

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

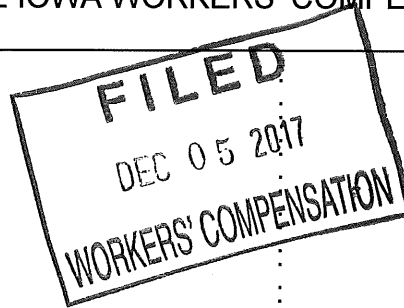
MIKE DARRAH,

Claimant,

vs.

DUPONT PIONEER,

Employer,
Self-Insured,
Defendant.



File No. 5063438

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapters 17A and 85. The expedited procedure of rule 876 IAC 4.48, the "alternate medical care" rule, is requested by claimant, Mike Darrah. Claimant filed a petition on November 20, 2017. At paragraph 5 of his petition, claimant requested authorization of Ai Huong Phu, D.O. for cognitive remediation, per James Gallagher M.D.'s recommendation.

Defendant filed an answer on November 27, 2017. Defendant admitted the occurrence of a work injury on February 28, 2017 and did not dispute liability for the condition sought to be treated by this proceeding.

The alternative medical care claim came on for hearing on December 4, 2017. The proceedings were recorded digitally and constitute the official record of the hearing. By an order filed February 16, 2015 by the workers' compensation commissioner, this decision is designated final agency action. Any appeal would be by petition for judicial review under Iowa Code section 17A.19. The evidentiary record consists of Claimant's Exhibits 1 through 4, and Defendant's Exhibit A. Oral arguments from the attorneys of record were heard.

ISSUE

The issue presented for resolution is whether claimant is entitled to alternate medical care in the form of authorization of cognitive therapy.

FINDINGS OF FACT

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

On September 1, 2017, a distinct workers' compensation commissioner issued an alternate care decision authorizing evaluation with Dr. Gallagher on September 21, 2017.

Dr. Gallagher evaluated claimant again on October 23, 2017, at which time he engaged in discussion with claimant and his wife. On October 24, 2017, Dr. Gallagher authored a letter to claimant's counsel, summarizing his treatment plan. Dr. Gallagher noted he prescribed medications and opined claimant should remain off work, with the hope that in time, the medication would result in decreased symptomatology.

Dr. Gallagher noted that claimant's wife had inquired regarding a referral to Dr. Phu and further indicated that "[s]he would like to see [claimant] enter into some type of cognitive remediation for his memory referent to his concussion." Dr. Gallagher indicated he believed Dr. Phu was a physiatrist at Mercy Physical Medicine. (Ex. 1, p. 1) Dr. Gallagher indicated "[m]aybe" an evaluation with Dr. Phu could be arranged to determine if additional care would be beneficial. He commented that claimant "certainly needs more support than I can provide now." (Ex. 1, p. 2)

On November 6, 2017, claimant's counsel authored a letter to defendant's counsel requesting authorization of Dr. Phu for "cognitive remediation for his memory referent to his concussion." (Ex. 2)

On November 29, 2017, Dr. Gallagher authored a letter to defendant's counsel in follow up of a November 19, 2017 conference. He commented that claimant was scheduled for follow up evaluation later that day. Dr. Gallagher noted that in the conference, defendant's counsel indicated Dr. Phu did not provide memory testing or memory remediation. As a result, Dr. Gallagher indicated a referral to Dr. Phu was "not an option." (Ex. A, p. 1)

Dr. Gallagher indicated that as an alternative, he and defendant's counsel agreed to a referral to Dr. Derek Campbell for assessment of claimant's "memory deficits, or not, and to put that issue to rest." (Ex. A, p. 1) Dr. Gallagher expressed desire to refer claimant to Dr. Campbell for a complete or partial battery of tests to assess claimant's memory function, at the discretion of Dr. Campbell. At that time, claimant's condition in that respect would no longer be an "unknown." (Ex. A, p. 2) Dr. Gallagher indicated that should deficits be shown, he would then be able to issue treatment recommendations. (Ex. A, p. 1)

Claimant and his wife presented for evaluation with Dr. Gallagher on November 29, 2017 and Dr. Gallagher authored a summary letter to claimant's counsel that same date. Dr. Gallagher noted claimant was receiving some relief with medications, but was not processing information well. Claimant described examples of inability to complete projects he was capable of completing prior to his injury; Dr. Gallagher noted he was uncertain if the issue was organic or anxiety-based. In the event claimant's symptoms

reflected a post-concussion event, Dr. Gallagher opined it was important to allow time for healing. (Ex. 4)

Dr. Gallagher noted that he recommended a neuropsychological evaluation with Dr. Campbell, in order to evaluate claimant's capacity for processing information and to determine "if there are deficits or if this is anxiety driven." Dr. Gallagher noted that following this evaluation, he would address additional treatment options. He noted that "[t]hereafter," he would determine when claimant was capable of returning to work. Dr. Gallagher identified a return to work goal of the beginning of 2018, yet noted consideration would need to be made of claimant's working terms in order to support a successful return to work. Dr. Gallagher noted claimant was scheduled for follow up evaluation on December 29, 2017. (Ex. 4)

Claimant's counsel offered a written report regarding another of his clients, reflecting that Dr. Phu had referred a patient to another provider for cognitive evaluation. (Ex. 3, pp. 1-2)

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 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 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.

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 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 1975).

"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).

Claimant remains under the care of psychiatrist, Dr. Gallagher, a provider selected by claimant. Dr. Gallagher's treatment plan currently includes prescription medication and a recommendation for neuropsychological evaluation with Dr. Campbell. As of the date of hearing, the process for securing claimant an appointment with Dr. Campbell had been begun, but not finalized. Claimant admits the evaluation with Dr. Campbell is appropriate and reasonable.

Claimant's concern rests in securing claimant some additional form of treatment in interim period, prior to the evaluation with Dr. Campbell. It is evident that claimant's family and counsel are attempting to secure claimant the care he needs to avoid any potential worsening of his symptoms. It is also clear from review of the records and arguments of counsel that claimant possesses significant concern regarding an upcoming attempt to return to work.

While these attempts appear genuine, I find defendant is currently offering reasonable treatment of claimant's condition. Dr. Gallagher remains an authorized provider and appears well-versed in claimant's symptoms and concerns regarding his work environment. It remains in Dr. Gallagher's purview to continue claimant's off-work restriction to allow claimant ample time to undergo further evaluation and treatment.

Further, I find Dr. Gallagher has opined evaluation with Dr. Campbell represents a reasonable treatment alternative to evaluation by Dr. Phu. Although some delay may come with securing the recommended evaluation, the results of the evaluation will provide Dr. Gallagher with the requisite information needed to craft appropriate treatment recommendations. Presumably, a determination of whether claimant's symptoms reflect a post-concussive event or some manifestation of anxiety, will impact treatment options. Accordingly, additional referrals as requested by claimant are now premature.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's application for alternate medical care is denied.

Signed and filed this 5th day of December, 2017.



ERICA J. FITCH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Christopher D. Spaulding
Attorney at Law
2423 Ingersoll Ave.
Des Moines, IA 50312-5233
chris.spaulding@sbsattorneys.com

James M. Ballard
Attorney at Law
14225 University Ave., Ste. 142
Waukee, IA 50263
jballard@jmbfirm.com

EJF/sam