BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MICHAEL J. RECTOR,

Claimant,

vs.

PEOPLEASE CORPORATION,

Employer,

and

ARCH INSURANCE,

Insurance Carrier,
Defendants.

File No. 5037407

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, Michael Rector. Claimant, acting pro se, filed a petition for alternate medical care.

The alternate medical care claim came on for hearing on February 5, 2016. The proceedings were digitally recorded, which constitutes the official record of this proceeding. By order filed February 16, 2015, this ruling is designated final agency action.

The record consists of claimant's Exhibit 1, pages 1-32; defendants' Exhibits 1-5. Claimant testified on his own behalf.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care.

FINDINGS OF FACT

Mr. Rector sustained an injury arising out of and in the course of his employment with PeopLease Corporation on June 14, 2010. As a result of that injury the parties entered into a settlement pursuant to Iowa Code sections 85.35(3) and 85.35(6). That settlement was approved by this agency on November 12, 2013. Under the settlement

the claimant has the right to benefits pursuant to 85.27 and this agency has jurisdiction of the settlement for purpose of adjudicating the employee's entitlement to section 85.27 benefits.

At the alternate care hearing one of the conditions claimant stated he was seeking treatment for was for symptoms of carpal tunnel syndrome for both hands. Defendants deny that any symptoms of carpal tunnel syndrome are related to the work injury. Because defendants deny responsibility for carpal tunnel syndrome of either hand/arm that portion of claimant's alternate care petition had to be dismissed. As a result of their denial of liability for the condition sought to be treated in this proceeding, claimant may obtain reasonable medical care from any provider for this condition but at claimant's expense and, seek reimbursement for such care using regular claim proceedings before this agency.

With regard to the conditions that defendants did accept responsibility for in the settlement documents defendants continued to accept responsibility for those at the time of the alternate care hearing.

Claimant is seeking several forms of requested treatment as set out in his attachment to the alternate care petition on pages two and three in the "Requested Treatment" section. Claimant is seeking a doctor "who can order the proper care and test and come up with an 'Actual Treatment Plan' . . . Mr. Rector then lists several types of treatment and/or testing that he believes should be explored.

Mr. Rector is currently receiving authorized care from Paul Ky, D.O. with Advance Pain Solutions in Fresno, California. Claimant specifically requests a primary care physician to include new medications and technology. According to Mr. Rector, Dr. Ky has told him that he does not order certain treatment because he knows the defendants will not authorize the treatment. Unfortunately, there is nothing in writing from Dr. Ky regarding this allegation. Because he believes Dr. Ky is hesitant to prescribe certain treatment Mr. Rector is dissatisfied with the treatment he is receiving with Dr. Ky. Additionally, claimant is dissatisfied because he says there are often delays in obtaining authorization for the recommended treatment. Mr. Rector also contends that defendants interfere with the recommended treatment because they question the amount of pain medications he is on. Defendants deny that they had delayed or interfered with any treatment. According to Mr. Rector he has been treating with Dr. Ky for approximately three years without significant improvement. Mr. Rector believes there is more that could be done for him than what Dr. Ky is offering. At the hearing defendants agreed to send Mr. Rector to an occupational medicine doctor for a second opinion regarding additional treatment options.

By the time of the alternate care hearing defendants had authorized all treatment that Dr. Ky had recommended in writing. Defendants had recently authorized mental health treatment for the claimant. It was defendants' intent that claimant would be allowed to schedule his own appointment so he could schedule a convenient time based on his schedule. However, at the hearing claimant indicated he was not willing to

schedule any of his own appointments. He stated he was tired of wasting his time trying to schedule appointments only to learn that a doctor's office had not received authorization from the defendants. Defendants indicated that they have hired a nurse case manager to help coordinate Mr. Rector's care including the scheduling of his appointments. The nurse case manager will schedule the mental health care and any other appointment for Mr. Rector.

Claimant has also requested a "life care planner." Claimant contends a life care planner should be paid for by the defendants to address the future life care issues that can arise and are associated with failed spinal fusions and infections causally related to his injury. This is desirable to Mr. Rector because he feels he would then have more control over his own treatment. Agency rule 4.48(5) provides that an alternate medical care hearing can "concern only the issue of alternate care." Claimant's request for a life care planner may or may not be considered "alternate care" at this point and therefore, may or may not be an appropriate issue for an alternate care proceeding. Regardless, at this point I find that the treatment defendants are offering is reasonable.

At this point, defendants are authorizing all care that they know to be recommended by Dr. Ky. Additionally, they have authorized mental health treatment and an appointment with an occupational medicine doctor to explore other treatment options. I find that this treatment is reasonably suited for his injury. Claimant has expressed frustration with past delays in defendants authorizing and/or interfering with treatment. If Mr. Rector feels defendants are delaying or interfering with treatment he should file another alternate care petition at the time of the alleged delay or interference.

REASONING AND CONCLUSIONS OF LAW

Under Iowa law, the employer is required to provide care to an injured employee and is permitted to choose the care. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

> [T]he 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.

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 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., 562 N.W.2d at 433, 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.

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" care 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.

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).

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).

Reasonable care includes care necessary to diagnose the condition and defendants are not entitled to interfere with the medical judgment of its own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening Decision June 17, 1986). Defendants should take care to remember that reasonable care includes care necessary to diagnose the condition, and defendants are not entitled to interfere with the medical judgment of its own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening Decision June 17, 1986).

In the present case claimant has not carried his burden of proof to show that the care and treatment offered by defendants is unreasonable. Therefore, claimant's petition for alternate care is denied at this time.

Defendants shall provide care that is reasonably suited to treat Mr. Rector. Such care shall be prompt and shall not be unduly inconvenient to the claimant.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is denied because it is found that defendants are currently offering reasonable care that is suited to treat his June 14, 2010 work injury.

Defendants retain their right to select the authorized medical provider(s) in this case and are ordered to provide prompt care that is not unduly inconvenient to the claimant.

IT IS FURTHER ORDERED if claimant seeks to recover the charges incurred in obtaining care for a condition for which defendants denied liability, defendants are barred from asserting lack of authorization as a defense to those charges.

Signed and filed this 8th day of February, 2016.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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