BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

GARY YANDA, Claimant, vs. KIRKWOOD COMMUNITY COLLEGE, Employer, WEST BEND MUTUAL INSURANCE, Insurance Carrier, Defendants.	File No. 23700292.04 ALTERNATE MEDICAL CARE DECISION Headnote: 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, Gary Yanda.

The hearing for this alternate medical care claim was held on June 8, 2023. Claimant appeared through his attorney Matthew Dake. Defendants appeared through their attorney Edward Rose. 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 hearing record consists of Claimant's exhibits 1-4, and Defendants' exhibit A.

Counsel for both parties provided argument. The record closed at the end of the alternate medical care telephonic hearing.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care in the form of:

- Authorization to treat with physiatrist, Stanley Mathew, M.D.

FINDINGS OF FACT

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

This is the fourth alternate medical care petition filed by the claimant for the accepted April 19, 2022 date of injury. The first petition went to hearing on April 13, 2023. Claimant's second alternate care petition was dismissed on May 8, 2023. Claimant's third alternate care petition went to hearing on May 18, 2023. Those decisions contain detailed explanations of claimant's injury and his prior medical treatment. The bulk of those facts will not be repeated in this decision.

In this petition, claimant is once again requesting that defendants authorize treatment with physiatrist, Stanley Mathew, M.D. This is the third time that claimant has made this same request. His last request was denied on May 19, 2023. In that decision, the agency determined claimant had not shown that the care being offered by defendants was unreasonable. At the time of that hearing, defendants had already agreed to authorize treatment with a physiatrist at the University of Iowa Hospitals and Clinics (UIHC), even though it had not been recommended by any of claimant's authorized providers.

On or about May 17, 2023, defendants contacted the UIHC Physical Medicine and Rehabilitation Clinic to see if a physiatrist there would treat claimant. (See AMC Decision in File No. 23700292.03). The referral request form from UIHC indicated the clinic generally takes 5-7 business days to address requests for treatment. (Id.). At the time of the hearing for this claim, defendants still had not heard back from UIHC. (Hearing Testimony; Ex. A).

According to the exhibits, on May 23, 2023, claimant's counsel sent defendants' attorney an email stating that it had been more than seven days since defendants contacted UIHC requesting an appointment for claimant. (Ex. 4). The email went on to state that claimant would be filing another alternate care petition if he did not hear back from defendants with an appointment by Friday, May 26, 2023. (Id.). On the morning of May 26, 2023, claimant filed this alternate medical care action. (See Petition).

With the exception of the May 23, 2023 email to defendants, claimant's hearing exhibits are an exact replica of those submitted in File No. 23700292.03—they consist of claimant's counsel's March 7, 2023 letter to Dr. Mathew asking if he treated injuries like the claimant's; claimant's April 21, 2023 letter to Dr. Bingham asking for a referral to Dr. Mathew; and Dr. Vincent's treatment note from claimant's surgical evaluation on April 25, 2023.

Defendants' hearing exhibit contains a series of follow-up emails sent by Kelley Texeira, the claims adjuster, to UIHC, asking for an update on the request and an appointment date for claimant. (Ex. A). According to this exhibit, Ms. Texeira contacted UIHC requesting updates on May 24, May 26, June 1, June 6, and June 7, 2023. (Id.). Each time, Jory Goerdt, a representative at UIHC, replied indicating she had requested

an update from the doctors, but had not heard back. (Id.). At the hearing, defendants' counsel stated Ms. Texeira called UIHC on the morning of the hearing and was told that Dr. Chen had not yet gotten back to the representative with an appointment. (Hearing Testimony). Defendants counsel argued that their actions and the care offered to claimant were not unreasonable. (Id.). Defendants requested a little more time to hear back from UIHC. (Id.).

Claimant's counsel argued that Iowa Code section 85.27 requires care be offered promptly. (Hearing Testimony). He stated that claimant requested defendants authorize Dr. Mathew as a provider back in March 2023, and "access delayed is access denied." (Id.). Defendants argued that claimant has received ongoing treatment from Dr. Bingham since March 2023, including injections. (Id.). He has also had a surgical evaluation with Dr. Vincent. (Id.). Claimant has not attempted to return to Dr. Bingham, his authorized physician, since the last alternate care hearing. (Id.). Nor has there been any attempt to follow-up on his April 21, 2023 letter to Dr. Bingham. (Id.). Claimant does not have an actual appointment date with Dr. Mathew, or any further information about what treatment Dr. Mathew would offer him. (Id.).

No authorized providers have referred claimant to a physiatrist. (Hearing Testimony).

CONCLUSIONS OF LAW

Under Iowa law, an employer who has accepted compensability for a workplace injury has a right to control the care provided to the injured employee. Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 769 (Iowa 2016). The relevant statute provides as follows:

> 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. 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). 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, 528 N.W.2d at 124. Ultimately, determining whether care is reasonable under the statute is a question of fact. Long, 528 N.W.2d at 123.

No authorized providers have referred claimant to a physiatrist. Despite this, defendants have voluntarily referred claimant to UIHC for care with a physiatrist. However, they have not yet heard back from UIHC. Defendants argue this is not their fault and their actions have been reasonable. Claimant argues that defendants are effectively offering him no care at all. That allegation is not supported by the evidence. Looking at the agency's prior decisions in this file, it appears defendants have offered claimant a plethora of care since the work incident, including MRIs, physical therapy, pain medication, anti-inflammatories, injections, and surgical evaluations. Defendants continue to offer claimant ongoing treatment with Dr. Bingham, an occupational medicine specialist at Mercy Care. Claimant, however, has never requested a return appointment with Dr. Bingham. Claimant is correct, under the statutory language he is entitled to prompt and reasonable care. He, however, is not entitled to direct that care and/or choose his own providers. The care provided by defendants up to this point has been reasonable. The question now is how much of a scheduling delay is reasonable under the facts of this case. UIHC's referral form indicates that the clinic generally takes between 5-7 business days to address requests for treatment. At this point, it has been 17 business days and UIHC still has not responded. The agency recognizes that claimant's case is quite complicated, and it may take Dr. Chen a while to review his past treatment records. (See AMC Decisions in File Nos. 23700292.01 and 23700292.03). Unfortunately, neither party introduced any evidence that would shed light on what is a reasonable timeline under these circumstances.

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. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997). Claimant still has not met this burden as it pertains to Dr. Mathew. Claimant has not submitted any information about the treatments Dr. Mathew would provide or his actual timeline for providing them. Given this lack of evidence, the claimant has not shown that the care being offered by defendants is inferior or less extensive than the care offered by Dr. Mathew. His request for alternate medical care with Dr. Mathew is denied. However, claimant continues have pain complaints, and extensive delays in scheduling treatments are not reasonable. Therefore, the undersigned is giving defendants a deadline in which to provide claimant with treatment for his pain complaints. Within the next fourteen days, defendants must provide claimant with an appointment date at the UIHC Physical

Medicine and Rehabilitation Clinic, or contact another physiatrist of their choosing to treat claimant's pain complaints.

THEREFORE, IT IS ORDERED:

Claimant's petition for alternate medical care is denied in part and granted in part.

Claimant's request for authorization to treat with Dr. Stanley Mathew is denied. However, within the next fourteen (14) days defendants must provide claimant with an actual appointment date for treatment at UIHC or have contacted another physiatrist of their choosing to treat claimant's pain complaints.

Signed and filed this 9th day of June, 2023.

AMANDA R. RUTHERFORD
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Matthew Dake (via WCES)

Edward Rose (via WCES)