BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

PATRICIA HINTZ, Claimant, vs. WILLOW GARDENS CARE CENTER, Employer, and AMERICAN COMPENSATION INSURANCE CO., Insurance Carrier, Defendants.	File No. 5063287 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, Patricia Hintz.

The alternate medical care claim came on for hearing on August 15, 2017. The proceedings were digitally recorded, which constitutes the official record of this proceeding. By order filed February 16, 2015, this ruling is designated final agency action.

The record consists of claimant's exhibits 1-4; defendants' exhibit A. Claimant alleges a date of injury of October 13, 2016. During the course of hearing, defendants admitted the occurrence of a work injury on October 13, 2016, and liability for the conditions sought to be treated by this proceeding. Counsel offered oral arguments to support their positions; no witnesses testified.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care.

FINDINGS OF FACT

Claimant, Patricia Hintz, sustained an injury arising out of and in the course of her employment with Willow Gardens Care Center on October 13, 2016. Claimant is dissatisfied with the care provided and has communicated that dissatisfaction to the

employer. The reason for her dissatisfaction is that defendants, "have failed to timely authorize Claimant's physical therapy, have failed to timely authorize a pain psychologist to treat Claimant, and have failed to pay for Claimant's medication." (Alt. Care Pet., p. 1) Defendants are requesting that defendants be ordered to provide treatment with Stanley Mathew, M.D.

It should be noted that claimant has previously filed two other alternate care petitions. The first petition resulted in a March 8, 2017 decision from another deputy worker's compensation commissioner. At the time of that proceeding claimant was seeking an order from this agency ordering the defendants to send her to see either a pain specialist or a neurologist. However, the petition was denied because the defendants had made arrangements for the claimant to be seen at the University of Iowa Hospitals and Clinics by Carolyn Hettrich, M.D., an orthopedic surgeon.

Following denial of her petition for alternate medical care, Ms. Hintz sought treatment on her own with a physiatrist and pain medicine specialist, Dr. Mathew. She saw Dr. Mathew on April 3, 2017. He recommended therapy and prescribed some medications. (Ex. 4)

On May 8, 2017, Ms. Hintz saw Tejinder Swaran Singh, M.D., at the University of Iowa Hospitals and Clinics (UIHC), who agreed with Dr. Matthew's recommendation for physical therapy and pain psychology. Dr. Swaran Singh also recommended that the patient continue managing her pain with the use of hydrocodone as directed by the prescribing physician. Dr. Swaran Singh further noted that the patient had a good relationship with Dr. Mathew and could continue to follow-up with Dr. Mathew. (Ex. 1)

Claimant filed a second alternate care petition seeking the agency to order defendants to authorize Dr. Mathew to treat Ms. Hintz. On June 5, 2017, yet a different deputy denied claimant's petition for alternate medical care because defendants had arranged for claimant to be evaluated by a pain specialist at Cedar Rapids Pain Associates.

On June 5, 2017, Ms. Hintz was seen by Michelle VandeBerg, ARNP, at Cedar Rapids Pain Specialist. Ms. VandeBerg advised claimant to continue to take the pain medications prescribed by Dr. Mathew, continue physical therapy, and to see a pain psychiatrist. Ms. VandeBerg recommended therapy with pain psychiatrist Dr. Luke Hansen. The note indicates the patient was to follow-up in four weeks. (Ex. 2)

Since the June 5, 2017 visit at Cedar Rapids Pain Associates, defendants have not paid for the medications prescribed by Dr. Mathew, have not arranged for claimant to see a pain psychologist or psychiatrist, and have not promptly authorized physical therapy. Ms. Hintz has been unable to attend physical therapy for over one month; her last therapy appointment was July 7, 2017.

Last week defendants advised claimant that they were again transferring her care, this time to Tina Stec, M.D., at St. Luke's Work Well Clinic. Claimant's first appointment with Dr. Stec occurred on August 11, 2017. (Ex. A) The clinical notes are not in evidence; a confidential report and a prescription sheet are in evidence. The report indicates that the doctor is also recommending physical therapy. Dr. Stec recommends Cymbalta, a medication that has been prescribed by Dr. Mathew. Additionally, the report indicates a referral to a pain psychologist is appropriate. (Ex. A)

Defendants have not provided the treatment recommended by the UIHC or the Cedar Rapids Pain Associates. Rather, they have now redirected care to the Work Well Clinic with Dr. Stec, an occupational medicine doctor. The evidentiary record is void of any justification for the change in care from Cedar Rapids Pain Associates to Work Well Clinic.

Claimant is asking the agency to order treatment with Dr. Mathew be authorized. Claimant argues that care under defendants' control has been fragmented among multiple providers. She has seen Dr. Hettrich one time, Dr. Swaran Singh one time, the Cedar Rapids Pain Associates on two occasions, and now defendants have transferred her care to a fourth provider, Dr. Stec, an occupational medicine doctor. Claimant contends that Dr. Mathew is the only physician who has been consistently involved in her care; he has been treating her since April 3, 2017. Thus, she has an established relationship with him. Claimant further contends defendants' chosen providers have all recommended essentially the same treatment as Mathew. Dr. Swaran Singh and Dr. Stec have recommended she take medications prescribed by Dr. Mathew. The medical providers have recommended physical therapy and pain psychologist. Thus, claimant contends Dr. Mathew is the most appropriate treating doctor going forward.

