BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

IVAN SHORT,

Claimant,

vs.

WORKSOURCE,

Employer,

and

COMMERCE AND INDUSTRY INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 5054372

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

This is a contested case proceeding under Iowa Code chapters 85 and 17A. The expedited procedures of rule 876 IAC 4.48, the "alternate medical care" rule, are invoked by claimant, Ivan Short.

This alternate medical care claim came on for hearing on January 5, 2016. The proceedings were recorded digitally and constitute the official record of the hearing. By an order filed by the workers' compensation commissioner, this decision is designated final agency action. Any appeal would be a petition for judicial review under Iowa Code section 17A.19.

The record in this case consists of claimant's exhibit 1, defendants' exhibits A and B, and the testimony of claimant. Defendants' exhibits were lettered by the undersigned for clarity of the record.

ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of an order for claimant to direct his own care.

FINDINGS OF FACT

Claimant sustained a work-related injury May 15, 2015 to his neck and head.

The administrative file for this matter indicates that on August 6, 2015 claimant filed a petition for alternate medical care requesting his care be transferred from Grinnell to Ottumwa where claimant resides. Claimant testified his request to have care transferred to Ottumwa was ignored by defendant insurer until an alternate medical care petition was filed.

In a professional statement claimant's counsel indicated defendant insurer ignored claimant's request to have care transferred to Ottumwa until after an alternate medical care petition was filed.

On August 18, 2015 claimant filed a dismissal of the August 6, 2015 petition.

Claimant testified his authorized treating physician, Matthew Doty, M.D. requested claimant have an MRI. Claimant testified defendant insurer ignored his requests for an MRI until an alternate medical care petition was filed.

In a professional statement, claimant's counsel indicated his requests for an MRI for claimant, recommended by Dr. Doty, were ignored until an alternate medical care petition was filed.

The administrative file in this case indicates that on December 22, 2015 an alternate medical are petition was filed seeking a neurological evaluation recommended by Dr. Doty. Claimant also requested he be allowed to control his own care given that defendant insurer continued to ignore requests for care until an alternate medical care petition was filed.

On November 17, 2015 Dr. Doty evaluated claimant. Dr. Doty recommended, at that time, claimant have a neurological opinion given claimant's headaches and dizziness. (Exhibit 1, page 2)

In a December 3, 2015 letter, claimant's counsel requested defendant insurer authorize the neurological evaluation recommended by Dr. Doty. (Ex. 1, p. 1)

On December 22, 2015 defendants' counsel sent claimant's medical records to Richard Adelman, M.D. and requested Dr. Adelman evaluate claimant. Dr. Adelman specializes in neurology and psychiatry. (Ex. A)

In a January 4, 2015 letter defendants' counsel indicated he was waiting for Dr. Adelman's office to schedule an evaluation for claimant. (Ex. B)

In a professional statement, defendants' counsel indicated the delay in getting a neurological exam for claimant was due, in part, to Dr. Adelman's office requesting claimant's records be sent for review before an appointment would be scheduled. Defendants' counsel also indicated that the delay in getting a neurological exam was due, in part, to the holidays.

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

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. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

The employee requesting the care has the burden to prove the care being offered by the employer is unreasonable. R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 196–96 (Iowa 2003); Lynch Livestock v. Bursell, No. 14-1133, Filed May 20, 2015 (Iowa Ct. App.).

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 Company, 528 N.W.2d 122 (Iowa 1995).

The record indicates defendants have authorized the neurological evaluation requested by claimant. The record also suggests defendant insurer has engaged in a pattern of delaying or ignoring requested care until after an alternate medical care petition is filed by claimant. The record suggests claimant's medical care has not been offered promptly, as required by law.

Because the neurological evaluation has been authorized by defendants, control of medical care will not be transferred to claimant, at this time.

Defendant insurer is given notice that should this pattern of ignoring or delaying care persist, control of medical care may be transferred to claimant in a subsequent alternate medical care request.

ORDER

Claimant's petition is denied. Defendant insurer is respectfully requested to offer care promptly in the future.

Signed and filed this 5th day of January, 2016.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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