

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JODY JOHNSON,

Claimant,

vs.

OAKVIEW, INC.,

Employer,

and

IOWA LONG TERM CARE RISK
MANAGEMENT ASSOCIATION,

Insurance Carrier,
Defendants.

FILED
MAR 19 2019
WORKERS COMPENSATION

File No. 5067689

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

This is a contested case proceeding under Iowa Code chapters 85 and 17A. Claimant, Jody Johnson, invokes the expedited procedure of rule 876 IAC 4.48. Claimant appeared through her attorney, Nathaniel Staudt. Defendants appeared through their attorney, Matthew Phillips.

The alternate medical care claim came on for hearing on March 19, 2019. 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.

Iowa Code section 85.27(4) provides, in relevant part:

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 therefore, allow and order other care.

Claimant's petition for alternate medical care seeks treatment through the previously authorized orthopaedic surgeon, Todd Harbach, M.D. At the commencement of the hearing, defendants confirmed that they had offered and scheduled a return evaluation to Dr. Harbach. Again, this is the treatment that was specifically requested by claimant in the petition for alternate medical care. Having confirmed that defendants have scheduled an evaluation with Dr. Harbach on March 21, 2019, the undersigned confirmed that there are no other pending disputed medical issues. Accordingly, the undersigned determined that all disputed issues in this alternate medical care proceeding are moot.

Ideally, this case would not have been brought to hearing. Defendants authorized the requested care five (5) days before the scheduled hearing. It is a waste of agency resources to hold a hearing and issue a decision on a dispute that was resolved five (5) days before the scheduled alternate medical care hearing. The alternate medical care process is not intended as a means of obtaining a tactical advantage or some type of procedural advantage. Once the dispute has been resolved, the purposes and intent of Iowa Code section 85.27(4) have been achieved and the petition for alternate medical care should be dismissed.

The Iowa Workers' Compensation Commission has a relatively small staff. The agency is not staffed nor intended to handle mass litigation. Handling unnecessary hearings when all disputes have been resolved ties up agency resources and slows down the agency's responsiveness on issuing decisions for parties with actual disputes.

Of course, there are times when defendants fail to live up to their agreements. There are cases when repeated alternate medical care petitions must be filed. In those situations, it may be appropriate to have a hearing and enter a consent order with the authority of the agency. This is not one of those cases.

Claimant requested specific care. Defendants promptly authorized and scheduled that care well in advance of the alternate medical care hearing. Mr. Phillips provided specific, written confirmation of defendants' agreement. No reason or rationale was provided why counsel could not accept, or should not accept, Mr. Phillips' statements.

The Iowa workers' compensation bar is a relatively small group of practitioners. The vast majority of them are good attorneys with knowledge of the system. Most look out for the integrity of the system and are trustworthy and honorable in their communications with opposing counsel. Until there is reason to doubt the informal exchanges with counsel, counsel should be willing to rely upon the professional statements of opposing counsel in Iowa workers' compensation cases.

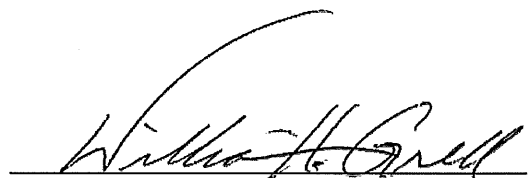
ORDER

THEREFORE, IT IS ORDERED:

The claimant's petition for alternate medical care is denied as moot.

The petition for alternate medical care is dismissed without prejudice.

Signed and filed this 19th day of March, 2019.



WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Nathaniel D. Staudt
Attorney at Law
2423 Ingersoll Ave
Des Moines, IA 50312
nate.staudt@sbsattorneys.com

Matthew R. Phillips
Attorney at Law
801 Grand Ave., Ste. 3700
Des Moines, IA 50309-8004
Phillips.matthew@bradshawlaw.com

WHG/kjw