

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ALLEN WERNER,

Claimant,

vs.

NCI BUILDING SYSTEMS,

Employer,

and

INSURANCE COMPANY OF THE
STATE OF PENNSYLVANIA,

Insurance Carrier,
Defendants.

FILED

AUG 06 2015

WORKERS COMPENSATION

File No. 5044478

SECOND

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, Allen Werner. Claimant appeared personally and through his attorney, Mark Sullivan. Defendants appeared through their attorney, Stephen Spencer. All parties were well-represented by counsel, who presented articulate and convincing arguments on behalf of all parties.

The alternate medical care claim came on for hearing on August 6, 2015. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Iowa Workers' Compensation 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 5 and defendants' exhibits A through E. All exhibits were offered without objection and received into evidence. One witness testified telephonically. Nancy Werner testified. Defendants elected not to call any witnesses to testify at the time of hearing.

The first alternate medical care decision was filed by Deputy William H. Grell on May 7, 2015. In the original decision, Deputy Grell ordered:

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is sustained in part.

Timothy Miller, M.D., shall remain the authorized pain specialist and shall remain responsible for prescribing fentanyl patches, oxycodone, and/or any other medications he deems medically reasonable for treatment of claimant's chronic pain.

All other medications stipulated to be causally related to claimant's work injury, including Lamotrigine, Duloxetine, Gabapentin, Xarelto, and Tizanidine shall be monitored, supervised, and prescribed through claimant's personal physician, Dr. Weston.

Claimant's original notice and petition for alternate medical care is dismissed with respect to his request for authorization and payment of the following medications: Tamsulosin, Hydrochlorothiazide, Hydroxyzine, Omeprazole, and Escitalopram.

Defendants' denial of liability for the medications noted in the immediately preceding paragraph results in the loss of their ability to select the authorized medical provider for these medications during the period of their denial.

If claimant seeks to recover the charges incurred in obtaining medications for which defendants denied liability, defendants are barred from asserting lack of authorization as a defense to those charges during the period of their denial.

FINDINGS OF FACT

Subsequent to the filing of the alternate medical care decision, claimant filed a request for rehearing. The request was filed on May 20, 2015. Deputy Grell issued a ruling on claimant's request for rehearing. The ruling was filed on May 27, 2015. In the ruling, the deputy ordered:

THEREFORE, IT IS ORDERED:

The May 7, 2015 alternate medical care decision is amended to clarify that it did not transfer care away from any specialists or preclude any specialists from prescribing, changing, or modifying any medications that the defendants concede are causally related to the work injury.

The remainder of the requests or challenges asserted in claimant's request for rehearing are denied.

Ms. Werner testified at the August 6, 2015 hearing, she contacted the office of Timothy Miller, M.D., after the May 6, 2015 hearing was held but before the May 7, 2015 alternate medical decision was issued. Ms. Werner discussed her spouse's health with Dr. Miller's nurse in a lengthy telephone conversation.

On May 7, 2015, Dr. Miller sent a letter to claimant. In the letter, Dr. Miller notified his patient he would no longer serve as claimant's pain specialist. (Exhibit B) Dr. Miller wrote, in relevant part, "but I will not follow you long-term since it appears that we are not able to meet all of your requirements." (Ex. B) Dr. Miller refuses to treat claimant.

Claimant is requesting treatment from Ivan Fomitchev, M.D., an anesthesiologist/pain specialist at Mercy Hospital in Dubuque, Iowa. Defendants are suggesting Joseph J. Chen, M.D., Clinical Associate Professor at the Department of Orthopaedics and Rehabilitation at the University of Iowa Hospitals and Clinics.

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).

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).

When a designated physician refers a patient to another physician, that physician acts as the defendant employer's agent. Permission for the referral from defendant is not necessary. Kittrell v. Allen Memorial Hospital, Thirty-fourth Biennial Report of the Industrial Commissioner, 164 (Arb. November 1, 1979) (aff'd by industrial commissioner). See also Limoges v. Meier Auto Salvage, Iowa Industrial Commissioner Reports 207 (1981).

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).

Dr. Chen opined a consultation with the Pain Clinic at the University of Iowa Hospitals and Clinics is not medically reasonable or necessary. (Ex. D) An appointment with Dr. Chen does not appear to be reasonable or necessary. Dr. Chen has nothing additional to offer claimant in the form of treatment.

It is apparent claimant is in need of additional treatment for chronic pain. Treatment by Ivan Fomitchev, M.D., a pain specialist in Dubuque, Iowa seems reasonable and will not be unduly inconvenient for claimant.

ORDER

THEREFORE, IT IS ORDERED:

Alternate care in the form of a pain specialist is hereby transferred to Ivan Fomitchev, M.D., of Dubuque, Iowa from Timothy Miller, M.D.

All other portions of Deputy Grell's orders and rulings regarding alternate medical care shall remain the same.

Signed and filed this 6th day of August, 2015.



MICHELLE A. MCGOVERN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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