

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KELLY JO STAUM,

Claimant,

vs.

PECH OPTICAL,

Employer,

and

TRAVELERS INDEMNITY COMPANY
OF CT.,

Insurance Carrier,
Defendants.

File No. 19001569.02

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, Kelly Jo Staum. Claimant appeared personally and through her attorney, Ronald Pohlman. Defendants appeared through their attorney, Julie Burger.

The alternate medical care claim came on for hearing on February 21, 2020. 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 A and B, which include three pages. Defendants offered Exhibits A through C, which consist of ten pages. Claimant testified on her own behalf. No other witnesses were called to testify.

ISSUE

The issue presented for resolution is whether the claimant is entitled to an order authorizing future treatment recommended by the currently authorized physicians, Richard L. Lawton, M.D., and/or Frederick C. Fisher, M.D.

FINDINGS OF FACT

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

Kelly Staum sustained an injury to her right arm as a result of a work accident occurring on November 28, 2018. (Original Notice and Petition) Defendants admit the alleged injury and the current causal connection of the care sought by claimant. (Answer) At the commencement of hearing, defendants conceded that they have authorized both Dr. Lawton and Dr. Fisher as treating physicians in this case.

Dr. Lawton is an orthopaedic surgeon, who provided claimant care, including surgical intervention for claimant's right arm. Following surgery, Dr. Lawton diagnosed claimant with adhesive capsulitis of the right elbow and complex regional pain syndrome type 1 of the right arm. (Defendants' Exhibit A, page 2) Dr. Lawton referred claimant for evaluation by a pain specialist, Dr. Fisher. Dr. Fisher recommended a course of treatment that includes stellate ganglion injections and physical therapy. (Defendants' Ex. A, p. 1)

Claimant testified that, pursuant to Dr. Fisher's recommendation, she submitted to a five-week course of injections and physical therapy in the fall of 2019. That course of care was not entirely helpful in resolving her symptoms and restoring full range of motion. (Claimant's testimony) On December 30, 2019, Dr. Fisher recommended a second set of injections and physical therapy.

Claimant testified that she received the additional five injections followed immediately by physical therapy. Claimant received these injections on Mondays. However, claimant understands that she was also supposed to receive physical therapy on Wednesdays and Fridays. She introduced Claimant's Exhibit A, which appears to be an order for physical therapy to continue on claimant's right arm for an additional 5-6 weeks on Wednesdays and Fridays. Claimant testified that defendants never authorized the Wednesday and Friday therapy appointments and that the additional therapy was not performed.

Defendants assert that they authorized all treatment for which they received notice from Dr. Fisher. However, defendants offer no explanation or cross-examination as to Claimant's Exhibit A, which documents an order of an additional five to six weeks of physical therapy on Wednesdays and Fridays. I find that Dr. Fisher did recommend additional therapy to occur on Wednesdays and Fridays. Claimant's counsel sought authorization for this treatment. (Claimant's Exhibit B) Defendants did not authorize the additional physical therapy recommended by Dr. Fisher. This is a failure to provide reasonable and necessary medical care by defendants.

Claimant completed the additional series of five injections with Dr. Fisher on February 10, 2020. (Defendants' Ex. B, p. 3) She is scheduled to return for evaluation with Dr. Lawton, the orthopaedic surgeon, on Wednesday, February 26, 2020. Dr. Lawton has previously discussed the possibility of continuing with additional injections and therapy. However, he has also previously discussed with claimant the possibility of

returning her to surgery with in-patient care for a period of time to try to increase her range of motion. Finally, Dr. Lawton has also indicated he may prefer a referral to Mayo Clinic for a second opinion if other medical treatments are not efficacious. Claimant conceded she does not know the current medical recommendations and will not know what Dr. Lawton recommends until seen again next week.

