

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JAYLON LLOYD, Claimant, vs. PLUNKETT'S PEST CONTROL, INC., Employer, ACCIDENT FUND NATIONAL INSURANCE COMPANY, Insurance Carrier, Defendants.	File No. 1664005.03 ALTERNATE CARE DECISION
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I. STATEMENT OF THE CASE.

On September 9, 2022, Jaylon Lloyd applied with the agency for alternate care under Iowa Code section 85.27 and rule 876 IAC 4.48 for alleged work injuries to his back, left hip, both knees, jaw, groin, and mental health in the form of anxiety, depression, and post-traumatic stress disorder (PTSD). The defendants, employer Plunkett's Pest Control, Inc. (Plunkett's) and insurance carrier Accident Fund National Insurance Company (Accident Fund), filed an answer on September 20, 2022, accepting liability for the alleged work injuries to Lloyd's left hip, left knee, and depression. Lloyd filed a written reply to the defendants' answer on September 21, 2022.

The undersigned presided over a hearing held by telephone and recorded on September 22, 2022. That recording constitutes the official record of the proceeding under agency rule 876 IAC 4.48(12). Lloyd participated personally and through attorney Greg A. Egbers. The defendants participated through attorney Laura J. Ostrander. The record consists of:

- Claimant's Exhibits 1 through 3; and
- Defendants' Exhibits A through C; and
- Hearing testimony by Lloyd.

II. ISSUE.

The issue under consideration is whether Lloyd is entitled to alternate care in the form of ongoing care with the authorized treating surgeons, ongoing medication management with Dianna Smith, ARNP, and continuing care with the mental health providers he has seen to date.

III. FINDINGS OF FACT.

On April 25, 2019, Lloyd sustained injuries arising out of and in the course of his employment with Plunkett's. The petition alleges multiple injuries. However, the focus of the alternate care Lloyd seeks are the injuries to his left knee, left hip, and mental health.

On September 15, 2022, the defendants informed Lloyd they had arranged care with Dr. Miller by scheduling an appointment to occur on the afternoon of the date of the telephone alternate care hearing, September 22, 2022. (Ex. B) Lloyd objects to the defendants' proposal to change Lloyd's treatment arrangement so that the lone authorized care provider for his knee, hip, and mental injuries moving forward is Dr. Miller. Lloyd wishes to continue care with Dr. Bremner, Dr. Sullivan, Smith, and Heather Wilson.

A. Personal Health Conditions.

Lloyd has personal health conditions in addition to those identified in the petition that require ongoing care. Some of these conditions require medication. Smith manages his prescription medications for these personal conditions unrelated to his work. (Testimony)

B. Knee.

Dr. Bremner performed surgery on Lloyd's left knee. Lloyd experienced ongoing pain after the surgeries. Dr. Bremner has opined Lloyd is not currently a candidate for additional surgery. Lloyd may require a total knee replacement down the road, but he is too young for such a procedure at present. (Testimony)

Dr. Bremner directed Lloyd to use Smith, who is Lloyd's personal care provider, to manage his prescription medications relating to the knee injury. Smith has managed Lloyd's prescription medications relating to the knee injury. She has done so in addition to managing his ongoing prescriptions for his personal health conditions. (Testimony)

Because of Lloyd's ongoing pain, the defendants authorized follow-up care with Dr. Bremner, who performed an injection that has provided no initial relief. (Testimony; Ex. A) Lloyd's pain worsened after the injection. (Testimony) The defendants argue Lloyd has provided no evidence he spoke with Dr. Bremner's office regarding a future appointment, but he credibly testified under oath (and there is no contrary evidence in the record) that he contacted Dr. Bremner's office and spoke with staff. Consequently,

the weight of the evidence establishes Lloyd talked to a staff person at Dr. Bremner's office about another appointment, but they did not schedule one because they are working to verify such care is authorized by Accident Fund before scheduling an appointment. (Testimony) In an email dated September 14, 2022, defense counsel informed claimant's counsel follow-up care was authorized but its timing relative to the injection would have to be in line with Dr. Bremner's medical judgment. (Ex. A)

While Dr. Bremner does not believe Lloyd is a candidate for additional surgery, Dr. Bremner has provided nonsurgical follow-up care for Lloyd's knee pain. The injection Dr. Bremner administered did not work and Lloyd's pain has worsened. It is reasonable for Lloyd to receive additional care with Dr. Bremner for his ongoing knee pain under these circumstances because Dr. Bremner is most familiar with Lloyd's injury, course of care, and Dr. Bremner recommended the injection that Lloyd's worsening symptoms followed. At this time, it would be unreasonable to stop Dr. Bremner's care and start care with another physician for the work injury to Lloyd's knee.

