BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ANA A. RAMIREZ,	:	
Claimant,	:	File No. 1642200.03
vs.	:	ALTERNATE MEDICAL
WELLS DAIRY,	:	CARE DECISION
Employer,	:	
and	:	
ACE AMERICAN,	:	
Insurance Carrier, Defendants.	:	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, Ana Ramirez. Claimant appeared telephonically and through her attorney, Dennis McElwain. Defendants appeared through their attorney, Steven Durick.

The alternate medical care claim came on for hearing on January 13, 2020. 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 13 and Defendants' Exhibits A through E. Claimant provided testimony. No other witnessed were called. 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 surgery performed by and transfer of care to John McClellan, M.D.

FINDINGS OF FACT

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

Claimant sustained a work-related injury to her low back on December 6, 2017. Defendants admitted liability for this injury and the current condition for which claimant seeks alternate medical care.

Matt Johnson, M.D., was authorized by defendants to perform a microdiscectomy on claimant on February 22, 2018. (Claimant's Testimony) Claimant then returned to Dr. Johnson for a second surgery—a fusion—on April 16, 2018. (Cl. Testimony) Claimant testified the fusion provided a little relief in her leg symptoms, but she continued to experience pain in her hips and low back. (Cl. Testimony)

These symptoms persisted into the fall of 2018. Eventually Dr. Johnson's physician's assistant referred claimant to Grant Shumaker, M.D., for a second opinion. (Cl. Testimony) After initially recommending injections and a referral to a pain clinic, Dr. Shumaker ultimately referred claimant to Douglas Martin, M.D., for an impairment evaluation. (Cl. Testimony; Cl. Exhibit 1, page 1)

Claimant, on her own accord, then sought an evaluation with John McClellan, M.D., on April 15, 2019. (Cl. Ex. 2, p. 2) Dr. McClellan noted Dr. Johnson's placement of the screws and cage during the claimant's fusion were "excellent." (Cl. Ex. 2, p. 2) The issue was whether claimant was failing to heal properly. (Cl. Ex. 2, p. 3) Dr. McClellan recommended a CT scan, which was eventually authorized by defendants in June of 2019. (Cl. Ex. 2, p. 3; Cl. Ex. 7)

After the CT scan, defendants authorized a return appointment with Dr. Shumaker. (Cl. Ex. 8) Dr. Shumaker told claimant her scan looked fine and referred her back to Dr. Martin. (Cl. Testimony; Cl. Ex. 8, p. 11)

Claimant then returned to Dr. McClellan for another unauthorized evaluation on September 18, 2019. (Cl. Ex. 9) Dr. McClellan again indicated Dr. Johnson's fusion procedure "looks as if it was done exceptionally well, with good screw position and good interbody support." (Cl. Ex. 9, p. 12) Dr. McClellan actually described Dr. Johnson as an "excellent surgeon." (Cl. Ex. 9, p. 12)

According to Dr. McClellan's interpretation of the CT, however, claimant was showing only limited areas of healing. (Cl. Ex. 9, p. 12) As a result, Dr. McClellan recommended a revision surgery. (Cl. Ex. 9, p. 13) Dr. McClellan encouraged claimant to return to Dr. Johnson for the surgery. (Cl. Ex. 9, p. 13)

Claimant was evaluated by Dr. Johnson on November 22, 2019. (Cl. Ex. 11) Claimant testified she was unimpressed with Dr. Johnson's demeanor during the appointment; she gave examples of Dr. Johnson not noticing her holding out her hand for a handshake because he was too distracted by her paperwork, his failure to perform a full examination, and his matter-of-fact warning that the surgery may not be successful

in alleviating her symptoms and may actually increase her symptoms. (Cl. Testimony) Claimant became upset and told Dr. Johnson that she did not want him to perform her surgery. (Cl. Testimony) Despite this exchange, Dr. Johnson in his notes still indicated he would "be happy" to perform claimant's surgery if Dr. McClellan declined. (Cl. Ex. 11, p. 15)

Just three days later, defendants' counsel sent an email to claimant's counsel indicating that surgery with Dr. Johnson would be authorized should claimant wish to proceed. (Defendants' Ex. D) Defendants' counsel indicated at hearing that this authorization with Dr. Johnson remains in place.

