIED

Signed and filed this __29th__ day of September, 2023.

Amanda Rutherford

AMANDA R. RUTHERFORD
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Jeffrey Lipman (via WCES)

Shane Michael (via WCES)

Alison Stewart (via WCES)