

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JONI WISEHART,

Claimant,

vs.

RISE, LTD.,

Employer,

and

UNITED WISCONSIN INS. CO.,

Insurance Carrier,  
Defendants.

**FILED**

AUG 03 2015

WORKERS COMPENSATION

File No. 5053340

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

This is a contested case proceeding under Iowa Code chapter 17A. Claimant sustained a work-related injury on February 13, 2005. Claimant filed a petition for alternate medical care. The petition was filed on July 21, 2015. Claimant stated she was dissatisfied with the quality of treatment she was receiving as defendants refused to authorize surgery for claimant. (Original Notice and Petition)

Defendants filed an answer.

The hearing administrator set the case for a telephone hearing on August 3, 2015, at 8:30 a.m. The hearing was recorded by digital means. The digital recording is the official transcript of the hearing.

Claimant testified on her own behalf. Ms. Jessie Pensel, assistant executive director of RISE, Ltd., testified for the employer. Ms. Denise Kaweczynski, senior claims adjuster for United Wisconsin Insurance Co., testified for the insurance carrier.

Claimant offered exhibits 1 and 2 (10 pages total). Defendants offered exhibits A through D (10 pages total).

According to the Iowa Workers' Compensation Commissioner, the deputy workers' compensation commissioner presiding at the contested case in an application for alternate medical care, pursuant to rule 876 IAC 4.48, is hereby delegated the authority to issue the final agency decision on the application, Iowa Code section 86.3.

There is no right of intra-agency appeal on this decision. Continental Telephone Co. v. Colton, 348 N.W.2d 623 (Iowa 1984) and Leaseamerica Corp. v. Iowa Dept. of Revenue, 333 N.W.2d 847 (Iowa 1983).

If claimant is dissatisfied with the medical care she has been receiving, she must communicate her dissatisfaction to the employer. Such dissatisfaction must be communicated to the employer prior to the filing of the original notice and petition. Iowa Code section 85.27.

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.

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 Decision June 17, 1986).

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).

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 Dec. January 31, 1994).

A referral by an authorized physician to another practitioner is generally found to be authorized care. Coleman v. Coleman Indus. Cleaning, 4 Iowa Indus. Comm'r Rep. 67 (1984).

Claimant's work injury was caused by a third party who rear-ended claimant in a motor vehicle accident. The third party tortfeasor was insured by Grinnell Mutual Insurance Company. Claimant determined she would seek medical care for her injuries through Grinnell Mutual as she could select her own treating physicians. The director of

RISE, Ltd., informed claimant ; if she used the workers' compensation insurance, the workers' compensation insurance carrier would have the right to select the medical providers. Claimant wanted the right to select her doctors.

Claimant underwent a myriad of conservative treatment measures. All of the medical bills were paid by Grinnell Mutual Insurance. On June 1, 2015, Jerry Davis, M.D., scheduled claimant for a left L5-S1 discectomy. The surgery was to be performed on June 15, 2015. However, Grinnell Mutual declined to cover the cost of the surgery and the surgery was ultimately cancelled.

Claimant finally requested medical care from United Wisconsin Insurance Co. on June 1, 2015. Prior to that date, neither any supervisor at RISE, Ltd., nor anyone at United Wisconsin knew claimant was seeking workers' compensation benefits. Ms. Jessie Pensel testified she first learned of the scheduled back surgery on June 2, 2015, and she had no prior knowledge claimant had been treating for any injuries related to the motor vehicle accident on February 13, 2015.

Ms. Kawczynski testified about the records at United Wisconsin Insurance relative to claimant's claim filed on June 1, 2015. The claims adjuster at United Wisconsin made numerous attempts to contact claimant by telephone and to secure a signed patient's waiver form. Claimant did not sign a patient's waiver form until July 14, 2015. United Wisconsin Insurance Co. did not receive the signed form until July 20, 2015, just one day prior to the filing of the petition for alternate medical care with the Iowa Division of Workers' Compensation.

Defendants have now scheduled an appointment for claimant on Friday, August 7, 2015. The appointment is as follows:

Stephen Bowman, M.D.  
Specialty: Occupational Medicine  
Mayo Clinic  
191 Theatre Rd.  
2<sup>nd</sup> Floor  
Onalaska, WI 54650

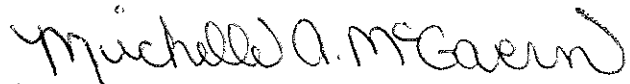
The appointment is scheduled to provide treatment for claimant pursuant to Iowa Code section 85.27. Because claimant selected not to pursue her original treatment through United Wisconsin, she had the right to select her own medical providers. However, once she filed her claim for workers' compensation benefits, she is required to execute a patient's waiver form in a timely manner and it is the obligation of the employer to furnish reasonable services and supplies to treat an injured employee. The employer has the right to choose the care. From the facts presented at hearing, defendants are providing reasonable treatment at the Mayo Clinic. If anything has occurred, it is claimant who has delayed her treatment by not executing a patient's waiver form in a timely manner.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's petition for alternate medical care is denied.

Signed and filed this 3<sup>rd</sup> day of August, 2015.



MICHELLE A. MCGOVERN  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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