BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ADAM YOUNG,	
Claimant,	File No. 22700533.07
vs.	
PREMIUM PLANT SERVICES, INC.,	
Employer,	ALTERNATE MEDICAL CARE
and	DECISION
EVEREST NATIONAL INSURANCE COMPANY,	
Insurance Carrier, Defendants.	Head Note No.: 2701

STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapters 85 and 17A. On June 2, 2023, claimant, Adam Young, filed an application for alternate care under Iowa Code section 85.27, invoking the expedited procedure rule 876 IAC 4.48. In the petition, claimant alleges he sustained a work-related injury to his low back/whole body on October 27, 2020. Claimant is seeking to resume his physical therapy appoints at Restore and Renew Therapeutics (hereinafter "Restore"). Claimant's petition alleges that his appointments at Restore have been suspended due to defendants' failure to pay for past treatments. Defendants did not file an answer.

The undersigned presided over an alternate care hearing held via telephone on June 14, 2023. Claimant appeared through his attorney Gary Nelson. Defendants appeared through their attorney Stephen Murray. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding.

The hearing record consists of Claimant's exhibits 1-8.

At the start of the hearing defendants verbally admitted liability for the October 27, 2020 injury. There were no witnesses. Counsel for both parties provided argument. The record closed at the end of the alternate medical care telephonic hearing.

Pursuant to the Commissioner's order dated February 16, 2015, 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.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care in the form of:

- Payment for claimant's past treatment with Restore and the resumption of his physical therapy appointments at Restore.

FINDINGS OF FACT

On October 27, 2020, claimant sustained a work-related injury to his low back/whole body. (See Petition; Hearing Testimony). Defendants admitted liability for the low back injury and authorized treatment with various medical providers, including Chad Abernathy, M.D., and Matthew Howard, M.D. (Hearing Testimony; see also Ex's. 2 and 3). At the hearing, defendants' counsel agreed that Dr. Abernathy and Dr. Howard are authorized providers for this claim.

On January 4, 2023, claimant had a telehealth visit with Bayard Carlson, M.D.[1] (See Ex. 1). Dr. Carlson is an orthopedic surgeon at the Twin Cities Spine Center. (Id.). Dr. Carlson diagnosed claimant with stenosis of the lumbar spine with neurogenic claudication. (Id.). He recommended claimant attend physical therapy 2-3 times a week for 4-6 weeks. (Id.).

On January 16, 2023, claimant's counsel sent Dr. Abernathy and Dr. Howard identical letters, asking them to review Dr. Carlson's telehealth visit summary and indicate whether they agreed that Dr. Carlson's treatment recommendations were reasonable and causally related to the October 27, 2020 work injury.[2] (Ex's. 2 and 3). Both doctors responded to claimant's counsel indicating they agreed. (Id.). Dr. Abernathy's reply is dated the same day, January 16, 2023. (Ex. 3). Dr. Howard's reply is not dated or signed. (Ex. 2).

At some point claimant began attending physical therapy at Restore. (Hearing Testimony; Ex. 6). There are no records from Restore in evidence, so it is not clear when those treatments started and/or how many appointments claimant has already attended. According to counsel, claimant's physical therapy order is ongoing and his last appointment at Restore took place at the end of May 2023. (Hearing Testimony).

[1] Claimant found Dr. Carlson and scheduled this evaluation. (Hearing Testimony).

[2] The letters sent to Dr. Abernathy and Dr. Howard stated that Dr. Carlson recommended Gabapentin, an EMG, an L4-L5 interlaminar injection, and physical therapy. (See Ex's. 2 and 3). The claimant did not put Dr. Carlson's telehealth visit summary and recommendations into evidence for the hearing. The agency was only provided with a copy of Dr. Carlson's physical therapy order. (Ex. 1).

However, Dr. Carlson's physical therapy order states it is for 4-6 weeks and that "requests for . . . extension to the physical therapy order should be faxed" to his office. (Ex. 1). There is nothing in the hearing record indicating that either Dr. Carlson, Dr. Howard, and/or Dr. Abernathy ever extended or changed the physical therapy order.

On April 14, 2023, claimant's counsel sent defendants' counsel a letter requesting payment for his physical therapy sessions at Restore. (Ex. 4). The letter also requested defendants reimburse claimant for funds he previously paid for treatment at Restore. (Id.). Claimant's counsel sent defendants a second letter on April 25, 2023. (Ex. 5). This letter indicated that the Restore bills remained unpaid. (Id.). It repeated the request for payment of the Restore invoices, as well as reimbursement to claimant for payments he had already made. (Id.).

On May 5, 2023, claimant filed an application for alternate care requesting payment of Restore's past due invoices. (See Petition). This petition was assigned File No. 22700533.06. On May 17, 2023, claimant filed a motion to dismiss. (See Motion to Dismiss). The motion indicated that an alternate care hearing was no longer necessary because defendants had already agreed to pay Restore's past due invoices. The agency issued an order of dismissal that same day. (See Order of Dismissal).

