BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ALISON CLAY,

Claimant,

vs.

BRIDGESTONE/FIRESTONE,

Employer,

and

OLD REPUBLIC INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 5051104

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, Alison Clay. Claimant appeared in person, with her attorney, Matthew Milligan. Defendants appeared through their attorney, Timothy Wegman.

The petition for alternate medical care came on for an in-person hearing on June 7, 2018. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's February 16, 2015 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 contains claimant's exhibits 1 and 2, and defendants' exhibits A and B. Claimant provided testimony at hearing and counsel waived closing arguments. The undersigned also received a Brief in Support of the Alternate Care Petition, prepared by claimant.

ISSUE

Whether the medical treatment provided by defendants to claimant for her low back injury is unreasonable.

Specifically, claimant seeks an order compelling defendants to authorize an evaluation with Christian Ledet, M.D., or another similar physician.

FINDINGS OF FACT

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

On May 29, 2018, claimant filed her application for alternate medical care concerning her low back injury that was the subject of an April 25, 2017 arbitration decision, which granted claimant permanent partial disability benefits. Claimant has a pronounced Scottish accent, which can be difficult to understand over the phone, therefore, this matter was scheduled for an in-person hearing.

Claimant's low back injury occurred on June 27, 2014. Defendants accepted liability for the injury and claimant's current condition for which she seeks medical treatment.

The primary issue in this case is that claimant has lost confidence in John Rayburn, M.D., her presently authorized treating physician. She also argues that the treatment that she has received from Dr. Rayburn has not been effective in dealing with her low back and leg pain.

Claimant last saw Dr. Rayburn on April 18, 2018, at which time he prescribed medication and told claimant to return in one year for follow-up. (Ex. 1, pp. 4-5) She continues to have substantial pain despite taking the medication. Prior to April 18, 2018, Dr. Rayburn provided several injections, a nerve block, and on October 10, 2017, he performed an ablation on the right L2-L5 medial branch. (Ex. A, pp. 1-8) Claimant testified that her pain increased after the ablation to a new level of severity that she had not experienced before and that she also began to have episodes of incontinence, which she did not have before. Although there is no medical opinion in the record that anything went wrong during the ablation, claimant's increased pain and newly developed incontinence have given her reason to question whether or not the procedure was done correctly and whether or not there is anything else that can be done to address her condition.

In addition to the problems that claimant developed following the ablation, claimant has other poor experiences with Dr. Rayburn. She testified that on April 18, 2018 she was laughed at when she advised that she could not afford the cost of a fitness club to continue the exercises that she had learned in therapy, which she believed helped her condition. Also, Dr. Rayburn had taken claimant off work following the October 10, 2017 ablation. At her visit with him in December, 2017, she stated that Dr. Rayburn did not discuss returning her to work, and he issued a Patient Status Form that indicated no change in her restrictions. (Ex. 1, p. 2) However, shortly thereafter, Dr. Rayburn modified the Patient Status Report to reflect a return to work with no restrictions. (Ex. 1, p. 3) Claimant was concerned by this apparent 180 degree change that occurred without explanation. It is possible that these instances represent simple

oversight by Dr. Rayburn or his staff or miscommunication. However, it is clear that claimant has lost confidence in Dr. Rayburn as a treating physician and there has been a breakdown in the physician/patient relationship.

Claimant seeks a return visit to Dr. Ledet or another similar physician to obtain an evaluation and opinion concerning the ablation procedure that she had and to determine whether alternative treatment is available to treat her condition. She testified that she has confidence in Dr. Ledet.

Claimant has previously received treatment from Dr. Ledet. (Ex. B) Claimant has also received treatment from Dr. Holt. Both Dr. Holt and Dr. Ledet have provided multiple injections to treat claimant's condition and no physician has recommended surgery or some other treatment at this time.

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. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 16, 1975).

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); Bell Bros. Heating v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); 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). In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997), the court approvingly quoted Bowles v. Los Lunas Schools, 109 N.M. 100, 781 P.2d 1178 (App. 1989):

> [T]he words "reasonable" and "adequate" appear to describe the same standard.
>
> [The New Mexico rule] requires the employer to provide a certain standard of care and excuses the employer from any obligation to provide other services only if that standard is met. We construe the terms "reasonable" and "adequate" as describing care that is both appropriate to the injury and sufficient to bring the worker to maximum recovery.

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).

Alternate care includes alternate physicians when there is a breakdown in a physician/patient relationship. Seibert v. State of Iowa, File No. 938579, Alt. Care Dec., September 14, 1994, (Walshire). Sumalee Neueone v. John Morrell & Co., File No. 1022976, Alt. Care Dec., January 27, 1994, (Walshire); Williams v. High Rise Const, File No. 1025415, Alt. Care Dec., February 24, 1993, (McGovern); Wallech v. F.D.L, File No. 1020245, Alt. Care Dec., September 3, 1992, (Trier) (Upheld by Dubuque County District Court on June 21, 1993).

I found above that based on the evidence presented that there has been a breakdown in the physician/patient relationship concerning Dr. Rayburn and claimant. Applying the above applicable case law, I conclude that refusing to authorize an alternate physician in this circumstance is unreasonable.

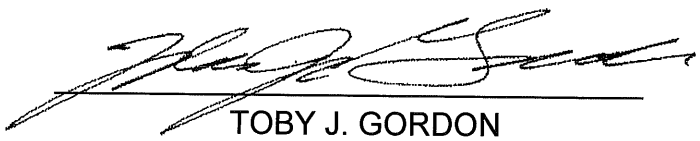
Claimant has asked to be evaluated and receive treatment from Dr. Ledet or another similar physician. Claimant expressed her confidence in Dr. Ledet at the hearing. It is appropriate to order alternate care in this matter and defendant shall authorize a return visit to Dr. Ledet for evaluation and treatment. If Dr. Ledet is unavailable for any reason, another similarly qualified physician shall be authorized by defendants.

ORDER

IT IS THEREFORE ORDERED:

Claimant's application for alternate care is granted. Defendants shall immediately authorize and timely pay for evaluation and treatment for claimant with Dr. Ledet. If Dr. Ledet is unavailable for any reason, another similarly qualified physician shall be authorized by defendants.

Signed and filed this 8th day of June, 2018.



TOBY J. GORDON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Matthew Milligan
Attorney at Law
6611 University Ave., Ste. 200
Des Moines, IA 50324-1655
mmilligan@smalaw.net

Timothy W. Wegman
Attorney at Law
6800 Lake Drive, Suite 125
West Des Moines, IA 50266
tim@peddicord.law

TJG/kjw