BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JAMES BLOOMER,

Claimant,

vs.

CITY OF DAVENPORT,

Employer,
Self-Insured,
Defendant.

File Nos. 5063173, 5063174

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, James Bloomer. Claimant appeared personally and through his attorney, Andrew Bribriesco. Defendant, the City of Davenport, appeared through its attorney, Peter Thill.

The alternate medical care claim came before the undersigned for a telephone hearing on February 22, 2017. 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 1-5, which include a total of 6 pages. The record also contains defendant's exhibits A through F, which contain 10 pages. All exhibits were received without objection. Claimant testified on his own behalf. No other witnesses were called to testify. Counsel for both parties offered cogent and helpful argument at the hearing.

Claimant filed his original notice and petition in two files. File No. 5063174 alleges an injury date of November 8, 2016. Defendant filed an answer and responded to the petition at the time of the alternate medical care hearing. Defendant denies liability for the alleged November 8, 2016 injury date. The parties were notified at the commencement of the alternate medical care hearing that the petition for November 8, 2016 must be dismissed because defendants deny liability for the alleged injury on that date. R. R. Donnelly & Sons v. Barnett, 670 N.W.2d 190 (Iowa 2003); Mercy Hospital v.

Goodner, 828 N.W.2d 325 (Iowa App. 2013) (unpublished decision) (2013 WL 104888) ("If the employer denies liability, the deputy must dismiss the petition.")

Defendant admitted liability for an injury on August 8, 2016 in agency File No. 5063173. Therefore, the evidentiary alternate medical care hearing proceeded on agency File No. 5063173.

ISSUE

The issue presented for resolution is whether the claimant is entitled to an order of alternate medical care for an orthopaedic evaluation for his left shoulder and/or an MRI of his left shoulder.

FINDINGS OF FACT

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

James Bloomer worked for the City of Davenport for little over four years. Due to budget constraints, claimant was subjected to a lay-off. His employment with the City of Davenport terminated in early January 2017.

However, on August 8, 2016, a co-worker came up behind claimant and put him in an extremely aggressive headlock and asked claimant to kiss him. Claimant resisted the headlock and sort of panicked. Eventually, the co-worker did release the headlock, but Mr. Bloomer developed severe pain in his left lower neck, left shoulder, and an extreme headache approximately one hour after the incident. Mr. Bloomer was unable to sleep on the night of the injury as a result of his symptoms. (Claimant's testimony)

The City of Davenport directed claimant for medical care through Genesis Occupational Clinic in Bettendorf, Iowa. Mr. Bloomer was evaluated by four different medical providers at Genesis Occupational, including two nurse practitioners, a physician's assistant and a physician. Claimant acknowledges that he was evaluated at Genesis Occupational at 14 clinic visits with the most recent being February 13, 2017. (Claimant's testimony)

In addition, defendants authorized and provided 2 CT scans, x-rays, as well as a cervical MRI following claimant's work injury. Medical providers at Genesis Occupational prescribed a TENS unit, as well as massage therapy. Defendants authorized both modalities.

Mr. Bloomer acknowledges that at least one provider, a nurse practitioner, at Genesis Occupational did perform range of motion testing for the left shoulder. (Claimant's testimony) The office note prepared by Rick Garrels, M.D., after an August 29, 2016, evaluation suggests he performed a left shoulder examination as well. (Exhibit A) None of the medical providers at Genesis Occupational diagnosed claimant with a shoulder injury. (Claimant's testimony)

On February 2, 2017, Mr. Bloomer was evaluated by physician assistant, Cheryl Benson, PA-C. Claimant says Ms. Benson was the most helpful medical provider in attempting treatment. Mr. Bloomer testified that he described his symptoms to Ms. Benson on that date, including symptoms at the base of his neck and into his left shoulder. Claimant also provided Ms. Benson a copy of Exhibit 2, which reflects symptoms in both the neck and left shoulder. Ms. Benson discussed the option of trigger point injections for claimant's symptoms. (Claimant's testimony; Ex. 2; Ex. 5; Ex. E)

On February 13, 2017, Dr. Garrels re-evaluated claimant. Claimant provided a copy of Exhibit 2 to Dr. Garrels on February 13, 2017. He also notified Dr. Garrels that he had hired an attorney and asked that Exhibit 2 be added to his medical file. Dr. Garrels agreed to include Exhibit 2 as part of claimant's medical file. (Claimant's testimony)

Despite the treatment offered to Mr. Bloomer to date, he continues to experience symptoms and testified that his symptoms remain generally in the area documented on the pain diagram he completed, which is contained in the evidentiary record as Exhibit 3. Mr. Bloomer testified that it hurts when he raises his left arm or pulls with his left arm. He described the symptoms as feeling like a tearing or burning sensation in top of his left shoulder and at the bottom of his neck. These symptoms never go away. As a result, Mr. Bloomer requests an evaluation with a left shoulder surgeon or specialist, as well as an MRI of his left shoulder. (Claimant's testimony)

Review of the evidentiary record demonstrates that none of the providers at Genesis Occupational made a referral to a shoulder surgeon. Claimant concedes this point during his testimony. However, Mr. Bloomer says neither Ms. Benson nor Dr. Garrels provided treatment for claimant's left shoulder or even focused on the left shoulder symptoms. (Claimant's testimony)

Review of the evidentiary record before me discloses that Dr. Garrels offered trigger point injections for treatment of claimant's symptoms. (Ex. 4) Claimant declined the injections and testified that he is concerned about the long-term effects of a steroid injection. He testified that Ms. Benson advised him that steroid injections could cause long-term problems. Therefore, Mr. Bloomer told Dr. Garrels that he considered the injections to be a "last result" and claimant indicated to Dr. Garrels that he was not ready to proceed with the injections at the present time. (Claimant's testimony) Instead, Mr. Bloomer testified that he would like to be evaluated by a shoulder specialist before accepting the trigger point injections.

