

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DUSTUN ZAEHRINGER,	FILED	
Claimant,	SEP 08 2015	
vs.	WORKERS COMPENSATION	File No. 5053487
NORFOLK IRON AND METAL CO.,		ALTERNATE MEDICAL
Employer,		CARE DECISION
and		
AIG – ACCIDENT AND HEALTH,		
Insurance Carrier,		HEAD NOTE NO: 2701
Defendants.		

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, Dustun Zaehring. Claimant appeared through his attorney, Nicholas Shaull. Despite proper notice via certified mail, return receipt to the employer, defendants failed to file an appearance, file an answer, or otherwise appear for hearing.

The alternate medical care claim came on for hearing on September 8, 2015. 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 1-10. Claimant's exhibits were received into the evidentiary record. No witnesses were called to testify. The undersigned clarified the claimant's request for alternate medical care with claimant's counsel. No other argument or evidence was received and the record was closed.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care. Claimant seeks an order compelling defendants to authorize and pay for

physical therapy for his low back recommended by his treating physician, Camilla J. Frederick, M.D.

FINDINGS OF FACT

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

Dustun Zaehringer sustained a work related cumulative low back injury that manifested itself on or about June 1, 2015, as a result of heavy lifting and physical work activities for the employer, Norfolk Iron and Metal Company. Defendants authorized medical care for claimant's low back through Camilla J. Frederick, M.D. Claimant sought care through Dr. Frederick.

Dr. Frederick recommends physical therapy for claimant's low back injury. (Exhibits 8, 10) Defendants have not promptly authorized the physical therapy recommended by Dr. Frederick. (Ex. 1-2) Defendants have not authorized or offered any alternate medical care despite claimant's ongoing low back symptoms and request for 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.

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 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 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).

In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997), the supreme court held that "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 the alternate care."

In this instance, the employer has not authorized the care recommended by Dr. Frederick. No alternate care is being authorized or provided. Claimant has established that the alternate care he seeks is medically reasonable and necessary. He has established that the lack of care currently being offered by defendants is not reasonable.

Claimant has also established that defendants are not offering the recommended care promptly. The care requested by claimant is clearly more extensive and superior than no care at all. The care requested by claimant is recommended by the authorized physician. Defendants are not entitled to question or refuse to authorize the care recommended by their own selected authorized medical provider. Therefore, I conclude that claimant has established entitlement to an order granting his request for alternate medical care and specifically the physical therapy recommended by Dr. Frederick.

ORDER

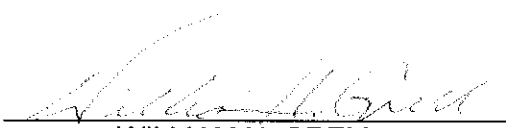
THEREFORE IT IS ORDERED:

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

Within ten (10) days of the filing of this order, defendants shall authorize and schedule physical therapy for claimant as recommended by Dr. Camilla Frederick.

Failure to comply with this order may result in imposition of sanctions pursuant to 876 IAC 4.36.

Signed and filed this 9th day of September, 2015.


WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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