ELECTRONICALLY FILED 2020-Jan-09 15:20:27 DIVISION OF WORKERS' COMPENSATION

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SONJA HANSEN-SMITH, Claimant, vs. WEST DES MOINES COMMUNITY SCHOOL DISTRICT, Employer, and SFM MUTUAL INSURANCE COMPANY, Insurance Carrier, Defendants.	File No. 19700676.01 ALTERNATE MEDICAL CARE DECISION HEAD NOTE: 2701

On December 20, 2019, claimant filed an original notice and petition for alternate medical care under Iowa Code section 85.27, invoking the provisions of rule 876 IAC 4.48. Defendants filed an answer accepting that claimant sustained injuries to the head and neck on May 16, 2019, which arose out of and in the course of her employment. Defendants noted that they denied liability for further medical care for claimant's alleged head injury if claimant refused to present for a follow-up appointment with Steven Adelman, D.O.

This alternate medical care claim came on for hearing on January 3, 2020, at approximately 10:50 a.m. The proceedings were recorded digitally and constitute the official record of the hearing.

Prior to hearing, defendants were asked to clarify their seemingly conditional acceptance of claimant's head injury. After a lengthy discussion regarding the undersigned's inability to accept a conditional acceptance, defendants provided that for purposes of the alternate care proceeding they would be accepting liability for the alleged head injury.

The record consists of Claimant's Exhibits 1 through 6, which include a total of 10 pages. Defendants offered Exhibits A through D, which include a total of 10 pages. Ms. Hansen-Smith was the only witness to provide testimony. Counsel for both parties provided argument.

ISSUE

The issue presented for resolution is whether claimant is entitled to alternate medical care consisting of recommendations for care contained in a report from Shawn Spooner, M.D. Claimant also seeks the removal of Steven Adelman, D.O., and Daphney Myrtil, M.D., as authorized physicians due to breakdowns in the physician-patient relationship.

FINDINGS OF FACT

Having considered all evidence and testimony in the record, the undersigned finds:

On May 16, 2019, Sonja Hansen-Smith injured her head, neck, and back while attempting to break up a fight outside of her classroom. In the process of breaking up the fight, Ms. Hansen-Smith's head came into contact with a brick wall several times. (Claimant's Testimony; see Exhibit C, page 1).

Defendants authorized treatment through Daphney Myrtil, M.D. (See Ex. C, p. 2). Claimant received conservative treatment consisting of diagnostic imaging, medication, and physical therapy. Despite seeing improvement in her neck condition, claimant continued to experience persistent headaches and issues with balance. Claimant reported the same to her physical therapists, Catherine Mitchell, P.T. and Thomas Rodemyer, P.T.

According to claimant, Mr. Rodemyer was concerned with claimant's persistent headaches and issues with balance. Claimant subsequently contacted defendants and requested additional treatment to address the same. Claimant testified defendants told her they would not pursue additional treatment for her complaints until she had completed physical therapy for her neck. When defendants did not immediately authorize additional treatment for her headaches, Mr. Rodemyer recommended she pursue treatment through her primary care physician.

Claimant's primary care physician diagnosed her with a concussion and referred her on to Shawn Spooner, M.D. for further treatment. (Claimant's Testimony; see Ex. 1, p. 1; see also Ex. C, p. 3). Defendants did not authorize claimant's treatment with Dr. Spooner. Dr. Spooner is board-certified in sports medicine and family medicine. Dr. Spooner has been acting in a primary role of managing posttraumatic head injuries, including complex concussion injuries, for the past 7 years. He has led multidisciplinary teams for the United States military and now in a civilian role for UnityPoint Clinic. His focus is on the recognition and appropriate management of head and neck injuries, with an additional focus on management of co-morbidities. (Ex. 1, p. 1).

