

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ROSE MURPHY,

Claimant,

vs.

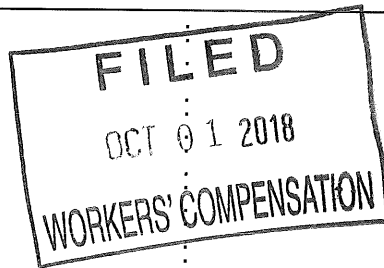
HOMEMAKERS PLAZA, INC.,

Employer,

and

DEPOSITORS INSURANCE CO.,

Insurance Carrier,
Defendants.



File No. 5063819

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, Rose Murphy. Claimant appeared telephonically and through her attorney, Nicholas Platt. Defendants appeared through their attorney, Jessica Cleereman.

The alternate medical care claim came on for hearing on October 1, 2018. 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 1 through 3. Counsel offered oral arguments to support their positions.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of a referral to Pain Specialists of Iowa.

FINDINGS OF FACT

Claimant sustained a low back injury on January 1, 2018, for which defendants admit liability.

On June 26, 2018, I issued an alternate medical care decision ordering defendants to authorize treatment with Shawn P. Spooner, M.D. At claimant's appointment with Dr. Spooner on August 22, 2018, he indicated claimant may benefit from a trial of trigger point injections. As a result, Dr. Spooner referred claimant to Pain Specialists of Iowa. (Exhibit 2)

Defendants were in possession of Dr. Spooner's August 22, 2018 referral on August 28, 2018, if not before. (See Ex. 1) On September 11, 2018, after claimant heard nothing from defendants regarding the referral, claimant's counsel e-mailed defendants' counsel asking for authorization. (Ex. 3) Still, however, defendants provided no response to claimant until the eve of the October 1, 2018 alternate medical care hearing, when they offered to send claimant's medical records to Central States Pain Clinic for review by Christian Ledet, M.D., so that Dr. Ledet could make a determination as to whether he would accept claimant for treatment.

At hearing, defendants' counsel failed to provide a sufficient explanation for the nearly six-week delay in arranging Dr. Spooner's referral. Defendants' counsel explained that defendants' offer to send claimant's medical records to Central States Pain Clinic instead of Pain Specialists of Iowa was due to the insurance adjuster's familiarity with Central States Pain Clinic; however, defendants' counsel also indicated defendants would be agreeable to arrange a referral to Pain Specialists of Iowa.

Claimant's counsel indicated claimant would prefer to have her records sent to Pain Specialists of Iowa first because that was the clinic recommended by Dr. Spooner. Should the providers at Pain Specialists of Iowa decline to accept her, claimant would be agreeable to a referral to Dr. Ledet.

I find that the nearly six-week delay in arranging the authorizing treating physician's referral was an unreasonable delay of medical care. In other words, it is found that defendants denied claimant prompt medical care.

REASONING AND CONCLUSIONS OF LAW

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.

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.

Similarly, 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). Thus, 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.

I found defendants failed to provide prompt medical care to claimant when they failed to arrange a referral to a pain clinic for nearly six weeks. The statute requires care to be "offered promptly." See Iowa Code § 85.27(4). Thus, I conclude claimant has proven her claim for alternate medical care.

Defendants are ordered to authorize and pay for a referral to Pain Specialists of Iowa. Should the providers at Pain Specialists of Iowa decline to accept claimant as a patient, defendants are ordered to authorize and pay for a referral to Central States Pain Clinic.

ORDER

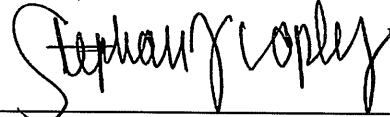
THEREFORE IT IS ORDERED:

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

Defendants shall immediately authorize, arrange, and timely pay for a referral to Pain Specialists of Iowa. Should the providers at Pain Specialists of Iowa decline to

accept claimant as a patient, defendants shall immediately authorize, arrange, and timely pay for a referral to Central States Pain Clinic.

Signed and filed this 15th day of October, 2018.



STEPHANIE J. COPLEY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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