Claimant testified she has full confidence in Dr. McClellan because he identified a potential problem with claimant's healing when Dr. Johnson's staff did not, and claimant believes Dr. McClellan can fix it. (Cl. Testimony) To the contrary, claimant testified she lost confidence in Dr. Johnson and is scared for him to perform surgery on her. (Cl. Testimony)

While I believe claimant's perceived reservations about Dr. Johnson are genuine, I find she has failed to show a breakdown in the physician-patient relationship.

Claimant asserts she lost confidence in Dr. Johnson during her post-operative care after her second surgery, particularly because claimant was evaluated by a physician's assistant instead of Dr. Johnson and Dr. Johnson's staff and colleagues failed to identify claimant's delayed healing. As mentioned, however, Dr. McClellan described Dr. Johnson as an "excellent surgeon" and encouraged claimant to return to him for the recommended surgery. (Cl. Ex. 2, p. 7; Cl. Ex. 9, p. 13) When he did so, he was aware of claimant's prior treatment with Dr. Johnson and Dr. Johnson's office. (See Cl. Ex. 2, p. 2; Cl. Ex. 9, p. 12) It is presumed Dr. McClellan would not have encouraged claimant to return to Dr. Johnson for surgery if he was concerned with claimant's previous post-operative treatment at Dr. Johnson's office or if he did not have confidence in Dr. Johnson.

Claimant also testified she was distressed by Dr. Johnson's bedside manner at the November 22, 2019 appointment. While I recognize claimant may have interpreted Dr. Johnson's presentation at the November 22, 2019 appointment to be cold or even unfriendly, claimant did not identify any behavior that was inappropriate. Claimant may have been startled or discouraged by Dr. Johnson's statement that an additional surgery may not improve her symptoms, but that is simply the reality of medical treatment.

Lastly, there is nothing in Dr. Johnson's records to indicate he believes there was a breakdown in his relationship with claimant. In fact, the opposite is true. Even after claimant testified she told Dr. Johnson she did not want him to perform her surgery, he indicated he would "be happy" to perform it if Dr. McClellan declined. (Cl. Ex. 11, p. 15)

For these reasons, I find there is insufficient evidence of a breakdown in the physician-patient relationship.

I also find claimant failed to show that the care being offered by defendants is inferior or less extensive than the care she seeks with Dr. McClellan. As noted above, both Dr. McClellan and Dr. Johnson are willing to perform the same surgery, and Dr. McClellan on numerous occasions indicated Dr. Johnson is not only a capable surgeon, but an excellent one.

Ultimately, I find the care being offered by defendants—authorization of surgery to be performed by Dr. Johnson—is reasonable.

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 Rule of Appellate Procedure 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.

Claimant in this case asserts the care being offered by defendants is unreasonable because there has been a breakdown in the physician-patient relationship

with Dr. Johnson and the care being offered by Dr. Johnson is inferior or less extensive than the care she seeks with Dr. McClellan.

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. Seibert v. State of Iowa, File No. 938579 (September 14, 1994); Neuaone v. John Morrell & Co., File No. 1022976 (January 27, 1994); Williams v. High Rise Const., File No. 1025415 (February 23, 1993); Wallech v. FDL, File No. 1020245 (September 3, 1992) (aff'd Dist. Ct. June 21, 1993).

When 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 alternate care. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

In this case, however, I found there has not been a breakdown in the physician-patient relationship with Dr. Johnson and that Dr. Johnson's care is not inferior to that being requested by claimant. Claimant's chosen physician, Dr. McClellan, described Dr. Johnson as an excellent surgeon and encouraged claimant to return to him. Dr. Johnson continues to be willing to perform the surgery at issue.

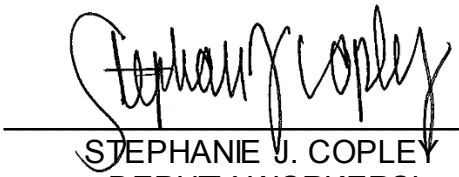
Based on the above findings of fact, it is concluded that claimant failed to prove a breakdown in the physician-patient relationship or that the care being offered by defendants is inferior or less extensive than the care sought by claimant. I therefore conclude claimant failed to carry her burden to prove that the care being offered by defendants—surgery with Dr. Johnson—is unreasonable.

ORDER

Therefore, it is ordered:

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

Signed and filed this 14th day of January, 2020.



STEPHANIE J. COPLEY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Steven Durick (via WCES)

Dennis McElwain (via WCES)