Claimant initially presented to Dr. Spooner on July 24, 2019. (See Ex. C, p. 3). Dr. Spooner diagnosed claimant with post-traumatic head and neck injuries, including a concussion, based on cognitive changes in addition to symptoms involving persistent

headaches, functional vision dysfunction, and functional impaired postural stability or impaired balance. (See Ex. 1, p. 1). Dr. Spooner also commented on what he considered to be claimant's extensive pre-existing co-morbidities, such as migrainous headaches, fibromyalgia, anxiety and depression, and ADHD, and how such co-morbidities impacted his diagnoses. (See Ex. 1, p. 1).

To address claimant's ongoing symptoms, Dr. Spooner proposed a multidisciplinary approach consisting of appropriate vestibular and cervicogenic physical therapy, speech-language pathology for cognitive coping techniques, and cognitive rehabilitation. Dr. Spooner also recommended claimant present for an evaluation by neuro-optometry for what appeared to be substantial functional vision impairment. (See Ex. 1, p. 1).

Claimant subsequently produced Dr. Spooner's report and recommendations to Dr. Myrtil. (See Ex. 2, p. 4). Claimant testified that Dr. Myrtil reacted poorly when presented with Dr. Spooner's recommendations. According to claimant, Dr. Myrtil appeared upset and threw her hands up in the air. (Claimant's Testimony). Claimant testified she cried during this interaction because she did not believe Dr. Myrtil was listening and adequately addressing her complaints. (Claimant's Testimony). The interaction is documented in Dr. Myrtil's notes as follows:

> The fact that [claimant] brought a letter from another provider discussing her postconcussion syndrome is alarming. I informed her that if she would like a second opinion, she should contact her adjuster to get a second opinion, but I do not follow recommendations of other providers that I did not refer my patients to.

(Ex. 2, p. 4). There is no evidence in the record claimant has returned to Dr. Myrtil since the above referenced interaction. Subsequent interactions with Dr. Myrtil, where she is not put on the spot regarding another physician's diagnoses and recommendations, may paint a different picture than what is presented today.

Defendants subsequently scheduled claimant for neurological examination with Steven Adelman, D.O., on October 15, 2019. (See Ex. 3, p. 5). Claimant described persistent headaches, neck pain, double vision, memory disturbances, personality changes, and falling episodes. (Ex. 3, p. 5). Dr. Adelman found claimant's neurologic examination to be normal. He opined the CT scan of claimant's brain was normal, and the non-specific white matter changes on her MRI were not caused by the alleged injury, nor were they clinically symptomatic. (Id.). Dr. Adelman ultimately opined claimant was experiencing tension-type headaches associated with a cervical strain. He felt the persistence of her symptoms could be related to her unrelated, chronic pain issues. Nevertheless, he recommended she proceed with neuropsychological testing. (Id.). The last sentence of Dr. Adelman's report makes little to no sense, but essentially provides claimant is instructed to follow-up with him after the neuropsychological testing to go over the same and to discuss what additional treatment, if any, is necessary. (See Ex. 3, p. 5).

At hearing, claimant testified Dr. Adelman spent approximately 20 minutes interviewing her and 10 minutes examining her. She did not believe Dr. Adelman conducted a thorough examination and felt he was dismissive of her complaints. (Claimant's Testimony).

Later that same day, claimant presented to physical therapy and detailed her recent appointment with Dr. Adelman. (Ex. 4, p. 7). Claimant's physical therapist opined claimant would benefit from continued therapy. (Id.). Nevertheless, on October 21, 2019, Dr. Adelman opined claimant no longer required vestibular, cognitive, or speech therapy. (Ex. 3, p. 6). At hearing, claimant testified she had not presented for physical therapy since Dr. Adelman provided said opinion. (Claimant's testimony).

On October 23, 2019, Dr. Myrtil signed a pre-written opinion letter indicating she would defer to Dr. Adelman's opinions as it related to claimant's medical treatment regarding the May 16, 2019, work injury. (Ex. B, p. 1).

