

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SONIA NABER,

Claimant,

vs.

BROADLAWNS MEDICAL CENTER,

Employer,

and

SAFETY NATIONAL
CASUALTY CORPORATION,Insurance Carrier,
Defendants.

File No. 20013587.06

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. By filing an original notice and petition for alternate medical care, claimant, Sonia Naber, invoked the expedited procedure of rule 876 IAC 4.48.

The alternate medical care claim came on for telephonic hearing on August 3, 2023. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Claimant appeared through her attorney, Nicole Merrill. Defendants appeared through their attorney, Jane Lorentzen.

Pursuant to the Commissioner's July 21, 2023 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. Any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code section 17A.

The evidentiary record consists of claimant's exhibits 1 through 4, consisting of ten pages and defendants' exhibits A through D, consisting of five pages. Neither party called witnesses, but counsel for each party presented cogent and helpful arguments.

ISSUE

The issue presented for resolution is whether the claimant is entitled to an alternate medical care order requiring defendants to authorize additional mirror therapy and/or physical therapy.

FINDINGS OF FACT

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

Sonia Naber sustained a work-related injury to her left foot and left leg on January 24, 2020. Defendants have authorized care for claimant. She has had extensive treatment, including surgery. She ultimately ended up being evaluated and treated by John E. Femino, M.D. at the University of Iowa. The current dispute arises out of a request for ongoing mirror therapy and/or physical therapy.

Claimant has been diagnosed with complex regional pain syndrome (CRPS), and several modes of treatment have been recommended and attempted. Among the treatments recommended were mirror therapy (referred to in medical notes as "GMI"). Physical therapists do not widely specialize in this type of treatment. Therefore, claimant had to travel to North Liberty, Iowa to obtain this treatment. Defendants' Exhibit A contains an April 5, 2023 progress report from Kepros Physical Therapy and Performance, who conducted the mirror therapy.

The physical therapist from Kepros indicated that claimant "has completed GMI program." (Defendants' Ex. A, p. 2) The therapist further noted claimant "will also need to cont. GMI program independently." (Defendants' Ex. A, p. 2) Based on this therapy record, it appears that claimant completed the mirror therapy on April 5, 2023 but needs to continue that therapy as a home therapy.

With respect to physical therapy, claimant began this treatment after completing the mirror therapy. Physical therapy was provided at Athletico in Grimes, Iowa. In Athletico's June 12, 2023 note, the therapist recommended four more weeks of physical therapy, twice per week. Obviously more than four weeks have now passed since this recommendation. Importantly, claimant returned to Dr. Femino after this recommendation for further evaluation.

Review of Dr. Femino's June 20, 2023 office note demonstrates that he declared claimant at maximum medical improvement. (Claimant's Ex. 2, p. 8) However, he mentions claimant's mirror therapy and physical therapy. Dr. Femino indicates in his note he "would support her further utilization of these resources." (Claimant's Ex. 2, p. 8) Claimant reads this to mean that Dr. Femino believes ongoing or additional mirror therapy and/or physical therapy is indicated and reasonable.

Defendants attempted to clarify this issue with Dr. Femino by sending him correspondence. However, Dr. Femino is currently out of the country and is not available to respond to the inquiry. Defendants, therefore, point out that Dr. Femino's support for continued utilization of mirror therapy and/or physical therapy could simply mean that claimant should continue home exercise, or a home routine provided by those therapists.

Defendants also introduce a July 28, 2023 report by the nurse case manager, Erin Bass, they hired to assist with the management of claimant's medical care. Ms. Bass indicated that Dr. Femino's "nurse coordinator told me in person that he was not willing to write any additional orders for her, and that was including PT." Ms. Bass's understanding from those comments is that "Dr. Femino does not intend to write an order for [claimant] to continue with PT as he has placed her at MMI." (Defendants' Ex. B)

Ms. Bass's interpretation and opinion is important. She has coordinated much of claimant's care and had direct communication with Dr. Femino's staff. However, I recognize that Ms. Bass's interpretation may not be accurate.

In fact, she notes that Dr. Femino never agreed to be a treating physician for claimant. While defendants argued at hearing that Dr. Femino likely would have written an order for further PT if he thought it was reasonable and necessary, Ms. Bass notes in her report that there "was never a formal order for PT." (Defendants' Ex. B) It is possible that Dr. Femino believes ongoing mirror therapy and/or physical therapy are reasonable, appropriate, and necessary treatment but is not willing to assume a treating physician role or provide those orders. Unfortunately, it is not really possible to know for sure in this evidentiary record.

Ultimately, I recognize the parties both present reasonable interpretations and arguments based on the medical records in this evidentiary record. However, these contradictory interpretations cannot truly be rectified or resolved in this evidentiary record. It is entirely possible that Dr. Femino will recommend further physical therapy and/or mirror therapy given his indication that he "would support her further utilization of these resources." (Claimant's Ex. 2, p. 8) It is also entirely possible that Ms. Bass accurately understood the comments of Dr. Femino's nurse coordinator and that Dr. Femino believes claimant has achieved MMI and recommends no further formal treatment via mirror therapy or physical therapy.

Realistically, the best course of action is to obtain the input and clarified recommendations of Dr. Femino to determine if additional mirror therapy and/or additional physical therapy is indicated for claimant. However, based upon this evidentiary record, I find that claimant failed to prove by a preponderance of the evidence that additional treatment in the form of mirror therapy and/or physical therapy is currently indicated. I understand and find that claimant desires additional treatment in hopes of improving her condition. However, I cannot find in this evidentiary record that

the care sought in this proceeding is medically necessary as opposed to simply desired by claimant.

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

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); Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); 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. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). 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 she 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).

Ultimately, I found that claimant failed to prove by a preponderance of the evidence that the additional care sought, either as mirror therapy or physical therapy, is medically reasonable and necessary. It is certainly possible that the care is needed, and Dr. Femino may clarify his opinions to recommend further treatment in the form of mirror therapy and/or physical therapy. However, based upon the record submitted in this alternate medical care proceeding, I conclude that claimant failed to carry her burden of proof to establish entitlement to an alternate medical care order for either mirror therapy or physical therapy at this time. Defendants are encouraged to continue their investigation, however, to clarify and determine the medical opinions of Dr. Femino.

ORDER

THEREFORE, IT IS ORDERED:

The claimant's petition for alternate medical care is denied at this time.

Signed and filed this 3rd day of August, 2023.

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

WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Corey Walker (via WCES)

Jane Lorentzen (via WCES)

Adam Kiel (via WCES)