

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ELIZABETH DIAZ-RUIZ,

Claimant,

vs.

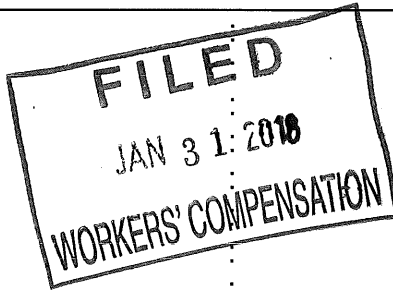
ABCM CORPORATION,

Employer,

and

CREATIVE RISK SOLUTIONS,

Insurance Carrier,
Defendants.



File No. 5060822

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, Elizabeth Diaz-Ruiz. Claimant appeared personally and through her attorney, Nicholas Platt. Defendants appeared through their attorney, David Schrock. Also present on the conference call for defendants were Nancy Kramer, Creative Risk Solutions, as well as Carla Mahler and Tracie Quinones, from ABCM Corporation. Andres Diaz served as the Spanish language interpreter.

The alternate medical care claim came on for hearing on January 30, 2018. 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 of claimant's exhibits 1 through 3, defendants' exhibits A through C, as well as the sworn testimony of Ms. Diaz-Ruiz, Ms. Kramer and Ms. Quinones. The defendants do not dispute liability for the conditions which claimant seeks to have treated as set forth in her petition.

ISSUE

The issue presented for resolution is whether the claimant is entitled to a second opinion for her ongoing symptoms of pain and disability, particularly in her neck and low back.

FINDINGS OF FACT

The claimant sustained an injury which arose out of and in the course of her employment, to her low back on January 19, 2017. The defendants have directed her care throughout. Her most recent treating physician was Trevor Schmitz, M.D., an orthopedic spine surgeon. (Defendants' Exhibit B) Dr. Schmitz last saw the claimant in June 2017, when he recommended an epidural steroid injection for pain. (Def. Ex. C, p. 10) He did not offer any other alternatives. "I had a lengthy discussion with her with regards to the risks of this injection, as well as the alternative, which would be to live with the pain." (Def. Ex. C, p. 10) Ms. Diaz-Ruiz was skeptical of this treatment and was not comfortable agreeing to it the day it was offered.

In July 2017, Dr. Schmitz documented in his file that claimant "does not wish to go forward with the injection as I recommended in my previous note on June 13, 2017." (Def. Ex. B) He placed her at maximum medical improvement with no restrictions.

Ms. Diaz-Ruiz testified that she wished to get a second opinion or return to Dr. Schmitz. To this end, she testified that she called her original adjustor named Ashley. She testified she called Ashley a couple of times and did not get called back. In August 2017, a new adjustor, Nancy Kramer, sent a letter to claimant essentially closing the case. Ms. Kramer testified at hearing that she attempted to contact Ms. Diaz-Ruiz on a couple of occasions but did not receive a return call.

Ms. Diaz-Ruiz testified that in approximately November 2017, she told her supervisor, Tracie Quinones, that her back had not healed and that she was still trying to get a second opinion for the pain. She further testified that her back and neck have been in continuous pain, up through the date of hearing. Ms. Quinones testified at hearing that this did, in fact, happen, but it actually occurred in December 2017. On December 16, 2017, claimant's counsel wrote to Ms. Kramer, asking for a second opinion from a different orthopedic surgeon. (Cl. Ex. 2, p. 2) There is no response to this letter in the file.

Ms. Kramer testified that the carrier had arranged an appointment for the claimant to return to Dr. Schmitz on January 31, 2018, the day after the scheduled hearing. Since it was so close to the hearing date, no one had informed the claimant of this. She further testified that she was willing to send claimant to a physician other than Dr. Schmitz for a second opinion evaluation.

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. Assman 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 January 31, 1994).

Based upon the record before me, I conclude the treatment provided by the defendants to date has been, generally speaking, reasonable. There was a breakdown in communication between the parties. Most of the hour and fifteen minute hearing was spent determining which party had caused the communication error.

I believe the claimant that she asked her first adjustor, Ashley, for a second opinion after her June 2017, appointment. I also believe Ms. Kramer that she attempted to call the claimant after that date. I believe the claimant that she told her supervisor, Ms. Quinones, in November or December 2017, that she was not fully healed and still wished to have a second opinion. I find that both parties could have done a better job communicating up to this point.


In December 2017, claimant's counsel wrote a letter to the insurance carrier (or TPA), clearly requesting alternate medical care. There is no response to this letter in the file; however, she did set up an appointment with Dr. Schmitz. Unfortunately, claimant was never informed of this appointment until the hearing. On cross-examination, Ms. Kramer testified she was willing to send claimant for a second opinion with a physician other than Dr. Schmitz. I interpret this testimony as being tantamount to a consent to alternate medical care.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is GRANTED. The defendants shall immediately arrange a second opinion for the claimant.

Signed and filed this 31st day of January, 2018.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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