Claimant's desire to forgo the trigger point injections is reasonable and his desire to pursue all other potential treatment and evaluation options is also reasonable. Mr. Bloomer's desire to be evaluated by a shoulder specialist is understandable. However, this very issue was considered by Dr. Garrels on February 13, 2017. Dr. Garrels opined in his latest clinic note, "[n]o further care indicated. We discussed trigger point

injections but the patient declined at this time. The cervical MRI is normal. The clinical exam is unremarkable. I see no reason for other referrals." (Ex. 4, p. 5)

At this point in time, Dr. Garrels offers really the only medical opinion from a physician. He opines that trigger point injections are a reasonable medical option for claimant's condition and symptoms. However, he opines that no referrals are necessary at this time. Given that this opinion is not rebutted in this record, I accept Dr. Garrels' opinions for purposes of this alternate medical care proceeding.

I find that the trigger point injections recommended and offered by Dr. Garrels are reasonable medical treatment options. I find that a referral to a shoulder specialist is not medically reasonable or necessary at this time. Similarly, I find no evidence in this record to demonstrate that a left shoulder MRI is medically reasonable or necessary at this time.

REASONING AND CONCLUSIONS OF LAW

Defendant denied liability in File No. 5063174. The Iowa Supreme Court has held:

> We emphasize that the commissioner's ability to decide the merits of a section 85.27(4) alternate medical care claim is limited to situations where the compensability of an injury is conceded, but the reasonableness of a particular course of treatment for the compensable injury is disputed.
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> . . . .
>
> Thus, the commissioner cannot decide the reasonableness of the alternate care claim without also necessarily deciding the ultimate disputed issue in the case: whether or not the medical condition Barnett was suffering at the time of the request was a work-related injury.
>
> . . . .
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> Once an employer takes the position in response to a claim for alternate medical care that the care sought is for a noncompensatory injury, the employer cannot assert an authorization defense in response to a subsequent claim by the employee for the expenses of the alternate medical care.

R. R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 197-198 (Iowa 2003).

Given the denial of liability for the November 8, 2016 injury date, claimant's original notice and petition for alternate medical care must be dismissed with respect to those claims. Given their denial of liability for the November 8, 2016 injury date, defendant loses its right to control the medical care claimant seeks during the period of

denial and the claimant is free to choose that care. Bell Bros. Heating v. Gwinn, 779 N.W.2d 193 (Iowa 2010).

As a result of the denial of liability for the November 7, 2016 injury date, claimant may obtain reasonable medical care from any provider for this treatment but at claimant's expense and seek reimbursement for such care using regular claim proceedings before this agency. Haack v. Von Hoffman Graphics, File No. 1268172 (App. July 31, 2002); Kindhart v. Fort Des Moines Hotel, I Iowa Industrial Comm'r Decisions No. 3, 611 (App. March 27, 1985). "[T]he employer has no right to choose the medical care when compensability is contested." Bell Bros. Heating v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010). Therefore, defendant is precluded from asserting an authorization defense as to any future treatment for the alleged injuries of November 8, 2016 during the period of denial.

Defendant admitted liability for the August 8, 2016 injury date and claimant's ongoing symptoms. Therefore, the alternate medical care petition on that claim may proceed.

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).

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); Bell Bros. Heating v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); 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. Long v. Roberts Dairy Co., 528 N.W.2d 122 (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 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).

In this case, I found that claimant's desires and requests for evaluation by a shoulder specialist and a left shoulder MRI were reasonable options to consider. I

certainly understand claimant's desire to investigate, through all non-invasive means, his potential injury and symptoms. However, there is no medical evidence in this record to suggest that a left shoulder MRI or an evaluation by a left shoulder specialist or surgeon is indicated or medically reasonable and necessary.

I found that the treatment offered by defendant, including the trigger point injections recommended by Dr. Garrels, constitute reasonable medical treatment. I conclude that the offered care through Dr. Garrels meets the defendant's obligations under Iowa Code section 85.27 to provide reasonable medical services for claimant's injury. Having identified no medical evidence in support of his request for a left shoulder MRI or evaluation by a shoulder specialist, I found that claimant did not prove defendant failed to provide reasonable medical care. Similarly, I found that claimant failed to prove his request for a left shoulder MRI or evaluation by a shoulder specialist is medically reasonable and necessary at the present time.

While I understand his desire to pursue non-invasive evaluations prior to proceeding with trigger point injections, claimant's desire for additional medical care of a specific nature is not the legal standard applied in alternate medical care proceedings. Therefore, I conclude that claimant has not proven entitlement to alternate medical care under the facts as presented in this alternate medical care proceeding.

ORDER

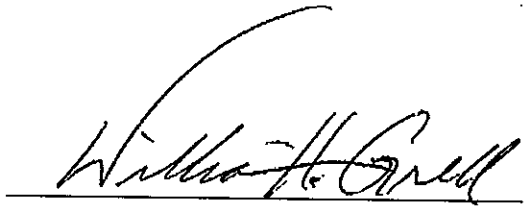
THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care in File No. 5063174 is dismissed without prejudice.

If claimant seeks to recover the charges incurred in obtaining care for the injuries alleged in File No. 5063174, 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.

In File No. 5063173, the claimant's petition for alternate medical care is denied and his petition for alternate medical care is dismissed.

Signed and filed this 22nd day of February, 2017.



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