BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CHRISTOPHER MARTIN, Claimant, vs. HOGAN TRANSPORTATION, Employer, and TECHNOLOGY INS. CO., Insurance Carrier, Defendants.	File No. 22006386.03 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. The expedited procedure of rule 876 IAC 4.48 is invoked by claimant, Christopher Martin.

The alternate medical care claim came on for hearing on December 19, 2022. Claimant appeared through his attorney John Lawyer. Defendants appeared through their attorney Bryan Brooks. 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.

The hearing record consists of:

- Claimant's exhibit 1;
- Defendants' exhibit A

Claimant was the only witness to provide testimony. Counsel for both parties provided argument. The record closed at the end of the alternate medical care telephonic hearing.

ISSUE

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

- Paravertebral intercostal injections as recommended by Laxmaiah Manchikanti, M.D.
- Defendants' loss of the right to control claimant's medical care moving forward.

FINDINGS OF FACT

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

On June 25, 2021, claimant sustained a work-related injury to his back. (See Petition; Hearing Testimony). Defendants admitted liability for the back injury and authorized treatment with a variety of different providers. (Hearing Testimony). Prior to the hearing, claimant received pain medication, physical therapy, home exercise recommendations, a nerve study done by Dr. Gordon in Nashville, TN, multiple surgical consults, including one with Timothy Chang, M.D., and an independent medical examination (IME) which provided him with a permanent impairment rating. (Id.).

Most recently, defendants authorized treatment with Dr. Chang, an orthopedic surgeon practicing in Kentucky. (Hearing Testimony). Dr. Chang did not recommended surgery for claimant. (Id.). Dr. Chang said he had no further treatment to offer claimant. (Id.). He recommended claimant follow-up with a pain management specialist, and referred him to Laxmaiah Manchikanti, M.D., at Pain Management Center of America. (Id.; See Ex. A, p. 1). At hearing, claimant testified that he thought the last time he saw Dr. Chang was about a month ago, but according to his own calendar, the last time he saw Dr. Chang was in July 2022. (Hearing Testimony). Claimant does not have any future appointments scheduled with Dr. Chang. (Id.). Correspondence from defendants to Dr. Manchikanti in November 2022, indicates that Dr. Manchikanti's office was taking over claimant's treatment from Dr. Chang. (See Ex. A, p. 2).

Claimant's initial consultation with Dr. Manchikanti took place on October 19, 2022. (Ex. A, p. 2). He had a follow-up appointment scheduled for November 29, 2022. (Id.). Dr. Manchikanti's treatment records are not in evidence. However, on November 10, 2022, Dr. Manchikanti's office faxed defendants an authorization request for left T5-T8 paravertebral intercostal injections. (Ex. A, p. 1). On November 14, 2022, defendants emailed Dr. Manchikanti's office requesting he complete a work status note for claimant's prior visit. (Id. at 4). There is no mention of Dr. Manchikanti's authorization request in this email. (Id.). On November 23, 2022, defendants sent Dr. Manchikanti's office another email, requesting that the doctor complete a work status note for the claimant. (Id.). This email, however, also states "At this time we are not denying or approving any treatment until we get a WS update." (Id.). On that same date, November 23, 2022, defense counsel sent Dr. Manchikanti a letter requesting a work status note. (Id. at 2). This letter reads,

> While we understand that Mr. Martin is new to your office, it is imperative that we receive an opinion or recommendation regarding his fitness to engage in any employment so that we can ensure benefits are being paid properly. To that end, we would respectfully request a statement regarding restrictions, if any, on Mr. Martin's physical capabilities at your next appointment on November 29, 2022.

(Id.). The letter does not say anything about Dr. Manchikanti's request for authorization to perform injections. (Id.).

At the hearing, claimant testified the receptionist at Dr. Manchikanti's office called him on November 28, 2022 and cancelled his upcoming appointment. (Hearing Testimony). She told him defendants would not authorize the recommended injections until they received an updated patient status report. (Id.). That afternoon, claimant's counsel sent defendants an email requesting that they "immediately authorize the scheduled injections." (Ex. 1). The email labeled defendants' request for an updated status report "a blatant interference with authorized care," and indicated that claimant would file a petition for alternative medical care if the injections did not take place the next day. (Id.).