On November 12, 2019, claimant's physical therapist drafted a non-visit discharge note. (Ex. 4, p. 8). The note provides claimant was still exhibiting significant symptoms of a concussion at the time of discharge. Ms. Mitchell opined claimant still needed activity training and habituation training. (Id.).

Claimant presented for a neuropsychological evaluation with Bruce Jasper, Ph.D. on November 19, 2019. (See Ex. 6, p. 10). Claimant testified the evaluation lasted all day. On cross-examination, claimant agreed with counsel for defendants that Dr. Jasper's neuropsychological evaluation was thorough. (Claimant's Testimony). After reviewing a portion of claimant's medical records and conducting several neuropsychological tests, Dr. Jasper opined claimant was malingering cognitive and physical symptoms self-reportedly attributed to the May 16, 2019, work incident. (Ex. 6, p. 10). He opined the May 16, 2019, work-related incident did not cause a concussion or traumatic brain injury. (Id.). He further opined claimant does not have any permanent psychological, cognitive, motor or pain-related impairment resulting from the same. (Id.).

In his December 29, 2019, report, Dr. Spooner commented on the evaluations performed by Drs. Adelman and Jasper. Dr. Spooner concluded neither consultation was meant to assist claimant in her recovery or management of her injury. Rather, the evaluations were meant to contribute documentation to help substantiate that claimant did not, in fact, sustain a meaningful injury at work. Dr. Spooner also commented on the evaluations performed by Dr. Myrtil. Dr. Spooner opined appropriate recognition of a concussive injury was missed on initial and follow-up visits. (Ex. 1, pp. 1-3).

At the time of hearing, claimant testified she had not presented for any physical therapy or additional treatment related to her injury since the neuropsychological evaluation with Dr. Jasper. It should be noted defendants had scheduled claimant for follow-up appointments with Dr. Adelman; however, said appointments had to be rescheduled because of conflicts in claimant's teaching schedule, as well as what

appears to be a general reluctance to return to Dr. Adelman on the part of claimant. (See Ex. D).

On cross-examination, claimant confirmed she was scheduled to present to Dr. Adelman for a follow-up appointment on January 8, 2020. Claimant expressed her intent to present to the same. (Claimant's testimony).

Claimant continues to work full-time as a high school teacher. She is contracted to work from 7:45 A.M. to 3:45 P.M., but testified she is often required to work longer hours to prepare for class and handle additional duties. (Claimant's Testimony).

Claimant requests that the recommendations for care outlined in Dr. Spooner's report be provided to claimant by objective care providers. Alternatively, claimant requests that Dr. Spooner be designated as claimant's authorized treating physician and permitted to direct any and all further care from this point forward. Essentially, claimant alleges that it is not reasonable for defendants to offer care through Dr. Myrtil and Dr. Adelman because there has been a breakdown in the physician-patient relationship. Claimant testified she does not trust either physician. It was clear to the undersigned that claimant had lost confidence in her authorized treating physicians.

I will first address the physician-patient relationship between claimant and Dr. Myrtil. Claimant's concerns regarding Dr. Myrtil stem from Dr. Myrtil's unwillingness to accept the recommendations made by Dr. Spooner. Claimant testified she did not trust Dr. Myrtil and felt she was not listening to her complaints. Realistically, it appears claimant is simply frustrated with the lack of improvement she has seen with the treatment recommendations of Dr. Myrtil. It cannot be said that Dr. Myrtil was not listening to claimant's complaints. Dr. Myrtil's August 29, 2019, report provides it is possible claimant sustained a mild traumatic brain injury as a result of the assault that occurred in May 2019. (Ex. 2, p. 4). The report goes on to discuss how claimant meets the diagnostic criteria for post-concussion syndrome. (Id.). Following this discussion, Dr. Myrtil provides claimant will follow-up after physical therapy. This tends to show Dr. Myrtil was open to further discussion regarding claimant's complaints. Outside of a single interaction in which claimant asserts Dr. Myrtil was hostile towards her, claimant submitted no other evidence to show a breakdown in the physician-patient relationship. I find claimant has not proven a breakdown in the physician-patient relationship with respect to Dr. Myrtil.

