

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JENNIFER KIRTON,

Claimant,

vs.

DARLING INGREDIENTS, INC.,

Employer,

and

AIU INSURANCE (NTL UNION FIRE OF
PITTS PA),Insurance Carrier,
Defendants.

File Nos. 22001268.01, 22700348.01

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. By filing an original notice and petition for alternate medical care, claimant, Jennifer Kirton, invoked the expedited procedure of rule 876 IAC 4.48. The original notice and petition contains a proof of service signed by an assistant for claimant's attorney. The proof of service demonstrates that service was effectuated upon the employer via certified and regular mail. The proof of service also demonstrates that a copy of the original notice and petition was mailed to the insurance carrier prior to the date of hearing.

The alternate medical care claim came on for telephonic hearing on April 21, 2022. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Claimant appeared personally and through her attorney, Zeke McCartney. Defendants failed to answer the petition for alternate medical care or appear for the alternate medical care hearing. Defendants are in default and default is entered against defendants for purposes of this alternate medical care 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. Any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code section 17A.

The evidentiary record consists of claimant's exhibits 1 and 2, consisting of nine pages. Claimant also testified on her own behalf. No other witnesses testified at the hearing, and the record closed at the conclusion of the telephonic hearing.

ISSUE

The issue presented for resolution is whether the claimant is entitled to an alternate medical care order requiring defendants to authorize and pay for an impending surgical procedure, as well as recommended surgical procedures for claimant's carpal tunnel syndrome and elbow.

FINDINGS OF FACT

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

Jennifer Kirton, claimant, sustained injuries to her right shoulder, as well as right carpal tunnel syndrome and a right elbow injury on September 1, 2021, as a result of her work duties with Darling Ingredients, Inc. She reported that injury to the employer and completed a written work injury report in September 2021. (Claimant's testimony)

Ms. Kirton aggravated her right arm and shoulder conditions again as a result of work duties on January 3, 2022. She again reported the injuries to her employer. The insurance carrier took her statement and she complied with requests for information. The defendants then authorized medical care through Medical Associates and claimant sought care. (Claimant's testimony)

Medical records from claimant's family medicine provider at Medical Associates Clinic, P.C., demonstrate an injury to the right shoulder and a recommendation for orthopaedic care. (Claimant's Ex. 2) Claimant obtained a referral of care from the primary care physician at Medical Associates Clinic to an orthopaedic surgeon, Kyle Korth, M.D., also with Medical Associates Clinic. Dr. Korth now recommends a right shoulder surgery for claimant, which is scheduled to occur on May 6, 2022. Claimant desires to proceed with the recommended surgical procedure on her right shoulder. (Claimant's testimony)

Ms. Kirton explained that she has shooting pain from her right shoulder down through her right elbow and into her right hand. She also has difficulties closing the fingers on her right hand all the way into a fist. Claimant has discussed the symptoms in her right elbow and right hand with the surgeon, Dr. Korth. Dr. Korth recommends surgical intervention on claimant's right elbow and a right carpal tunnel release after she completes her recovery from the impending right shoulder surgery. Claimant wishes to proceed with the course of care recommended by Dr. Korth, and defendants are not offering any care for claimant's injuries at this time.

In fact, despite authorizing care through Medical Associates, defendants have not paid for any of claimant's medical care. Medical Associates has contacted claimant to notify her that the insurance carrier is not paying for her medical care and that she has outstanding medical bills. However, claimant has not received an oral explanation or any written denial of this claim or the medical expenses she has incurred to date. Claimant's counsel brought this to the attention of the defendants in correspondence dated March 7, 2022. Defendants have not reacted to the correspondence from counsel to either deny the claim, pay for past medical expenses, or authorize further care for claimant's injuries. In essence, defendants have abandoned Ms. Kirton's medical care for her work injuries.

Claimant gave appropriate and timely notice of her dissatisfaction with the lack of care being offered and/or paid for by defendants. (Claimant's Ex. 1, p. 1) Claimant has established that defendants' offered care (or lack thereof) is unreasonable and inferior to the care that can be offered. She has also established by a preponderance of the evidence that she gave notice of that dissatisfaction but received no response from defendants.

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 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 and Air Conditioning 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 she 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).

When a designated physician refers a patient to another physician, that physician acts as the defendant employer's agent. Permission for the referral from defendant is not necessary. Kittrell v. Allen Memorial Hospital, Thirty-fourth Biennial Report of the Industrial Commissioner, 164 (Arb. November 1, 1979) (aff'd by industrial commissioner). See also Limoges v. Meier Auto Salvage, Iowa Industrial Commissioner Reports 207 (1981).

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, claimant is satisfied with the care she has been receiving through Medical Associates and she wishes to proceed with the recommended care. However, although they initially authorized care through Medical Associates, defendants have not been paying for the authorized care. Defendants' failure to pay for the authorized care and/or authorize alternative care results in an abandonment of care being provided for these work injuries. In other words, defendants are not offering prompt care or care that is reasonably suited to treat the work injuries because they have not been paying for said care.

In the alternative, even if the care offered but unpaid through Medical Associates is considered reasonable, defendants have not complied with the treatment recommendations of the authorized medical providers at Medical Associates, including the orthopaedic surgical referral and now pending surgery recommendations. The care being offered by defendants (nothing at this point) is clearly inferior to the care being offered and recommended by Dr. Korth at Medical Associates. Claimant has proven that there is more extensive care available for the treatment of her injuries and that the denial (or lack of any response) of the surgical care is unreasonable. Under either theory of the case, claimant has established that the care offered by defendants is unreasonable and that an order requiring defendants to authorize and pay for further care is necessary under the circumstances.

ORDER

THEREFORE, IT IS ORDERED:

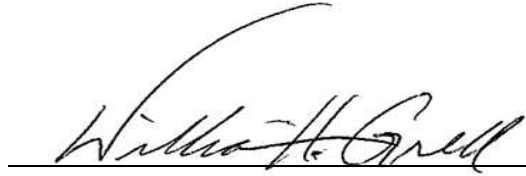
The claimant's petition for alternate medical care is granted.

Defendants shall immediately authorize and pay for the recommended May 6, 2022 right shoulder surgery with Dr. Korth, as well as all necessary follow-up care and rehabilitation care after said surgery.

Defendants shall authorize and pay for further orthopaedic care of claimant's right elbow and right hand to the extent that Dr. Korth recommends

additional surgeries for carpal tunnel syndrome, claimant's hand, or claimant's elbow, or related structures, after completion and healing from the May 6, 2022 right shoulder surgery.

Signed and filed this 21st day of April, 2022.

A handwritten signature in black ink, reading "William H. Grell", written over a horizontal line.

WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Zeke McCartney (via WCES)

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