Smith has been the provider who has managed Lloyd's prescription medication for personal health conditions. Smith has also managed Lloyd's prescription medication relating to his knee injury. Given the number of medications for conditions both personal and work related and Smith's status as the current provider overseeing the prescription medications for both types of conditions (excluding medications relating to his mental health), it would be unreasonable to assign management of Lloyd's prescription medications relating to the knee to another physician.

C. Hip.

The defendants authorized Dr. Sullivan to care for Lloyd's hip. Dr. Sullivan has performed two surgeries to date on Lloyd's hip. Dr. Sullivan has opined Lloyd may be a candidate for total hip replacement in the future but is not now because of his age. (Testimony)

Dr. Sullivan directed Lloyd to maintain prescriptions for medication relating to his hip with Smith. Lloyd has seen Smith for management of prescription medications relating to his hip since then. At the time of hearing, Smith continued to manage Lloyd's prescription medications for personal conditions as well as the work injury to his hip. (Testimony)

After the surgeries, Lloyd has continued to experience pain in his hip as well as having a cramping sensation with it locking up while performing everyday activities. He requested authorization from the defendants to follow-up with Dr. Sullivan. (Testimony) The defendants contacted Dr. Sullivan's office about scheduling a follow-up appointment regarding Lloyd's hip. Dr. Sullivan refused to schedule the appointment. (Ex. C)

Despite the initial confusion about Dr. Sullivan's willingness to provide additional care, Dr. Sullivan ultimately saw Lloyd on September 20, 2022, two days before

hearing. Dr. Sullivan recommended physical therapy. Dr. Sullivan also informed Lloyd that the ongoing symptoms in his hip may be related to his knee. (Testimony)

The defendants plan to de-authorize Dr. Sullivan as a provider. They want to use Dr. Miller as the care provider for Lloyd's hip injury moving forward. Dr. Sullivan saw Lloyd two days before the hearing and recommended physical therapy. He also opined that Lloyd's hip pain might be related to his knee. Thus, the evidence shows Dr. Sullivan is willing to provide care and has recommended physical therapy. As Lloyd's treating surgeon, Dr. Sullivan is intimately aware of the details regarding Lloyd's injury and care. It would be unreasonable to end his treatment of Lloyd's hip injury and transition the care to another provider.

Smith manages Lloyd's prescription medications for all other personal conditions as well as the work injuries to his hip and knee. The defendants also want to replace Smith as the manager of Lloyd's prescription medications relating to the work injury to his hip with Dr. Miller. Given the number of prescription medications Lloyd is currently on for personal and work-related conditions other than those for mental health, it would be unreasonable to change the manager from one person (Smith) to two (Smith and Dr. Miller).

D. Mental.

The defendants initially denied Lloyd's claim of a mental injury. Heather Wilson, a care provider whose qualifications were not identified, has prescribed medications for Lloyd's mental health. Wilson manages prescription medication for Lloyd's mental conditions while Smith manages it for all others. (Testimony)

The defendants arranged for Lloyd to undergo an IME with Dr. Ascheman. After the IME, Dr. Ascheman diagnosed Lloyd with major depressive disorder (MDD) and PTSD resulting from the motor vehicle crash that caused his work injuries. (Ex. 3) Dr. Ascheman also opined Lloyd "will likely require ongoing medication for treatment of MDD and PTSD" and "may also benefit from individual therapy, but again, that is less clear given that he does not appear to have sought out treatment of that type." (Ex. 3)

The defendants want Dr. Miller, an occupational medicine specialist, to take over the care for Lloyd's mental health conditions. This would mean displacing Wilson as Lloyd's care provider for mental health conditions. It would be unreasonable to allow an occupational medicine doctor to take over management of Lloyd's prescription medications for mental health conditions under these circumstances.

