

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

 ROGER BORROR,

Claimant,

vs.

KELDERMAN MANUFACTURING, INC.,

Employer,

and

FIRST DAKOTA INDEMNITY CO.,

Insurance Carrier,
Defendants.

File No. 20701156.01

ALTERNATE MEDICAL
CARE DECISIONHEAD 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, Roger Borrer.

The alternate medical care claim came on for hearing on December 21, 2020. The proceedings were digitally recorded which constitutes the official record of this proceeding. This ruling is designated final agency action and any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code 17A.

The record consists of Claimant's Exhibits 1 and 2 and Defendants' Exhibit A.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of treatment of claimant's lower back by Anureet Walia, M.D., at the University of Iowa Hospitals and Clinics (UIHC) including epidural steroid injection scheduled for January 6, 2021.

FINDINGS OF FACT

The undersigned having considered all of the testimony and evidence in the record finds:

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Defendants admitted liability for an injury occurring on January 23, 2020. Claimant requested additional treatment at the UIHC on October 26, 2020. Claimant injured his lower back. Defendants have not provided this care.

After his injury on January 23, 2020 claimant received medical care authorized by the defendants at the Mahaska Health Partnership. Mark Zacharjasz, M.D., provided treatment for claimant's low back condition. Dr. Zacharjasz last provided treatment on March 25, 2020. Claimant had a couple of physical therapy sessions after February 25, 2020 that Dr. Zacharjasz prescribed. On April 22, 2020, Dr. Zacharjasz wrote that claimant was at maximum medical improvement (MMI) as of February 25, 2020 and that he had no permanent impairment. (Ex. A)

Claimant was terminated from his employment on March 5, 2020. Claimant then call Mahaska Health Partnership around March 5, 2020 and asked for additional treatment. Claimant spoke to a nurse who told him that since he was no longer employed Mahaska Health Partnership would not provide any additional care. Claimant did not speak to his ex-employer or insurance carrier about obtaining additional care.

Claimant then obtained care at Ottumwa Regional Health Center Emergency Department (ORHC) for his back. On March 17, 2020, claimant was referred to UIHC. Claimant was seen at the pain clinic at UIHC on July 22, 2020. (Exhibit 1, page 1) Claimant was seen by Dr. Walia at the UIHC on August 26, 2020 (Ex. 1. pp 1 – 8) The UIHC recommend and provided physical therapy and an epidural steroid injection, which claimant received. (Ex. 1 p. 7) Claimant testified that the injection and physical therapy helped. Claimant testified that he has scheduled for another epidural steroid injection on January 6, 2020.

On October 26, 2020, claimant sent a request for additional medical care at the UIHC including epidural steroid injections. (Ex. 2)

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).

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

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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).

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).

On the other hand, 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). In other words, defendants are not entitled to interfere with the medical judgment of their own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening, June 17, 1986).

In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997), the supreme court held that “when evidence is presented to the commissioner that the employer-authorized medical care has not been effective and that such care is ‘inferior or less extensive’ than other available care requested by the employee, . . . the commissioner is justified by section 85.27 to order the alternate care.”

If an employer fails to provide prompt medical care, the commissioner has authority to order alternate medical care, including care from a doctor chosen by the claimant. West Side Transport v. Cordell, 601 N.W.2d 691, 693 (Iowa 1999).

Claimant contacted his authorized medical provider and was told that he was not entitled to additional care. Claimant then obtained unauthorized care at ORHC and UIHC. Whether claimant can obtain reimbursement for this care is beyond the scope to this alternative medical care petition. Claimant's request for future medical care is within the scope of this petition for alternate medical care.

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On October 26, 2020, claimant did make a proper request for medical care. There is no evidence that the defendants offered medical care to the claimant after claimant's request on October 26, 2020. No evidence was provided that defendants have offered medical care. The defendants have stopped providing care. The defendants are not providing reasonable care. I find that claimant has met his burden of proof to show the defendants failed to provide prompt and reasonable care. I also find defendants abandoned care for the claimant.


I find that claimant is entitled to an order transferring care for his lower back to Dr. Walia and the UIHC Pain Clinic.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is granted. Defendants shall authorize Dr. Walia and the UIHC Pain Center to provide care, including but not limited to epidural steroid injections scheduled for January 6, 2021.

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


JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Joanie Grife (via WCES)

Paul Barta (via WCES)