Claimant's concerns regarding Dr. Adelman stem from the belief that he is biased and he has not adequately addressed claimant's complaints. (Addendum to Petition for Alternate Medical Care). Claimant has not introduced concrete evidence to show Dr. Adelman is biased. I do not find claimant's argument convincing in this regard. However, I do have concerns as to whether Dr. Adelman has offered reasonable care.

First, claimant implies Dr. Adelman's care is inferior or less extensive than the care recommended by Dr. Spooner. Claimant credibly testified to the minimal examination performed by Dr. Adelman. This testimony is supported by the report of

Dr. Spooner, wherein Dr. Spooner discusses several deficiencies in Dr. Adelman's examination, including the lack of functional testing.

> I do not see any well-documented functional testing including more advanced functional vision testing such as vestibular oculomotor testing to evaluate for convergence and saccadic dysfunction. I also do not see documentation of much more than simple routine observation of gait rather than more robust functional balance assessment. During her neurology exam, there was no documented cognitive testing.

(Ex. 1, p. 2).

Second, the care Dr. Adelman provided was essentially no care. It cannot be said that Dr. Adelman recommended care reasonably suited to treat claimant's condition. In fact, Dr. Adelman did just the opposite when he recommended against additional physical therapy; a previously authorized treatment modality that claimant consistently provided was helping to improve her condition. Dr. Adelman's sole report serves merely as a vehicle to refer claimant for neuropsychological testing. While it is not my place to question the medical opinions of a physician, it is concerning that Dr. Adelman provided the opinion claimant no longer required physical therapy nearly one week after his initial examination, and without explanation or additional analysis. Dr. Adelman's recommendation goes against the opinions of claimant's authorized physical therapist who believed claimant required additional physical therapy.

> We do feel patient would benefit from continued therapy to work on normalizing eye and head movement as well as working on progressing screen time when she can outside of school setting for further recuperation. […] She was still having significant symptoms of concussion at this time and still needed activity training and habituation training.

(Ex. 4, pp. 7-8). It also goes against the opinions and recommendations of Dr. Spooner. (See Ex. 1, p. 1). At the time the recommendation was made, it also went against the recommendations of claimant's authorized treating physician, Dr. Myrtil.

Lastly, Dr. Adelman did not offer any treatment to assuage claimant's condition in place of physical therapy. Claimant credibly testified she does not trust Dr. Adelman. While I do believe some of this mistrust is due to preconceived notions, I find the majority of claimant's concerns are valid.

On the date of hearing, we had an injured worker seeking treatment for symptoms a number of physicians associated with a concussion. As of the date of hearing, defendants had accepted liability for claimant's injuries. Nevertheless, claimant was receiving no treatment specifically addressing her persistent headaches and issues with balance. What's more, one of the only treatment modalities shown to be effective at mitigating claimant's complaints, which had been recommended by Dr. Myrtil, Dr. Spooner, and claimant's physical therapist, had been discontinued without explanation.

During this period of time, other treatment recommendations existed. (See Ex. 1, p. 1). I find the care offered by Dr. Adelman, which was essentially no care, was not effective and was inferior or less extensive than the care recommended by Dr. Spooner. Given this finding, I also find claimant has proven a breakdown in the physician-patient relationship with respect to Dr. Adelman.

CONCLUSIONS OF LAW

The employer has the right to select the medical care an injured worker receives as a result of an injury occurring in the course and scope of employment. See Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193 (Iowa 2010).

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.

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); R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 196–96 (Iowa 2003). Determining what care is reasonable under the statute is a question of fact. Pirelli–Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 436 (Iowa 1997) (quoting Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995)). 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).

