

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

THOMAS HANNON,

Claimant,

vs.

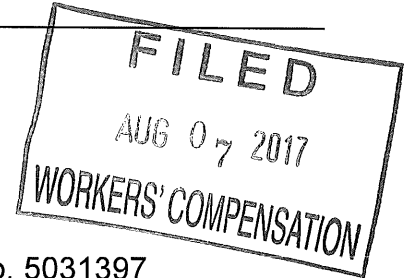
MID-CONTINENT TRUCKING CO.,

Employer,

and

CONTINENTAL WESTERN,

Insurance Carrier,
Defendants.



File No. 5031397

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, Thomas Hannon. Claimant appeared pro se. Defendants appeared through their attorney, René Charles Lapierre. Cindy Kundron testified on behalf of the insurance carrier, Continental Western.

The alternate medical care claim came on for hearing on August 4, 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 the claimant, as well as Ms. Kundron. Prior to hearing, the defendants acknowledged that claimant suffered a work injury February 5, 2005. The defendants could not accept medical causation on the treatment sought because prior to the commencement of hearing, the defendants did not know what specific treatment was being sought. At the commencement of hearing, claimant made an opening statement, stating that he was seeking special orthotic or prosthetic shoes he needs as a result of his work-related disability. He also mentioned other treatment he needs, such as medications, but through the course of the hearing, it is my understanding that those items have now been authorized.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care specifically for orthotics for his shoes.

FINDINGS OF FACT

The claimant sustained a significant work-related injury on February 5, 2008, causing damage and disability to his pelvis, spine, and left knee, at a minimum. I have a minimal record on the nature of claimant's disability at this time and the full file was not available to me.

The defendants admitted this injury and acknowledge that it was settled in 2010. While indemnity benefits were closed out, claimant's medical remains open. An adjustor for the insurance carrier testified that claimant's authorized treaters are Tara Sands, a nurse practitioner, as well as a counselor for the mental injury which is not part of this alternate care claim.

Claimant testified that he has been receiving treatment through Christine Berke, a nurse practitioner at Nebraska Medical Center. Her treatment appears to have never been formally authorized by the defendants. It is unclear based upon this record, whether this is because the defendants specifically denied that such treatment is causally connected to claimant's work injury, or there is some other reason, such as an oversight or mistake.

The claimant testified that he believes the defendants are aware of all of the treatment that he needs. It is his opinion that the defendants have repeatedly refused to authorize treatment he needs for his work injury. I do not have sufficient evidence of this assertion at this time. The insurance representative testified that a request for "diabetic shoes" was denied as not being related to the work injury. When a request for orthotic shoes came in later, which appeared to be for the same shoes, the carrier sought clarification from the provider, which has never been answered.

The claimant is diabetic and the diabetes is unrelated to the work injury.

The record was held open to allow the claimant to provide a letter from one of his medical providers outlining his need for the orthotics. The letter was not received or entered into evidence prior to this decision.

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).

Before any benefits can be ordered, including medical benefits, compensability of the claim must be established, either by admission of liability or by adjudication. The summary provisions of Iowa Code section 85.27 as more particularly described in rule 876 IAC 4.48 are not designed to adjudicate disputed compensability of claim.

The Iowa Supreme Court has held:

We emphasize that the commissioner's ability to decide the merits of a section 85.27(4) alternate medical care claim is limited to situations where the compensability of an injury is conceded, but the reasonableness of a particular course of treatment for the compensable injury is disputed.

....

Thus, the commissioner cannot decide the reasonableness of the alternate care claim without also necessarily deciding the ultimate disputed issue in the case: whether or not the medical condition Barnett was suffering at the time of the request was a work-related injury.

....

Once an employer takes the position in response to a claim for alternate medical care that the care sought is for a noncompensatory injury, the employer cannot assert an authorization defense in response to a subsequent claim by the employee for the expenses of the alternate medical care.

R. R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 197-198 (Iowa 2003).

At this time, I do not have enough information to order alternate medical care. The record is incomplete.

At the time of hearing, the claimant was primarily seeking two types of alternate medical care. He was seeking (1) treatment from Christine Berke, a nurse practitioner through the Nebraska Medical Center and (2) some type of orthotic or diabetic shoes. At this time, I deny claimant's request for alternate medical care on two separate grounds. First, it is not clear whether liability is denied for the condition for which treatment is sought because neither the petition itself, nor the evidence presented at hearing was sufficiently specific. Second, there is simply not enough evidence in this record that the defendants have failed to provide reasonable care to date.

I find, however, that the defendants are required to investigate the claimant's request for alternate medical care further and provide him with a letter outlining whether they agree to provide the treatment he has requested. See 876 IAC section 3.1(2). If the defendants do not agree to the treatment sought by claimant, they shall provide him with specific reasons. This letter shall be mailed to the claimant and copied to the agency to be placed in the file. A subsequent report of injury shall be filed if appropriate.

After receiving the letter from defendants, claimant may re-file this alternate medical care petition, or he may file a regular petition for medical benefits, which should be expedited, if the care is denied as not causally-connected.

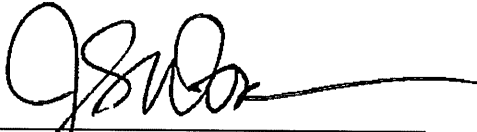
ORDER

THEREFORE IT IS ORDERED:

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

The defendants are ORDERED to investigate claimant's need for alternate medical care as set forth above.

Signed and filed this 7th day of August, 2017.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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JLW/kjw