

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

XAVIER WINTERS,

Claimant,

vs.

MADICORP,

Employer,

and

UNITED WISCONSIN INSURANCE CO.

Insurance Carrier,
Defendants.

File No. 22701032.01

ALTERNATE MEDICAL

CARE CONSENT ORDER

AND ORDER OF DISMISSAL

HEAD NOTE NO: 2701

This is a contested case proceeding under Iowa Code chapters 85 and 17A. By filing an original notice and petition for alternate medical care, claimant, Xavier Winters, invoked the expedited procedure of rule 876 IAC 4.48. The alternate medical care claim came on for telephonic hearing on October 28, 2022. Claimant appeared through counsel, Joseph Lyons. Defendants appeared through their attorney, Caitlin Kilburg.

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 order is designated final agency action. Any appeal of the order would be to the Iowa District Court pursuant to Iowa Code section 17A.

Prior to the commencement of the telephonic hearing, the undersigned had a conversation with counsel. Defendants deny liability for the alleged right arm injury but admit liability for the alleged right-hand injury.

Before any benefits can be ordered, including medical benefits, compensability of the claim must be established, either by admission of liability or by adjudication. The summary provisions of Iowa Code section 85.27, as more particularly described in rule 876 IAC 4.48, are not designed to adjudicate disputed compensability of a claim.

The Iowa Supreme Court has held:

We emphasize that the commissioner's ability to decide the merits of a section 85.27(4) alternate medical care claim is limited to situations where the compensability of an injury is conceded, but the reasonableness of a

particular course of treatment for the compensable injury is disputed. . . . Thus, the commissioner cannot decide the reasonableness of the alternate care claim without also necessarily deciding the ultimate disputed issue in the case: whether or not the medical condition Barnett was suffering at the time of the request was a work-related injury.

. . . .

Once an employer takes the position in response to a claim for alternate medical care that the care sought is for a noncompensatory injury, the employer cannot assert an authorization defense in response to a subsequent claim by the employee for the expenses of the alternate medical care.

R. R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 197-198 (Iowa 2003) (fn 2).

Given the denial of liability for the alleged right arm condition, claimant's original notice and petition for alternate medical care must be dismissed with respect to the right arm claim. Given their denial of liability for the right arm condition sought to be treated in the petition for alternate medical care, defendants lose their right to control the medical care claimant seeks for the right arm during their period of denial and the claimant is free to choose that care. Brewer-Strong v. HNI Corp., 913 N.W.2d 235 (Iowa 2018); Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193 (Iowa 2010).

As a result of the denial of liability for the right arm condition sought to be treated in this proceeding, claimant may obtain reasonable medical care from any provider for this treatment but at claimant's expense and seek reimbursement for such care using regular claim proceedings before this agency. Haack v. Von Hoffman Graphics, File No. 1268172 (App. July 31, 2002); Kindhart v. Fort Des Moines Hotel, Iowa Industrial Comm'r Decisions No. 3, 611 (App. March 27, 1985). "[T]he employer has no right to choose the medical care when compensability is contested." Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010). Therefore, defendants are precluded from asserting an authorization defense as to any future treatment of the right arm during their period of denial.

As noted, however, defendants agreed in their answer to authorize and provide care through Concentra in St. Paul, Minnesota. Claimant's counsel advised that claimant currently resides in Alabama. In response, defendants agreed to provide care in Alabama near claimant's residence.

Defense counsel was not aware claimant was currently residing in Alabama. Therefore, defendants were not prepared to authorize a specific medical provider in Alabama. Nevertheless, claimant's desire is for care and claimant is willing to accept care authorized and selected by defendants if it is done promptly.

Counsel's discussions resolved the pending dispute between the parties. Defendants will authorize a provider in Alabama that is close to claimant's residence for

treatment of the right-hand injury. Claimant concedes this is reasonable under Iowa Code section 85.27 if done promptly.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's original notice and petition is dismissed without prejudice with respect to the alleged right arm injury.

If claimant seeks to recover the charges incurred in obtaining care for the right arm condition for which defendants denied liability, defendants are barred from asserting lack of authorization as a defense to those charges during the period of their denial.

With respect to the right-hand injury, defendants shall select and authorize a medical provider near claimant's residence in Alabama within 14 days of the entry of this order.

Defendants shall schedule an evaluation for treatment of claimant's right hand and shall select and schedule the first available appointment with the medical provider of their choosing.

Failure to select, authorize, and schedule an evaluation within 14 days of the entry of this order (the evaluation is not required to occur within 14 days but must be the first available evaluation and the date and time for that evaluation must be secured and conveyed to claimant within 14 days) may result in a finding that defendants have abandoned claimant's medical care.

Signed and filed this 28th day of October, 2022.

A handwritten signature in black ink, reading "William H. Grell", is written over a horizontal line.

WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Joseph Lyons (via WCES)

Caitlin Kilburg (via WCES)