Claimant requests an order of this agency authorizing Dr. Lawton and Dr. Fisher as treating surgeons and ordering defendants to provide any and all care recommended by these physicians. Defendants concede that Dr. Lawton is an authorized medical provider and that they have previously authorized Dr. Fisher as an authorized medical provider. However, defendants are concerned about offering a definitive authorization and blanket authorization of any treatment recommendations made by Dr. Lawton under the premise that they have the right to direct medical care pursuant to Iowa Code section 85.27. Defendants raise no challenges at the present time as to the reasonableness or necessity of care that has been recommended by either Dr. Lawton or Dr. Fisher. Defendants acknowledge and implicitly authorized the return appointment with Dr. Lawton next week.

I find that Ms. Staum requires ongoing medical care. I find that Dr. Lawton is an authorized orthopaedic surgeon. I find that Dr. Fisher is an authorized pain specialist. Claimant testified that she is satisfied with the care recommended and offered by both Dr. Lawton and Dr. Fisher. I find that claimant proved she was entitled to receive physical therapy for an additional five or six weeks after December 30, 2019, pursuant to the recommendation and order of Dr. Fisher.

I find that claimant requested the additional physical therapy on Wednesdays and Fridays. I find that claimant appropriately expressed her dissatisfaction with the care, or lack of care, offered by defendants. Nevertheless, defendants failed to authorize the additional physical therapy recommended by the authorized pain specialist, Dr. Fisher. I find this is a failure by defendants to provide reasonable and prompt medical care to treat claimant's injury.

Nevertheless, I am unable to make a finding at this time as to the future treatment that is reasonable and necessary for claimant. No medical recommendations for future care are currently in this evidentiary record. Claimant conceded in her testimony that she is not clear what future medical course of care Dr. Lawton will recommend. However, it is clear that claimant requires additional medical care for her injury and that she should return to Dr. Lawton to obtain his medical opinions and recommendations on Wednesday, February 26, 2020.

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 and Air Conditioning 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. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). 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 she 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 right to select the provider of medical treatment to an injured worker does not include the right to determine how an injured worker should be diagnosed, evaluated, treated, or other matters of professional medical judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988).

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, June 17, 1986).

Having found that claimant requires ongoing medical care for her injury and that defendants failed to authorize additional physical therapy recommended by the authorized pain specialist, I conclude that claimant proved by a preponderance of the evidence that the medical care provided by defendants was not reasonable. Offering only a portion of the authorized physician's medical care is not a reasonable offer of medical care. Defendants are not entitled to determine which portions of the authorized medical providers' recommendations should be authorized and determine which they deem unnecessary.

Instead, defendants are permitted at the commencement of medical care to select the authorized medical provider. In this case, defendants selected Dr. Lawton as the authorized orthopaedic surgeon. Dr. Lawton referred claimant to Dr. Fisher, a pain specialist. This made Dr. Fisher an authorized medical provider as well. Defendants conceded at the commencement of trial that both Dr. Lawton and Dr. Fisher are authorized medical providers. Therefore, the recommendations of either, or both, should have been timely authorized and provided to claimant. Defendants' failure to authorize the additional physical therapy on Wednesdays and Fridays was not reasonable care.

Claimant has established entitlement to an order for alternate medical care. Although I am unable to determine with any certainty the specific course of care that Dr. Lawton is likely to recommend next week, claimant has established entitlement to an order appointing both Dr. Lawton and Dr. Fisher as authorized medical providers and an order requiring defendants to fully comply with their treatment recommendations.

ORDER

THEREFORE, IT IS ORDERED:

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

Richard L. Lawton, M.D., is an authorized physician for the treatment of claimant's work injury.

Frederick C. Fisher, M.D., is an authorized physician for the treatment of claimant's work injury.

Defendants shall authorize and pay for the scheduled return visit with Dr. Lawton on February 26, 2020.

Defendants shall timely authorize and pay for any and all physical therapy, injections, referrals to other specialists or medical providers, surgical intervention, hospitalization, or any and all other medical treatment recommended by Dr. Lawton following the February 26, 2020 evaluation for the treatment of claimant's work injury.

Signed and filed this 21st day of February, 2020.



WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Ron Pohlman (via WCES)

Julie Burger (via WCES)