BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BEAU VOSATKA, Claimant, vs. LEWIS MACHINE & TOOL, CO., Employer, and VALLEY FORGE INSURANCE CO., Insurance Carrier, Defendants.	File No. 23010488.02 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, Beau Vosatka. Claimant appeared through attorney, Makayla Augustine. Defendants appeared through their attorney, Tyler Laughlin.

The alternate medical care claim came on for hearing on October 26, 2023. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's 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 1 through 3 and Defense Exhibits A and B, which were received without objection. The defendants do not dispute liability for claimant's August 2023, work injury.

ISSUE

The issue presented for resolution is whether the care offered by defendants is unreasonable.

FINDINGS OF FACT

The claimant sustained a work injury to his left arm and right leg on August 15, 2023. He has been receiving treatment for this condition from an authorized physician, Ryan Dunlay, M.D. (Defendants' Exhibit B) On August 29, 2023, Dr. Dunlay recommended physical therapy "2-3 times a week for the left wrist and right knee." (Def. Ex. B) Claimant agreed with this plan.

Claimant's authorized therapist provided the following opinion on October 9, 2023:

> Mr. Beau Vosatka has been treating at our facility due to a work related incident. The patient was impacted by bullet fragments to the left forearm, and right thigh area.
>
> Due to persistent symptoms, the patient may benefit from a second opinion with orthopedics.

(Cl. Ex. 2) The therapist went on to specifically recommend a physician named "Dr. Mendel." (Cl. Ex. 2)

Claimant also submitted a note from his family physician, Katie Vickroy, ANRP, FNP-C, recommending a second opinion.

Just prior to hearing, defendants authorized a visit with Dr. Mendel. (Def. Ex. A) Email correspondence verifies that Dr. Mendel is reviewing the file so that an appointment can be arranged. Defense counsel confirmed at hearing that the appointment has been authorized and they intend to pay for the second opinion. Claimant's counsel, for her part, indicated that she simply wanted to protect her client as much as possible by securing an order memorializing this agreement on the record. Claimant's counsel did express concerns about the defendants' follow through on various benefits and treatment. Claimant's counsel expressed her desire to obtain a "consent order" from the defendants memorializing their assurance that they have authorized this treatment.

In my experience, this has become a bigger issue in recent years. When defendants agree to authorize treatment prior to an alternate care hearing, claimants often now seek to place this agreement on the record in order to legally protect their clients. This agency, however, only has authority to order alternate care when the treatment being offered by defendants is unreasonable by a preponderance of evidence. This, of course, is determined on a case-by-case basis, based upon the facts and the law.

In this case, prior to hearing, defendants agreed to provide the care requested. The defendants presented correspondence between the carrier and Dr. Mendel's office

that this was done prior to hearing. Claimant's counsel has pointed out that this was done just prior to hearing (within a couple of days) and that this request was initially denied. The recommendation for a second opinion, however, was first made on October 9, 2023, just a few weeks ago. While claimant and/or claimant's counsel may not entirely trust the defendants, I have no basis to make such a finding in this record.

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. Iowa Code Section 85.27 (2013).

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See 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 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).

An employer's statutory right is to select the providers of care and the employer may consider cost and other pertinent factors when exercising its choice. Long, at 124. An employer (typically) is not a licensed health care provider and does not possess medical expertise. Accordingly, an employer does not have the right to control the methods the providers choose to evaluate, diagnose and treat the injured employee. An employer is not entitled to control a licensed health care provider's exercise of professional judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 18, 1988). An employer's failure to follow recommendations of an authorized physician in matters of treatment is commonly a failure to provide reasonable treatment. Boggs v. Cargill, Inc., File No. 1050396 (Alt. Care January 31, 1994).

The claimant's position is that the physical therapist is an authorized treatment provider the same as a physician who can make referrals. These types of referrals should not be interfered with by an insurance carrier or claims handler. The defendants contend that they have provided reasonable care. A physical therapist is not a "physician" and his recommendation does not carry the same weight as such.

Nevertheless, prior to hearing, defendants have agreed to authorize the treatment claimant is seeking.

Based upon the record before me, I find that by authorizing the care requested by claimant (a second opinion from Dr. Mendel), the defendants are providing reasonable care. All other issues are moot. Therefore, I have no basis to order *alternative* care at this time. In other words, the "alternative care" requested has already been authorized and I trust the defendants to follow through with this. This agency obviously does expect that the defendants will carry through with their assurances made to the claimant and this agency at hearing, regarding this care.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is formally DENIED.

Signed and filed this 26th day of October 2023.

JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

MaKayla Augustine (via WCES)

L. Tyler Laflin (via WCES)