

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BRITTANY MCCLAIN,

Claimant,

vs.

SUNDANCE, INC.,

Employer,

and

AMERICAN COMPENSATION INS. CO.,

Insurance Carrier,
Defendants.

File No. 22008820.02

ALTERNATE MEDICAL CARE

DECISION

Headnote: 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, Brittany McClain. She filed her application on April 6, 2023. Claimant appeared personally and through attorney, Brian Keit. Defendants appeared through their attorney, Meredith Ashley. Holly Van Roekel was also present for the insurance carrier.

The alternate medical care claim came on for hearing on April 20, 2023. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's 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 record consists Claimant's Exhibits 1 and 2 and Defense Exhibits 1 through 17, which were received without objection. The defendants do not dispute liability for claimant's July 3, 2022, work injury.

ISSUE

The issue presented for resolution is whether the claimant is entitled to further medical treatment for her work injury.

FINDINGS OF FACT

Ms. McClain sustained an injury to her left leg which arose out of and in the course of her employment on July 3, 2022. On that date she fell, injuring her left knee.

The employer eventually authorized treatment. Ms. McClain was evaluated and underwent an MRI. She was referred to a specialist, Mark Gorsche, M.D., in September 2022. He diagnosed a rupture of the anterior cruciate ligament, as well as an acute medial meniscus tear of the left knee. (Claimant's Exhibit 1, page 2) He recommended physical therapy and probably surgery.

The defendants contend that Ms. McClain became noncompliant with treatment at some point. Ms. McClain testified live and under oath at the telephone hearing. I find that Ms. McClain was not a great historian. She testified that she did not have transportation in the fall of 2022. She resided in Cedar Falls, Iowa, at that time and had two different residences, living with her sister at times. At some point in that timeframe her cell phone was disconnected due to nonpayment of the phone bill. Since Ms. McClain did not have her own transportation, defendants arranged her transportation through a nurse case manager at OneCall. Ms. McClain testified that this arrangement was working well until she got a new case manager. This, however, coincided roughly with the time that there was some confusion about her exact address and phone number. Ms. McClain did miss some medical appointments. I cannot tell exactly how many therapy appointments she missed from this record. In her testimony, Ms. McClain took no responsibility for the communication challenges and missed appointments.

The defendants submitted several pages of records, which I have reviewed thoroughly. There is an email "Referral Confirmation" record from OneCall dated November 7, 2022, related to a November 17, 2022, transportation for an appointment with Cedar Valley Orthopedics. (Defendants' Exhibit 1) There is an email "Referral Confirmation" record from OneCall dated January 5, 2023, also with Cedar Valley Orthopedics. (Def. Ex. 2) There is also an email "Referral Confirmation" record dated October 26, 2022, which contains referrals for 11 different appointments between October 26, 2022, and November 18, 2022. (Def. Exs. 4-6) I am not entirely certain whether defendants are claiming that Ms. McClain missed all of these appointments. Ms. McClain testified that she attended at least a few appointments in October and November 2022. Defendants' Exhibit 7 is an invoice from OneCall to the insurance carrier for transportation payments on the following dates: 1/9/2023, 1/18/2023, and 1/19/2023. OneCall apparently billed \$721.23 for transportation on those dates. (Def. Ex. 7) Defendants' Exhibit 8 appears to be a duplicate of the "Referral Confirmation" email in Defendants' Exhibit 2. Defendants' Exhibit 10 appears to be some type of internal notes with dates between August 2022, and January 2023. (Def. Ex. 10) There is no context for any of these notes and consequently they are given little or no weight.

There are also a number of emails in the record. The earliest email between the parties appears to be dated January 5, 2023, from Holly Van Roekel to claimant's counsel.

Ms. McClain has not been attending physical therapy for several weeks and the therapy clinic has not been able to get a hold of her. In fact no one is able to get a hold of her, she is not returning calls or e-mails.

We are expected to arrange transportation for her to attend medical appointments but are not able to do this when we can't locate her.

Please discuss this situation with your client, have her return to physical therapy as well as contact this office so that we can be sure her transportation is arranged.

If she no longer wishes to participate in medical treatment we can ask Dr. Gorsche to discharge her from care.

(Def. Ex. 3, 17) Claimant's counsel responded on January 6, 2023, stating, "I just sent her an email and letter via snail mail. Her phone appears to be disconnected." (Def. Ex. 3) For her part, Ms. McClain testified that she had provided OneCall with the information where she would be and her ride did not show up on January 9, 2023.

The next email in the record is dated February 1, 2023. It is an email from defense counsel's paralegal to claimant's counsel on that date at 10:54 AM. (Def. Ex. 11) It simply states that correspondence from defense counsel is attached, although I do not find the actual correspondence in evidence. At 11:49 AM claimant's counsel responded to defense counsel.