At the hearing, claimant testified defendants have habitually delayed his recommended causally-related medical care. (Hearing Testimony). Claimant stated that sometime last year his doctor recommended physical therapy at Atlas Physical Therapy. (Id.). According to claimant, defendants initially authorized the therapy and scheduled six visits, but when his provider recommended further therapy it took defendants "a month or two" to get more visits scheduled. (Id.). Claimant testified his physical therapist told him he physically regressed during the alleged gap in treatment. (Id.). Claimant did not provide any actual dates when testifying about his issues obtaining physical therapy appointments. Claimant also did not introduce any physical therapy records at hearing. Claimant testified that he currently has pain and wants more physical therapy. Claimant indicated he would likely recover faster if he could schedule his own therapy appointments, instead of waiting for defendants to approve the treatment and make the appointments. (Id.). No medical providers have recommended claimant attend additional physical therapy at this time. (Id.). Claimant testified Dr. Manchikanti has recommended he do home exercises. (Id.). Claimant is currently taking several pain medications. (Id.). These were initially prescribed by Dr. Chang and have been continued by Dr. Manchikanti. (Id.).

In the time period since claimant filed this alternate care action, defendants have authorized the injections recommended by Dr. Manchikanti. (Hearing Testimony). Claimant has a follow-up appointment with Dr. Manchikanti on February 1, 2023. (Id.). Claimant will return to Dr. Manchikanti to undergo paravertebral intercostal injections on February 14, 2023. (Id.). Claimant's counsel was notified of these scheduled appointments right before the start of the alternate care hearing on December 19, 2022. (Id.). Defendants did not know whether this was the first available appointment with Dr. Manchikanti. (Id.).

CONCLUSIONS OF LAW

Under Iowa law, an employer who has accepted compensability for a workplace injury has a right to control the care provided to the injured employee. Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 769 (Iowa 2016). The relevant statute provides as follows:

> 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.

Iowa Code § 85.27(4).

Defendants' "obligation under the statute is confined to *reasonable* care for the diagnosis and treatment of work-related injuries." Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995) (emphasis in original). In other words, the "obligation under the statute turns on the question of reasonable necessity, not desirability." Id. 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. See Iowa Code § 85.27(4). 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, 528 N.W.2d at 124. Ultimately, determining whether care is reasonable under the statute is a question of fact. Long, 528 N.W.2d at 123.

Under Iowa Code section 85.27, claimant bears the burden of providing "reasonable proofs of the necessity" to order alternate care. Defendants have already authorized the injections recommended by Dr. Manchikanti. While claimant is understandably upset that the injections will not take place until February 2023, the undersigned does not have the authority to order a doctor's office in Kentucky to change his appointment date. Because defendants have already provided the care requested by claimant in his petition, this issue is moot and need not be ruled upon. That said, it does appear that defendants withheld authorization for the injections because they did not have an updated work status report from Dr. Manchikanti. The undersigned cannot find any authority for this stance. An employer's right to select the provider of medical

treatment for 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 18, 1988). Defendants are not entitled to interfere with the medical judgment of their own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening, June 17, 1986). Defendants should proceed accordingly in the future.

Claimant alleges that defendants have habitually delayed authorizing causally-related recommended medical care. He asserts that these delays caused him to regress physically and delayed his recovery. He is asking the agency to take away defendants' right to control his medical care in the future. Claimant, however, has not produced sufficient evidence to support his allegation. He did not introduce any physical therapy records at hearing. Nor did he provide correspondence between the parties documenting the allegedly habitual delays in providing treatment. Finally, when testifying claimant was not able to remember when he started physical therapy and did not provide any actual dates for the claimed delays. In alternate care actions, claimants bear the burden of proving that the care provided by defendants is unreasonable. See Iowa R. App. P 14(f)(5); Long, 528 N.W.2d at 124. Claimant did not meet his burden. Defendants shall retain the right to direct claimant's medical care.

During the hearing, claimant also made a verbal request for additional physical therapy. No authorized provider has recommended additional therapy at this time. However, Dr. Manchikanti has given claimant a home exercise program. An employee's desire for a different "reasonable" treatment plan does not make the employer-authorized care unreasonable. See Long, 528 at 124. A finding that the treatment requested by the claimant is reasonable does not result in an implicit finding that the authorized treatment is unreasonable. Id. The employee must prove the care being offered by the employer is unreasonable to treat the work injury, not that another treatment plan is reasonable. Id.; See also Lynch Livestock, Inc. v. Bursell, 870 N.W.2d 274 (Table) (Iowa Ct. App. 2015). There is no evidence in the record showing that the home exercise program recommended by Dr. Manchikanti is unreasonable. Given this, claimant's request for additional therapy is denied.

THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care is denied.

Signed and filed this 20TH day of December, 2022.

AMANDA R. RUTHERFORD
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

John Lawyer (via WCES)

Bryan Brooks (via WCES)