IV. CONCLUSIONS OF LAW.

"Iowa Code section 85.27(4) affords an employer who does not contest the compensability of a workplace injury a qualified statutory right to control the medical care provided to an injured employee." Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 769 (Iowa 2016) (citing R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 195, 197 (Iowa 2003)). Under the law, the employer must "furnish reasonable medical

services and supplies *and* reasonable and necessary appliances to treat an injured employee.” Stone Container Corp. v. Castle, 657 N.W.2d 485, 490 (Iowa 2003) (emphasis in original). Such employer-provided care “must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee.” Iowa Code § 85.27(4).

An injured employee dissatisfied with the employer-furnished care (or lack thereof) may share the employee’s discontent with the employer and if the parties can’t reach an agreement on alternate care, “the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.” Id. “Determining what care is reasonable under the statute is a question of fact.” Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995); Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 436 (Iowa 1997). As the party seeking relief in the form of alternate care, the employee bears the burden of proving that the authorized care is unreasonable. Id. at 124; Gwinn, 779 N.W.2d at 209; Reynolds, 562 N.W.2d at 436; Long, 528 N.W.2d at 124. Because “the employer’s obligation under the statute turns on the question of reasonable necessity, not desirability,” an injured employee’s dissatisfaction with employer-provided care, standing alone, is not enough to find such care unreasonable. Id.

As found above, Dr. Bremner recently administered an injection. While Lloyd has initially had worse pain after the injection, Dr. Bremner has opined it takes a few weeks for such injections to work. As Lloyd’s treating surgeon, Dr. Bremner is most familiar with his knee injury and care. Under these circumstances, it would be unreasonable to end Lloyd’s care with Dr. Bremner for the knee injury and transfer it to another provider.

As found above, Dr. Sullivan recently provided care and recommended physical therapy. As Lloyd’s treating surgeon, Dr. Sullivan is most familiar with his hip injury and care. Under these circumstances, it would be unreasonable to end Lloyd’s care with Dr. Sullivan for the hip injury and transfer it to another provider.

Smith manages Lloyd’s prescription medications for personal conditions. This role led Dr. Sullivan and Dr. Bremner to direct Lloyd to see her for prescription medications relating to his hip and knee injuries. Given the number of prescriptions Lloyd has for personal and work-related conditions, it is reasonable for Smith to continue her duties managing all of Lloyd’s prescription medications (excluding those relating to his mental health). It would be unreasonable to transition to a different provider for medication management.

Wilson has provided care and prescribed Lloyd medication for his mental health conditions. They have an established provider-patient relationship. There is no indication Dr. Miller, an occupational medicine specialist, specializes in or has experience with treating such conditions or prescribing medications for them. Under the circumstances, it would be unreasonable to change Lloyd’s care provider for his mental health conditions to Dr. Miller.

V. ORDER.

Under the above findings of fact and conclusions of law, it is ordered:

- 1) Lloyd's application for alternate care is GRANTED.
- 2) The defendants shall:
 - a) Continue to authorize Dr. Bremner to treat Lloyd's knee.
 - b) Continue to authorize Dr. Sullivan to treat Lloyd's knee.
 - c) Continue to authorize Smith to manage the prescription medication relating to Lloyd's work injuries, with Smith coordinating with Dr. Miller as appropriate.
 - d) Authorize Wilson as a provider for Lloyd's mental injury.

On February 16, 2015, the Iowa workers' compensation commissioner issued an order delegating authority to deputy workers' compensation commissioners, such as the undersigned, to issue final agency decisions on applications for alternate care. Consequently, there is no appeal of this decision to the commissioner, only judicial review in a district court under the Iowa Administrative Procedure Act, Iowa Code chapter 17A.

Signed and filed this 23rd day of September, 2022.

A handwritten signature in black ink, appearing to read "Ben Humphrey", is written over a horizontal line.

BEN HUMPHREY
Deputy Workers' Compensation Commissioner

The parties have been served, as follows:

Greg A. Egbers (via WCES)

Laura J. Ostrander (via WCES)