

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KHALID HASSABALLA,

Claimant,

vs.

REM IOWA COMMUNITY SERVICES,
INC.,

Employer,

and

NEW HAMPSHIRE INSURANCE CO.,

Insurance Carrier,
Defendants.

File No. 20700633.01

ALTERNATE MEDICAL
CARE DECISION

Head Note No.: 2701

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, Khalid Hassaballa. Claimant appeared telephonically and through his attorney, Andrew Bribriesco. Claimant's original notice and petition contains proof of service upon the employer, as well as the third-party claims administrator, Sedgwick. It is found that the petition was properly served via certified mail upon the employer. Notice of hearing was given by this agency to the employer and insurance carrier via U.S. Mail on July 15, 2020. Nevertheless, the defendants have not entered an appearance or responded in any way to the pending petition for alternate medical care. Additionally, prior to hearing, emails were sent to Nicole Evanoff, claims representative for Sedgwick, and an attempt to call Ms. Evanoff for participation in the hearing was made, with no answer.

The alternate medical care claim came on for hearing on July 27, 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 3 and claimant's testimony. No other witnesses were called. Counsel offered oral argument to support claimant's position. Given defendants' failure to appear for hearing or otherwise defend that

alternate medical care hearing, they are found to be in default. All allegations of the claimant's petition for alternate medical care are accepted as accurate.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of authorization for treatment with Steindler Orthopedic Clinic.

FINDINGS OF FACT

Claimant testified that he currently lives in Iowa City, Iowa. He has lived in the United States for a little over one year, and is from Sudan. His native language is Arabic, and an interpreter was used for the hearing. Claimant has worked for REM Iowa Community Services for approximately one year.

Claimant sustained a right hand/right upper extremity injury on March 30, 2020, when a resident under his care grabbed his hands and wrists during a struggle. Claimant testified that his job was to protect this particular patient, who can sometimes become agitated. Claimant testified that he reported the injury to his supervisor, Grant Gardner, on March 31, 2020. Claimant's exhibit 1 is an employee accident report completed by Mr. Gardner, which confirms that accident was reported on March 31, 2020. However, the report was not signed by claimant and his supervisor until May 11, 2020.

Claimant testified that his employer has not offered him any medical care for his injuries, so he sought treatment on his own through the Iowa City Free Medical Clinic. Claimant was then seen at Steindler Orthopedic Clinic on May 12, 2020, at which time he was diagnosed with a displaced fracture at the base of his fifth metacarpal bone on the right side. (Claimant's Exhibit 2, p. 1) He was provided with a hand and wrist splint and given a 1-pound lifting, pushing, pulling, and gripping restriction for the right hand/upper extremity. He was seen at Steindler again on June 2, 2020, at which time he was to continue wearing the splint, his restriction was increased to 5-pounds, and it was recommended that he begin occupational therapy. He was also prescribed medication. (Ex. 2, p. 2-3)

Claimant's attorney has been in email contact with Nicole Evanoff, claims representative at Sedgwick Claims Management Services. (Ex. 3) Pursuant to emails exchanged between Ms. Evanoff and claimant's attorney, no medical treatment has been authorized. Claimant, through his attorney, has expressed his dissatisfaction with defendants' failure to authorize care. (Ex. 3) Claimant's counsel has sent defendants copies of the petition for alternate medical care. (Proof of Service)

I find that defendants are not currently authorizing any care for claimant's injury. As a result, I find that defendants are not offering reasonable medical care suited to treat the claimant's work injuries, and have abandoned care. The physician who has treated claimant at Steindler has recommended occupational therapy. There is no

contrary evidence in the record. As such, the recommendations of Steindler Orthopedic Clinic are considered to be reasonable and medically necessary care.

REASONING AND CONCLUSIONS OF LAW

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 Iowa Supreme Court has held the employer has the right to choose the provider of care, except when the employer has denied liability for the injury, or has abandoned care. Iowa Code § 85.27(4); Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010).

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); Bell Bros. Heating, 779 N.W.2d at 209; 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).

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).

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."

I found Steindler Orthopedic Clinic's treatment recommendations to be reasonable and necessary. Further, not only have defendants not authorized Steindler's treatment, but they are not offering any medical care at this time. Defendants did not participate in the hearing. Based on this, it is found that defendants have abandoned claimant's care. For these reasons, I conclude claimant has established entitlement to an order directing defendants to authorize ongoing treatment with Steindler Orthopedic Clinic.

ORDER

THEREFORE IT IS ORDERED:

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

Defendants shall immediately authorize and timely pay for the treatment recommended by Steindler Orthopedic Clinic.

Signed and filed this 28th day of July, 2020.



JESSICA L. CLEEREMAN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Andrew Bribriesco (via WCES)

REM Iowa Community Services, Inc. (via certified and regular mail)
351 2nd Ave. Place
Coralville, IA 52241

New Hampshire Insurance Co. (via certified and regular mail)
175 Water Street
18th Floor
New York, NY 10038

Courtesy Copy:
Nicole Evanoff (via email)
Sedgwick Claims Management Services, Inc.
nicole.evanoff@sedgwick.com