On May 16, 2023, Lindsey Topping, a physical therapist at Restore, issued a letter stating Restore would not provide claimant with any more treatment until it received payment for past due invoices. (Ex. 6). The letter indicates that Restore had "been asking for payment for several months now for client Adam Young." In the letter, Ms. Topping also opined that the treatments at Restore were beneficial and necessary for claimant's healing, range of motion and general mobility. (Id.).

On May 25, 2023, claimant's counsel notified defendants' counsel that Restore's invoices remained unpaid. (Ex. 8). At the alternate care hearing on June 14, 2023, claimant's counsel stated that Restore's invoices still remain unpaid, and as a result the claimant is not able schedule any more appointments at Restore. (Hearing Testimony). Defendants' counsel responded, indicating that he spoke to the adjuster assigned to claimant's case last week. (Id.). During that conversation the adjuster said that the insurance carrier attempted to pay Restore's invoices, but there is an issue with the format of the invoices provided. (Id.). According to the adjuster, to receive payment under the insurance carrier's system, Restore needs to complete a certain type of form. (Id.). Defense counsel stated the adjuster is in contact with Restore and actively attempting to remedy the issue. (Id.).

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). 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). 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).

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, 123 (Iowa 1995). An injured employee dissatisfied with the employer-furnished care (or lack thereof) may share the employee's discontent with the employer and if the parties cannot reach an agreement on alternate care, "the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order the care." Id. "Determining what care is reasonable under the statute is a question of fact." Long, 528 N.W.2d at 123; Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 436 (Iowa 1997). As the party seeking relief in the form of alternate care, the employee bears the burden of proving that the authorized care is unreasonable. Id. at 124; Bell Bros., 779 N.W.2d at 209; Pirelli-Armstrong Tire Co., 562 N.W.2d at 436. Because "the employer's obligation under the statute turns on the question of reasonable necessity, not desirability," an injured employee's dissatisfaction with employer-provided care, standing alone, is not enough to find such care unreasonable. Id.

It is the employer's statutory right to select medical providers, and the employer may consider cost and other pertinent factors when exercising that choice. Long, 528 N.W.2d at 124. An employer (typically) is not a licensed health care provider and does not possess medical expertise. Accordingly, an employer does not have the right to control the methods the providers choose to evaluate, diagnose, and treat the injured employee. An employer is not entitled to control a licensed health care provider's exercise of professional judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988). An employer's failure to follow recommendations of an authorized physician in matters of treatment is commonly a failure to provide reasonable treatment. Boggs v. Cargill, Inc., File No. 1050396 (Alt. Care, January 31, 1994).

Based upon the evidence presented, it appears defendants authorized physical therapy at Restore as initially recommended by Dr. Carlson and agreed upon by Dr. Abernathy and Dr. Howard, both authorized providers for this claim. However, defendants have not paid the invoices for this authorized care. Claimant seeks payment of these past due bills. Unfortunately, alternate medical care proceedings are only available for *prospective* relief. As routinely stated by this agency, a decision in an alternate medical care proceeding operates prospectively only, not retroactively. A 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).

Consequently, the portion of claimant's petition seeking payment for treatment he already received at Restore must be dismissed without prejudice. There are other mechanisms available to obtain payment of these bills.

Claimant's petition also seeks the resumption of his physical therapy appointments at Restore. The undersigned agrees that claimant is (or was) entitled to physical therapy according to the collective opinions of Dr. Carlson, Dr. Abernathy, and Dr. Howard. However, Dr. Carlson's physical therapy order is dated January 4, 2023, and Dr. Abernathy and Dr. Howard's opinions adopting that order appear to be dated January 16, 2023. (Ex's. 1-3). Under the order, Dr. Carlson recommended physical therapy 2-3 times a week for 4-6 weeks. (Ex. 1). It is now June of 2023; it has been way more than six weeks since the order was issued. There is no evidence in the hearing record showing when claimant started treatment at Restore and/or evidence of how many appointments he has attended. Without this, or a treatment note extending the physical therapy order, the undersigned does not have sufficient information to order the resumption of claimant's physical therapy appointments at Restore. Stated another way, under the evidence presented, it is not clear that claimant hasn't already received the physical therapy prescribed by Dr. Abernathy and Dr. Howard through Dr. Carlson, and/or that those authorized treating providers ordered ongoing physical therapy past the six weeks articulated.

Claimants bear the burden of proof in alternate care proceedings. Under this record, claimant has not met his burden to prove the care offered by defendants is unreasonable. Claimant's petition for alternate care is denied at this time.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's petition for alternate care is DENIED.

Signed and filed this 16th day of June, 2023.

AMANDA R. RUTHERFORD
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Gary Nelson (via WCES)

Stephen Murray (via WCES)