BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

PATRICIA HINTZ, Claimant, vs. WILLOW GARDENS CARE CENTER, Employer, and AMERICAN COMPENSATION INSURANCE CO., Insurance Carrier, Defendants.	File No. 5063287 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, Patricia Hintz.

The alternate medical care claim came on for hearing on September 26, 2017. The proceedings were digitally recorded, which constitutes the official record of this proceeding. By order filed February 16, 2015, this ruling is designated final agency action.

The record consists of claimant's exhibits 1, page 3, exhibit 3, pages 1-5, and exhibit 4, pages 1-4; claimant withdrew exhibit 1, pages 1 and 2 and all of exhibit 2 in order to comply with the 10 page limit. Defendants offered no additional exhibits. Claimant alleges a date of injury of October 13, 2016. During the course of hearing, defendants admitted the occurrence of a work injury on October 13, 2016, and liability for the conditions sought to be treated by this proceeding. Counsel for claimant offered oral arguments to support their positions; no witnesses testified on behalf of the claimant. Defendants offered arguments and the testimony of Julie Collins.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care.

FINDINGS OF FACT

Claimant, Patricia Hintz, sustained an injury arising out of and in the course of her employment with Willow Gardens Care Center on October 13, 2016. The relief claimant is seeking through her alternate medical care petition is, "a determination by the agency that defendants have failed abandoned care." (Alt. Care, August 16, 2017, page 6)

It should be noted that claimant has previously filed three other alternate care petitions. The first petition resulted in a March 8, 2017 decision from another deputy worker's compensation commissioner. At the time of that proceeding claimant was seeking an order from this agency ordering the defendants to send her to see either a pain specialist or a neurologist. However, the petition was denied because the defendants had made arrangements for the claimant to be seen at the University of Iowa Hospitals and Clinics by Dr. Carolyn Hettrich, an orthopedic surgeon.

Following denial of her petition for alternate medical care, Ms. Hintz sought treatment on her own with a physiatrist and pain medicine specialist, Dr. Stanley Mathew. She saw Dr. Mathew on April 3, 2017. He recommended therapy and prescribed some medications. (Alt. Care, August 16, 2017, p. 2)

On May 8, 2017, Ms. Hintz saw Dr. Swaran Singh, M.D., who recommended physical therapy and pain psychology. Dr. Singh also recommended that the patient continue managing her pain with the use of hydrocodone as directed by the prescribing physician. Dr. Singh further noted that the patient had a good relationship with Dr. Stanley Mathew and could continue to follow-up with Dr. Mathew. (Alt. Care, August 16, 2017, p. 2)

Claimant filed a second alternate care petition seeking the agency to order defendants to authorize Dr. Mathew to treat Ms. Hintz. On June 5, 2017, yet a different deputy denied claimant's petition for alternate medical care because defendants had arranged for claimant to be evaluated by a pain specialist at Cedar Rapids Pain Associates. (Alt. Care, August 16, 2017, p. 2)

On August 3, 2017, claimant filed a third alternate medical care petition. Claimant was dissatisfied with the care provided. The reason for her dissatisfaction was that defendants, "have failed to timely authorize Claimant's physical therapy, have failed to timely authorize a pain psychologist to treat Claimant, and have failed to pay for Claimant's medication." (Alt. Care Pet., p. 1) Defendants requested that defendants be ordered to provide treatment with Dr. Stanley Mathew. On August 16, 2017, the undersigned issued a ruling denying the petition for alternate medical care. The order stated in part:

> Claimant's request that this agency order defendants to authorize Dr. Mathew as a treating physician is denied. However, defendants are

> ordered to promptly provide the treatment recommended by the authorized providers. This treatment includes but is not limited to, physical therapy, treatment with a pain psychologist or psychiatrist, and payment of future medications. Failure to provide the recommended treatment in a prompt manner could result in a determination that the defendants have abandoned care.

(Alt. Care, August 16, 2017, p. 7)

Since May of this year, recommendations have been made by several authorized treating providers that claimant receive treatment with a pain psychologist or pain psychiatrist. (Alt. Care, August 16, 2017) At the time of the last alternate medical care hearing, defendants indicated they had contacted Dr. Bruce Jasper, a pain psychologist and that defendants were ready and willing to have him provide the recommended treatment.

Defendants called Jane Collins at the alternate care hearing. Ms. Collins is an independent nurse case manager hired by the defendants in this case; she has worked with Ms. Hintz since later November of 2016. Since the recommendations have been made for Ms. Hintz to receive treatment with a pain psychologist or pain psychiatrist, Ms. Collins has contacted three different offices or providers in an attempt to find someone who is willing to treat Ms. Hintz. She testified that it is extremely difficult to find a pain psychologist or pain psychiatrist that is willing to accept workers' compensation patients. According to Ms. Collins, she contacted Dr. Luke Hansen in June of this year; he is not accepting new patients. She also contacted Dr. Mike March in Cedar Rapids but was eventually informed that neither he nor anyone in his office is accepting workers' compensation patients. Ms. Collins also contacted the University of Iowa Hospitals and Clinics but was also unsuccessful. When questioned about the fact that she had only contacted three facilities in four months regarding possible treatment, Ms. Collins explained that there were also delays in getting authorization from the defendants. (Testimony)

