BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ROSE MURPHY,

Claimant,

vs.

HOMEMAKERS PLAZA, INC.,

Employer,

and

NATIONWIDE INSURANCE,

Insurance Carrier,
Defendants.

File No. 5063819

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, Rose Murphy. Claimant appeared telephonically and through her attorney, Nicholas Platt. Defendants appeared through their attorney, Jessica Cleereman.

The alternate medical care claim came on for hearing on June 26, 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 consists of Claimant's Exhibits 1 through 4 and Defendants' Exhibit A. Claimant provided testimony. No other witnessed were called. Counsel offered oral arguments to support their positions.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of the authorization of claimant's primary care provider, Shawn P. Spooner, M.D.

FINDINGS OF FACT

Claimant sustained an injury to her low back resulting in sacroiliac joint pain on January 1, 2018, when she slipped and fell on ice. Defendants admitted liability for this injury and the current condition for which claimant seeks alternate medical care.

Defendants initially authorized treatment with Trevor Schmitz, M.D., at Iowa Ortho. Claimant's last appointment with Dr. Schmitz was on April 18, 2018, when she was seen in follow-up of a right sacroiliac joint injection and lumbar MRI. (Defendants' Exhibit A) Claimant testified that at this appointment Dr. Schmitz recommended work restrictions that included sitting down and taking breaks. (Claimant Testimony) Claimant further testified that when she told Dr. Schmitz that the nature of her job did not allow her to sit down or take frequent breaks, Dr. Schmitz became rude and condescending. (Cl. Testimony) Dr. Schmitz's note portrays a different version of the story, indicating claimant "continually stated that she wanted to go home and not be at work." (Def. Ex. A:2) Claimant adamantly disputed this account at the hearing before the undersigned. Regardless, both parties agree that Dr. Schmitz came to the conclusion at the April 18, 2018 appointment that the physician-patient relationship was "damaged beyond repair." (Def. Ex. A:2) As a result, Dr. Schmitz discharged claimant from his care. (Def. Ex A:2; Cl. Testimony)

Dr. Schmitz's April 18, 2018 note makes mention of the "possibility of a transforaminal epidural steroid injection," although Dr. Schmitz also indicated he did "not hold out high hopes of this helping." (Def. Ex. A:2) The note is devoid of other recommendations for further care.

After being discharged from Dr. Schmitz's care, claimant began treating with her primary care physician, Dr. Spooner for her ongoing complaints. Dr. Spooner's care has included additional injections and referrals for physical therapy and chiropractic treatment. (Claimant's Ex. 4; Cl. Testimony)

Claimant filed her first petition for alternate medical care on May 3, 2018. On May 14, 2018, counsel for defendants indicated via e-mail that defendants would authorize a second opinion with Lynn Nelson, M.D., at DMOS. (Cl. Ex. 1:1) Claimant, in response, then dismissed her petition for alternate medical care.

To date, the appointment with Dr. Nelson has not been scheduled, nor have defendants authorized a second opinion with a different physician. In fact, despite claimant's ongoing complaints and requests for care, defendants have authorized no additional care since April 18, 2018, when claimant was discharged by Dr. Schmitz due to the breakdown in the patient-physician relationship.

Because claimant has gone more than two months without any authorized care being offered by defendants, claimant requests the authorization of Dr. Spooner, whose treatment is currently being processed through claimant's personal health insurance.

Defendants' counsel indicated during the hearing that her clients have been trying and continue to try to get the appointment with Dr. Nelson scheduled, but the scheduling has been hindered due to delays in obtaining records and other factors. Understandably, defendants want a second opinion due to the unusual circumstances that led to claimant's discharge from Dr. Schmitz's care. While I believe defendants' attempts to be genuine and I appreciate their desire to get a second opinion, the bottom line is that defendants are not currently providing or offering claimant any treatment, nor have they authorized any treatment for more than two months.

I find that the care and treatment—or more accurately, the lack thereof—offered by defendants since claimant's last appointment with Dr. Schmitz has not been effective. Claimant continued to be symptomatic at the April 18, 2018 appointment with Dr. Schmitz, and she as recently as last week sought treatment with Dr. Spooner for ongoing back complaints. Even Dr. Schmitz mentioned the possibility of an epidural steroid injection, so this is not a scenario where there is nothing left to offer claimant. I find that no care is inferior or less extensive care than the care currently being provided by claimant's primary care provider, Dr. Spooner. Ultimately, I find defendants' failure to authorize any treatment for the last two months is unreasonable.

REASONING AND CONCLUSIONS OF LAW

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

> 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 under the statute turns on the question of reasonable necessity, not desirability." Id.

Similarly, 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). Thus, 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 Rule of Appellate Procedure 14(f)(5); Long, 528 N.W.2d at 124.

The commissioner is justified in ordering alternate care when employer-authorized care has not been effective and evidence shows that such care is "inferior or less extensive" than other available care requested by the employee. Long, 528 N.W.2d at 124; Pirelli-Armstrong Tire Co., 562 N.W.2d at 437.

Ultimately, determining whether care is reasonable under the statute is a question of fact. Long, 528 N.W.2d at 123.

Based on the above findings of fact, I conclude the medical treatment offered by defendants—which, at the present time, is none—is not reasonably suited to treat claimant's work injury. I further conclude no care is "inferior or less extensive" care than the treatment being provided by Dr. Spooner. Therefore, I conclude that claimant has proven her claim for alternate medical care. Claimant's petition for medical care is granted.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is granted.

Defendants shall immediately authorize and timely pay for treatment with Dr. Spooner.

Signed and filed this 26th day of June, 2018.

STEPHANIE J. COPLEY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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