Determining what is reasonable under the statute is a question of fact. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). “[W]hen 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." Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997).

Claimant asserts one basis for her challenge to the reasonableness of the care offered by defendants. Specifically, claimant asserts there has been a breakdown in the physician-patient relationship. Claimant also loosely argued Dr. Spooner should be treated as an authorized treating physician because claimant was referred to Dr. Spooner by an employer directed physical therapist; however, I do not find such an argument convincing. Claimant's testimony regarding Mr. Rodemyer's referral is not corroborated by any medical records or additional testimony. Further, the evidentiary record does not provide a clear indication as to how claimant was ultimately referred to Dr. Spooner, specifically.

This agency has held that a breakdown in the physician-patient relationship is sufficient reason and basis to find offered medical care is no longer reasonable.

Alternate care includes alternate physicians when there is a breakdown in a physician/patient relationship. Seibert v. State of Iowa, File No. 938579 (September 14, 1994); Nueone v. John Morrell & Co., File No. 1022976 (January 27, 1994); Williams v. High Rise Const., File No. 1025415 (February 24, 1993); Wallech v. FDL, File No. 1020245 (September 3, 1992) (aff'd Dist Ct June 21, 1993).

The fighting issue is whether claimant is entitled to alternate medical care because of a breakdown in the physician-patient relationship between claimant and her authorized treating physicians.

Based on the above findings of fact, it is concluded that claimant failed to prove a breakdown in the physician-patient relationship between claimant and Dr. Myrtil. Claimant's distrust in Dr. Myrtil stems from a single interaction. Claimant offered no other evidence of a breakdown in the physician-patient relationship. Importantly, claimant's distrust has nothing to do with Dr. Myrtil's treatment recommendations or prior interactions. Dr. Myrtil's treatment recommendations appear reasonable. There is no evidence in the record that Dr. Myrtil was not providing care reasonably suited to treat claimant's condition. The medical records in evidence reflect Dr. Myrtil was at the very least open to discussing a treatment plan for claimant's persistent headaches, albeit after claimant had completed physical therapy. For these reasons, it is found that there has not been a sufficient breakdown in the physician-patient relationship to warrant an order of alternate medical care as it relates to Dr. Myrtil.

However, I found claimant proved a breakdown in the physician-patient relationship exists between claimant and Dr. Adelman. Dr. Adelman essentially offered no care to treat a condition defendants had accepted liability for. In fact, Dr. Adelman discontinued the only treatment shown to improve claimant's condition without explanation. I found the treatment offered by Dr. Adelman was not effective and was inferior or less extensive than the treatment recommended by Dr. Spooner. It is clear claimant has lost confidence in Dr. Adelman. It is reasonable for an injured worker to

lose confidence in such a scenario. Based on claimant's testimony regarding her lack of confidence in Dr. Adelman, and the fact Dr. Adelman provided no alternate forms of therapy, medication, and/or treatment plans, it is found that there has been a sufficient breakdown in the physician-patient relationship to warrant an order of alternate medical care as it relates to the treatment provided by Dr. Adelman. Claimant is entitled to see a different neurologist.

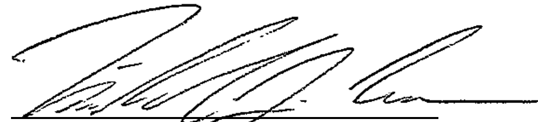
Claimant's request for a specific referral to Dr. Spooner is denied. Defendants maintain the right to direct claimant's care. Defendants shall authorize a neurologist other than Dr. Adelman to treat claimant's condition.

ORDER

THEREFORE, IT IS ORDERED,

Claimant's petition for alternate medical care is granted in part and denied in part. Claimant is entitled to an alternative specialist to treat claimant's ongoing complaints. The selection of said specialist remains with defendants.

Signed and filed this 9th day of January, 2020.



MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Thomas Berg (via WCES)
Nick Cooling (via WCES)