Ms. Collins then contacted Bruce Jasper, Ph.D., who informed her that he required Ms. Hintz to have a formal pain psychology evaluation. Once that was performed then he would either provide Ms. Hintz with treatment or make a referral. (Testimony)

Ms. Collins also testified that the last time she spoke with Ms. Hintz was at the most recent Dr. Stec appointment. At that time, Ms. Hintz indicated that she was feeling better and did not think she needed to see a pain psychologist. (Testimony)

Claimant did go to the September 1, 2017, appointment that defendants scheduled for her with Dr. Jasper. Dr. Jasper is actually a clinical neuropsychologist, not a pain psychologist or pain psychiatrist as previously indicated. (Ex. 3) At that appointment, claimant was provided an informed consent form for the evaluation. The form stated that she was there for an evaluation and that no treating relationship will

exist between Ms. Hintz and Dr. Kasper. The form further stated that Dr. Kasper was an independent examiner hired by the workers' compensation carrier to perform an independent evaluation. (Ex. 4, pp. 1-2) As of the September 26, 2017, hearing the parties still had not received a report from Dr. Jasper. Dr. Jasper's office has indicated that he needed further retainer from the defendants to finish his report. (Ex. 4, p. 4) Dr. Jasper also indicated that although his report was not finalized his preliminary findings indicated that Ms. Hintz may not need further counseling based on her report of feeling better and her resistance to discussion of prior psychological history or needs. (Ex. 4, p. 4)

Defendants have redirected claimant's care to several different doctors. I find that since May of 2016, several authorized providers have recommended that Ms. Hintz see a pain psychologist or pain psychiatrist for treatment. (Alt. Care, August 16, 2017; Ex. 1, p. 3) To date, defendants have failed to provide any such treatment. Defendants were previously ordered by the undersigned to promptly provide the recommended treatment. In that order defendants were cautioned that failure to provide prompt treatment could result in a determination that they had abandoned care. Yet as of the September 26, 2017, alternate care hearing defendants still have not authorized the recommended treatment. I find defendants do not have a treatment plan for Ms. Hintz. Although they sent claimant to see Dr. Jasper on September 1, 2017, no treatment has been authorized. In fact, preliminary indications from Dr. Jasper's office seem to indicate that he will not recommend any treatment. I find defendants further delayed treatment by delaying payment of the full retainer requested by Dr. Jasper. I find that defendants have failed to provide prompt and reasonable care for Ms. Hintz. I find that defendants' failure to authorize treatment that has been recommended by an authorized provider since May of 2017 constitutes an abandonment of care.

Furthermore, claimant has already seen Stanley Mathew, M.D., for treatment and would like to return to see Dr. Mathew. A review of the agency file reveals that the prior treatment recommendations made by Dr. Mathew were subsequently recommended by many of the treating physicians selected by the defendants. (Alt. Care, August 16, 2017, p. 3) With regard to the recommendation for a pain psychologist or pain psychiatrist, I find that the defendants are currently offering no care or treatment to the claimant. I further find that returning to treatment with Dr. Mathew is superior to the treatment currently being offered by the defendants.

REASONING AND CONCLUSIONS OF LAW

Under Iowa law, the employer is required to provide care to an injured employee and is permitted to choose the care. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

> [T]he 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.

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 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). In Pirelli-Armstrong Tire Co., 562 N.W.2d at 433, the court approvingly quoted Bowles v. Los Lunas Schools, 109 N.M. 100, 781 P.2d 1178 (App. 1989):

> [T]he words "reasonable" and "adequate" appear to describe the same standard.
>
> [The New Mexico rule] requires the employer to provide a certain standard of care and excuses the employer from any obligation to provide other services only if that standard is met. We construe the terms "reasonable" and "adequate" as describing care that is both appropriate to the injury and sufficient to bring the worker to maximum recovery.

The commissioner is justified in ordering alternate care when employer-authorized care has not been effective and evidence shows that such care is "inferior or less extensive" care than other available care requested by the employee. Long, 528 N.W.2d at 124; Pirelli-Armstrong Tire Co., 562 N.W.2d at 437.

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. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 16, 1975).

With regard to the recommendations from authorized providers that claimant receive treatment from a pain psychologist or pain psychiatrist, I conclude that defendants are currently offering no treatment. I further conclude that this is inferior or less extensive care than the care with Dr. Mathew that claimant is requesting.

Furthermore, I conclude that the authorized providers have been recommending treatment from a pain psychologist or pain psychiatrist since May of 2017. Defendants' four-month delay in authorizing any such treatment is unreasonable and a failure to provide prompt and reasonable care.

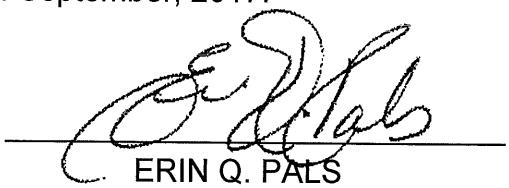
ORDER

THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care is granted.

Defendants shall transfer care through Dr. Stanley Mathew.

Signed and filed this 27th day of September, 2017.



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