BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BROOKLYN BRADY, Claimant, vs. FEDEX GROUND PACKAGE SYSTEM, INC., Employer, Self-Insured, Defendant.	:	File No. 19006691.02 ALTERNATE MEDICAL CARE DECISION 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, Brooklyn Brady. Claimant appeared through attorney, Eric Loney. Defendant appeared through attorney, Kathryn Johnson. Claimant filed her petition on December 16, 2020.

The alternate medical care claim came on for hearing on December 29, 2020. 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 claimant's exhibits 1 and 2 which were received without objection. The defendant does not dispute liability for claimant's October 2019, work injury.

ISSUE

The issue presented for resolution is whether the claimant is entitled to medical referrals ordered by her authorized physician.

FINDINGS OF FACT

The claimant sustained a head injury which arose out of and in the course of her employment on October 10, 2019. This injury caused her to need treatment which the employer directed. MercyOne Ruan Neurology Care became her authorized treatment provider and directed her medical care.

Claimant was most recently evaluated at the clinic by Anne Lewis, ARNP, on November 24, 2020. At that time, the following was documented.

> The patient is a 26-year-old female who returns to the clinic today for a 4-week follow-up appointment with a history of headaches and postconcussion syndrome. Her injury initially occurred in October 2019. She was hit in the right parietal region with a metal piece of a FedEx truck. She did not lose consciousness, but she likely had a concussion as she was confused afterward and got lost while trying to drive. She has had headaches since that time, although they were better in March and June of this year when she was seen at the office.
>
> When she returned to the office in October, everything was worse again. She has more lightheadedness/dizziness even with subtle turning or bending. She is still working at the part-time job with FedEx and does not feel that she is a good employee anymore. She feels stressed going into work and inquired as to whether we felt that she should quit her job. She also has a full-time job with US cellular.

(Claimant's Exhibit 2, page 2)

The working diagnoses include: (1) post-traumatic headache, (2) depression with anxiety, (3) insomnia, (4) mood and affect disturbance, (5) memory change. (Cl. Ex. 2, p. 4) Ms. Lewis summarized the medical visit as follows.

> It has been over a year since the patient was struck in the head at work. It is unusual for postconcussion symptoms to last for that length of time. She feels that she is not quite the same cognitively as she was before this incident. She will be referred for neuropsychological testing to better determine her degree of cognitive dysfunction. . . . She would likely benefit from counseling as well. She ruminates on the fact that she does not feel like the same person since being hit in the head despite the fact this would not be considered a severe injury. She seems to have some posttraumatic stress over the incident and that can certainly interfere with her focus and concentration. She also gets quit anxious when she has to work on the weekends. She requested that we tell her whether she should quit the job. This decision is certainly hers to make.

(Cl. Ex. 2, pp. 4-5) Claimant was referred for neuropsychological testing and chiropractic treatment.[1] On December 2, 2020, claimant's counsel faxed this report to the defendant's third party administrator requesting authorization. Claimant filed her

[1] In a handwritten referral note, Ms. Lewis indicated claimant "may benefit from chiropractic care." (Cl. Ex. 2, p. 1) Defendant pointed out in argument that this referral contained the word "may." I agree with the defendant. I find, however, that this handwritten note was placed on a referral/prescription sheet and is, in fact, a referral for chiropractic care rather than a broad, esoteric statement of possibility.

alternate medical care petition on December 16, 2020. There is no indication in this record that anyone ever responded to the referrals or claimant's counsel's request.

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).

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See 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. Id. 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).

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).

In this case, claimant's authorized treatment provider has recommended two referrals: (1) neuropsychological testing and (2) chiropractic care. These referrals were ordered on November 24, 2020. Neither the defendant, nor the third-party administrator have apparently bothered to provide any direction to the claimant regarding these referrals. Based upon the record before the undersigned it is unclear why this is.

Defendant did appear at the hearing through attorney Kathryn Johnson. She indicated that an appointment had been arranged for claimant to return to a physician at the authorized clinic (instead of a nurse practitioner) on February 5, 2021. Claimant's

counsel did not dispute this, although he just learned of the appointment recently. Defense counsel indicated that given the new component of a potential psychological condition possibly associated with the injury, additional time was needed for investigation which could be completed when claimant has her February 2021 appointment.

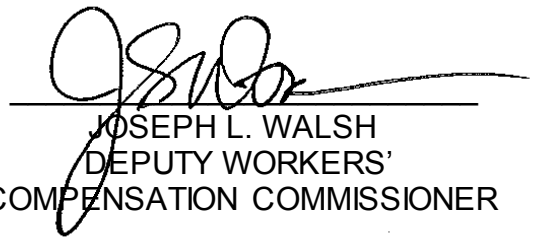
Having considered all of the evidence and arguments of counsel, I find that the employer's delay in authorizing the treatment recommendations of the authorized treating physician is unreasonable. Admittedly, November and December are busy months. There are holidays. It is the end of the year. Neither the injury, nor medical causation of the condition for which claimant seeks treatment, has been denied at this time. The defendant needs to have adequate processes in place to authorize (or refuse to authorize) treatment recommendations made by its own authorized clinic. In this case, the claimant was seen by her authorized provider on November 24, 2020. The treatment recommendations were undoubtedly immediately sent to the employer or its agent. Even if they were not, claimant's counsel covered that base by faxing them to the employer's third-party administrator on December 2, 2020, specifically requesting direction as to what she should do. If the defendant is, in fact, investigating issues related to causation, this was never communicated to the claimant based upon the record before the agency. This agency understands that sometimes medical issues can be complicated and messy. This young woman though, did everything right. She requested help. Help was recommended and then she waited. This matter is quite serious to her. The employer's failure to even respond to the authorized provider's treatment recommendations, or claimant's inquiry, is unreasonable. I further find it would be unreasonable to require claimant to wait until February 5, 2021, for treatment.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is GRANTED. Defendant shall immediately authorize neuropsychological testing and chiropractic care.

Signed and filed this _30th_ day of December, 2020.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Eric Loney (via WCES)

Kathryn Johnson (via WCES)