With regard to request to authorize Dr. Mathew, defendants argue that they already won this battle one month ago at the previous alternate care proceeding and nothing has changed since that time. Defendants' counsel states that there is a nurse case manager who has been diligently working to find a pain psychologist that is accepting new patients; defendants state that this is not an easy task. Dr. Bruce Jasper, a pain psychologist has been contacted and defendants are ready and willing to provide the treatment recommended. Previously, a recommendation was made for pain psychology with Mike March. Unfortunately, he is not accepting new patients. Defendants contend that have not abandoned care. Rather, that they have been diligently providing care for the claimant and as such, it would be inappropriate for agency to order defendants to authorize treatment with a doctor that claimant has been treating with on an unauthorized basis since the agency's order denying her prior request.

Defendants stated reason for delay or lack of authorization for the physical therapy is because the therapy was not recommended by an authorized treating physician. However, now that it has been recommended by Dr. Stec defendants are willing to provide therapy. A review of the records shows that physical therapy was

recommended as early as June 5, 2017 by a provider selected by the defendants, the Cedar Rapids Pain Associates. (Ex. 2)

Recommendation for a pain psychologist was first made on May 8, 2017 by Dr. Swaran Singh. Claimant points out that it is now over three months since the first recommendation has been made. Claimant argues that defendants' failure to authorize a pain psychologist in the Cedar Rapids, Iowa City, or surrounding areas that is willing to see claimant is unreasonable. Defendants contend that they too are frustrated but believe that they now have found a suitable candidate to provide the pain psychology.

With regard to the request for payment of medications, claimant argues that the authorized treating providers are recommending medications prescribed by Dr. Mathew and defendants should not be allowed to use Dr. Mathew as a prescriber without authoring him to also treat Ms. Hintz.

Defendants contend the payment for medication cannot be the subject of alternate care. Defendants are correct that payment of past medical expenses are not the appropriate subject of an alternate care proceeding.

Claimant is essentially arguing that because defendants have not scheduled physical therapy and treatment with a pain psychologist or psychiatrist defendants should be ordered to authorize treatment with Dr. Mathews. However, this request was previously deemed denied by this agency in the second alternate care proceeding. The undersigned does not see any additional evidence that would justify ordering treatment with Dr. Mathew at this point in time.

Defendants stated at this alternate care proceeding that the Cedar Rapids Pain Specialist and Dr. Stec are both authorized medical providers. I find that claimant has not carried her burden of proof to show that the authorized care is unreasonable.

REASONING AND CONCLUSIONS OF LAW

Under Iowa law, the employer is required to provide care to an injured employee and is permitted to choose the care. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

> [T]he 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.

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).

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); 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). In Pirelli-Armstrong Tire Co., 562 N.W.2d at 433, the court approvingly quoted Bowles v. Los Lunas Schools, 109 N.M. 100, 781 P.2d 1178 (App. 1989):

> [T]he words "reasonable" and "adequate" appear to describe the same standard.
>
> [The New Mexico rule] requires the employer to provide a certain standard of care and excuses the employer from any obligation to provide other services only if that standard is met. We construe the terms "reasonable" and "adequate" as describing care that is both appropriate to the injury and sufficient to bring the worker to maximum recovery.

The commissioner is justified in ordering alternate care when employer-authorized care has not been effective and evidence shows that such care is "inferior or less extensive" care than other available care requested by the employee. Long, 528 N.W.2d at 124; Pirelli-Armstrong Tire Co., 562 N.W.2d at 437.

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).

Reasonable care includes care necessary to diagnose the condition and defendants are not entitled to interfere with the medical judgment of its own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening June 17, 1986).

"Determining what care is reasonable under the statute is a question of fact." Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995). I concluded that the claimant failed to carry her burden of proof to show that the authorized care is unreasonable. Thus, I conclude that claimant's request that defendants be ordered to authorize treatment with Dr. Mathew is denied.

However, defendants shall promptly authorize any care and treatment recommended by the authorized providers. Since March of this year claimant has had to file three separate petitions for alternate medical care. Failure to promptly authorize care can be detrimental to claimant's treatment. Any further delays in the authorization and scheduling of such treatment and defendants risk the danger of a determination by this agency that they have abandoned care.

With regard to the payment of past medical expenses, the summary procedures set forth in the alternate medical care statute and the rules provide injured workers with prospective relief, not for the payment of past bills. While neither the statute nor the rules actually come right out and state it in such a manner, this is how the statute has always been applied. It does make logical sense insofar as it would be difficult to manage a system where past medical bills were claimed in such an expedited, summary proceeding.

Consequently, the agency has repeatedly articulated the following statement of law. A decision in an alternate medical care proceeding operates prospectively only, not retroactively. The claimant's application for alternate care should be dismissed without prejudice when the claimant seeks payment for medical care that had been provided prior to the time the alternate medical care petition was filed. Moline v. Nordstrom, File No. 1273226 (December 21, 2000); Donisi v. Norrell Services, File No. 1276161 (August 8, 2000); Mobayed v. AMS Services, Inc., File No. 1168048 (May 20, 1997); and Massie v. Madison Avenue Dairy Queen, File No. 1055168 (November 3, 1995).

In this case, to the extent the claimant seeks payment of past medical expenses, the undersigned is disinclined to ignore agency precedent. Consequently, the portion of the claimant's petition alleging the failure to pay past benefits is dismissed without prejudice. Claimant, of course, has other mechanisms for requiring the payment of these expenses. If those issues are not resolved by the parties, those issues may be raised at the time of the arbitration hearing.

ORDER

THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care is denied with regard to past medical expenses.

Claimant's request that this agency order defendants to authorize Dr. Mathew as a treating physician is denied. However, defendants are ordered to promptly provide the treatment recommended by the authorized providers. This treatment includes but is not limited to, physical therapy, treatment with a pain psychologist or psychiatrist, and payment of future medications. Failure to provide the recommended treatment in a prompt manner could result in a determination that the defendants have abandoned care.

Signed and filed this 16th day of August, 2017.

ERIN Q. PALS
DEPUTY WORKERS'
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