I just spoke with my client. She is having a difficult time making it to her appointments because of transportation and phone issues. She said your client was supposed to supply a taxi to the appt with Dr. Gorsche on Jan 9 but it did not show. I told her your client is cutting off TTD benefits and she is in danger of being put at MMI for failure to attend appointments. Please advise what you want me to do.

(Def. Exs. 11, 12, 15, 16) From this exchange, it appears that defendants provided notice that TTD benefits were to be terminated.

The next email in evidence is from defense counsel to claimant's counsel dated February 17, 2023.

Please see attached confirming that my client did set up transportation for the 1/9/23 visit and an email from 1/6/23 to you about your client's phone being disconnected. If your client failed to be available for the provided transportation, that is her noncompliance. Please let me know if you have gotten new contact information for your client since the 1/6/23 email.

(Def. Exs. 11, 12, 14, 16) Claimant's counsel responded on February 20, 2023, by supplying a new phone number and address. (Def. Ex. 16) On February 27, 2023, Ms. McClain wrote an email directly to Holly Van Roekel. "Hello Holly how are you doing today. I'm thinking about relocating to Alabama and I wanted to know if I can get some help down here with my knee." (Def. Ex. 13) Ms. Van Roekel responded promptly. "I am going to refer you to your attorney, please discuss this issue with him." (Def. Ex. 13)

On March 22, 2023, claimant's counsel emailed defense counsel. In this email, he indicated that Ms. McClain had relocated to Montgomery, Alabama. He asked if defendants would authorize a treatment provider in Alabama. (Def. Ex. 14) Defense counsel responded on March 28, 2023, denying any further care. "Given these events, my client is declining to authorize additional medical treatment." (Def. Ex. 14) On April 3, 2023, claimant's counsel sent a dissatisfaction letter to defense counsel. (Cl. Ex. 2)

At hearing, virtually all of the defendants' cross-examination questions focused on her noncompliance with treatment beginning in November 2022. It is evident from the cross-examination questions that defendants are accusing Ms. McClain of missing at least two physical therapy appointments in November 2022, an appointment with Dr. Gorsche in January 2023, and possibly two more therapy appointments later in January 2023. For her part, Ms. McClain denied that she caused the problem.

REASONING AND CONCLUSIONS OF LAW

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Iowa Code Section 85.27 (2013).

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See 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).

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

An employer's statutory right is to select the providers of care and the employer may consider cost and other pertinent factors when exercising its choice. Long, at 124. An employer (typically) is not a licensed health care provider and does not possess medical expertise. Accordingly, an employer does not have the right to control the methods the providers choose to evaluate, diagnose and treat the injured employee. An employer is not entitled to control a licensed health care provider's exercise of professional 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).

The defendants argued at hearing that they did set up transportation for all of Ms. McClain's appointments and she had no valid excuse for missing any appointment. In her closing argument, defense counsel asserted that claimant missed some appointments. She asserted that defendants made numerous attempts to contact her by phone, email and through her attorney. She further argued that Ms. McClain was not "committed to her treatment between November 18, 2022, and her move to Alabama in February 2023, four months later."

The defendants provided no legal authority for the proposition that noncompliance with treatment is a basis for discontinuation of medical treatment. Having thoroughly reviewed Iowa Code section 85.27, I conclude that isolated instances of noncompliance with treatment (i.e., missing a few appointments; being difficult to communicate with) is not a basis for denial of medical care as a matter of law.

Even if I were to assume that there is a certain level of noncompliance with treatment (tantamount to a refusal to engage in medical care) which could result in a denial of medical benefits under Section 85.27, the defendants have not proven it in this case. To be clear, the defendants have proven by a preponderance of evidence that they were having significant difficulty communicating with Ms. McClain starting in November 2022. Her phone had been shut off at some point. She had moved or was possibly living between two residences. Based upon the record, she probably did not do a good job of keeping the defendants informed of these circumstances. At most, the defendants proved Ms. McClain was having difficulty with her living situation and her phone which caused her to miss a few appointments between November 2022 and January 2023. They also proved it was difficult to contact her to try to correct this problem. While this is undoubtedly frustrating, the reality is these things happen, particularly when the employer is required to provide transportation to an injured worker whose phone and living arrangements are in flux.


In her petition the claimant requests the defendants to authorize care with a medical provider in or near Montgomery, Alabama. I find this is the appropriate remedy.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is GRANTED. Defendants shall immediately authorize further treatment for Ms. McClain in the vicinity of Montgomery, Alabama. If a physician is not authorized by May 15, 2023, claimant may choose her own physician, and defendants shall be responsible for such treatment.

Signed and filed this 21st day of April, 2023.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

MCCLAIN V. SUNDANCE, INC.

Page 6

The parties have been served, as follows:

Brian Keit (via WCES)

Meredith Ashley (via WCES)