

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KYLE McDOLE,
Claimant,

vs.

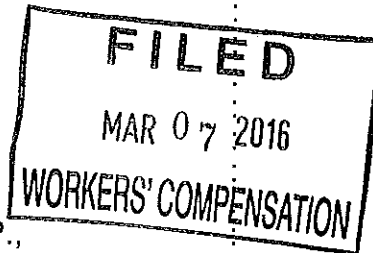
THE WALDINGER CORP.,

Employer,

and

EMASCO INS. CO.,

Insurance Carrier,
Defendants.



File No. 5052076

ALTERNATE MEDICAL

CARE DECISION

AND CONSENT ORDER

HEAD NOTE NO: 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, Kyle McDole. Claimant appeared personally and through his attorney, Christopher Spaulding. Defendants appeared through their attorney, Brian Scieszinski.

The alternate medical care claim came on for hearing on March 4, 2016. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's 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 record consists of the sworn testimony of Kyle McDole and the representations and stipulations of counsel. Defense counsel objected to all of the claimant's testimony. Prior to the commencement of hearing, defense counsel announced that the care had been authorized. Claimant wished to proceed to make a record for a consent order and defendants' objection was overruled.

ISSUE

The issue presented for resolution is whether the claimant is entitled to physical therapy as recommended by the authorized treating physician.

FINDINGS OF FACT

The claimant suffered an injury on December 26, 2012, which arose out of and in the course of employment. This injury has caused the need for the claimant to seek medical treatment. Claimant alleges for each item of care he has needed, there have been delays. He provided examples of authorization for medical prescriptions. He filed this petition to obtain physical therapy, which his authorized treating surgeon told him he needed to start right away. Based upon the claimant's testimony, it sounds like his therapy was delayed for approximately one week.

REASONING AND 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. Iowa Code Section 85.27 (2013).

An employer's statutory right is to select the providers of care and the employer may consider cost and other pertinent factors when exercising its choice. Long, at 124. An employer (typically) is not a licensed health care provider and does not possess medical expertise. Accordingly, an employer does not have the right to control the methods the providers choose to evaluate, diagnose and treat the injured employee. An employer is not entitled to control a licensed health care provider's exercise of professional judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988). An employer's failure to follow recommendations of an authorized physician in matters of treatment is commonly a failure to provide reasonable treatment. Boggs v. Cargill, Inc., File No. 1050396 (Alt. Care January 31, 1994).

The defendants argue that, since the care requested in the alternate care petition has been granted and the defendants have agreed to a consent order, there should be no hearing. And the defendants are, of course, correct. I allowed Mr. McDole to make a record in this case simply to give him an opportunity to air his complaints to an unbiased third party and to be heard.

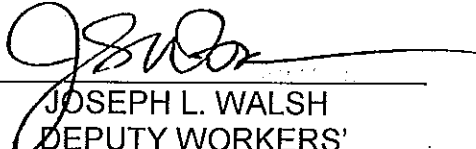
Having heard from the claimant and in review of the file, I can tell from this record that there have been delays in claimant's medical care, although I cannot determine the length and severity of those delays because it is not a full record. It is noted, however, that this is the third alternate medical care petition filed by the claimant. Each time the care requested has been authorized. Based upon this, the insurance carrier is encouraged to review its processes for authorizing the claimant's care, particularly from the authorized treating physician. It should be essentially automatic. Repeated medical delays, even if brief, can cumulatively amount to an abandonment of care at the point that the delays become unreasonable.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is GRANTED by consent.
Physical therapy is authorized and ordered by consent.

Signed and filed this 7th day of March, 2016.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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