

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RANDY EDWARDS,

Claimant,

vs.

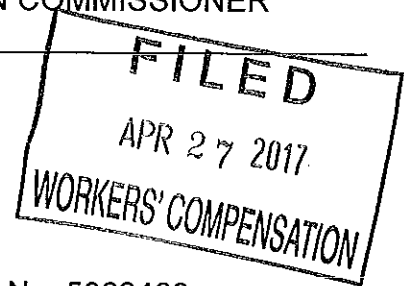
LUKE'S WASTE MANAGEMENT,
d/b/a SAWYER LUKE,

Employer,

and

LIBERTY MUTUAL INSURANCE CO.,

Insurance Carrier,
Defendants.



File No. 5062483

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, Randy Edwards. Claimant appeared personally and through his attorney, Daniel Bernstein. Defendants appeared through their attorney, Christine Wesberg Dorn.

The alternate medical care claim came on for hearing on April 27, 2017. 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 the sworn testimony of claimant and claimant's exhibits 1 through 3; and defendants' exhibits A through G.

ISSUE

The issue presented for resolution is whether the claimant is entitled to be evaluated by another specialist to review his MRI.

FINDINGS OF FACT

The claimant injured his left shoulder on January 28, 2015, while working for Luke's Waste Management. He underwent medical care, including a surgery performed by Matthew Bollier, M.D., at the University of Iowa Hospitals and Clinics. He underwent a functional capacity evaluation in December 2016. (Defendants' Exhibit A) After the FCE, his shoulder began hurting again, he was given another MRI. The MRI report seems to suggest that there are positive findings, such as "recurrent SLAP tear" and a "partial-thickness articular sided tear." (Cl. Ex. 1, p. 2) The films were apparently shown to or discussed with Dr. Bollier, who "did not see new tears." (Cl. Ex. 2) At least this is what was documented by Ronda Dunn, ARNP, on February 10, 2017.

Claimant has reasonably asked to have "new eyes" review the MRI and explain to the claimant what is going on. (Cl. Ex. 3) The defendants apparently believed it was reasonable to allow the claimant a second opinion under these circumstances and negotiated with claimant's counsel to agree upon a physician for a second opinion. (Cl. Ex. 3, pp. 1-7) The parties agreed on two separate physicians both of whom ultimately declined to see the claimant after reviewing medical records. James Nepola, M.D., wrote a letter on April 24, 2017, indicating he reviewed medical records. "I determined it was unlikely that I would be able to offer any new or further treatment that would be likely to improve his condition." (Def. Ex. E) Matthew J. White, M.D., wrote on April 26, 2017, that he reviewed the records and simply declined to provide orthopedic care.

I completely understand claimant's dissatisfaction with this care. Defendants offered a second opinion and then failed to deliver a meaningful second opinion. Any reasonable person would be dissatisfied with this. I would be dissatisfied with this. I suspect defendants would be dissatisfied with this.

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 January 31, 1994). It is the claimant's burden to prove the care provided by the defendants is unreasonable and in most cases this will require some medical evidence.

In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997), the supreme court held that "when evidence is presented to the commissioner that the employer-authorized medical care has not been effective and that such care is 'inferior or less extensive' than other available care requested by the employee, . . . the commissioner is justified by section 85.27 to order the alternate care."

While it was forward-thinking of the defendants to offer the claimant a second opinion, they were not legally required to do so without some medical evidence. Stated another way, it was reasonable to offer a second opinion; however, it is not unreasonable to refuse a second opinion absent medical evidence that the second opinion is necessary.

I admit I am somewhat concerned about what appears to be a positive MRI report and the failure of the treating doctor to address this in a meaningful way. The treating medical provider, however, provided his medical opinion that there was no new tear and the repair was "intact." (Cl. Ex. 2) Two other highly-qualified physicians, agreed upon by claimant's counsel, also reviewed records. One stated that there was no additional treatment he could offer. The other simply declined to provide care to the claimant. I am not a physician. Hypothetically, if one of the physicians recommended that claimant have a second opinion, I would not interfere with that medical judgment. I would order the second opinion. Absent some medical evidence, however, that the claimant needs a second opinion, I am not free to interject my own medical opinion that he requires a second opinion.


Having stated all of this, I completely understand claimant's dissatisfaction. He has a report which he understands shows new or recurrent tears in his left shoulder and he has apparently not been able to talk to any physician about this report.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is DENIED.

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



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Daniel D. Bernstein
Attorney at Law
1313 Harrison St
Davenport, IA 52803
dbernstein152@yahoo.com

Christine E. Westberg Dorn
Attorney at Law
1299 Farnam St., Ste. 260
Omaha, NE 68102
christine.westbergdorn@libertymutual.com

JLW/kjw