BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LISA MUHLBAUER,

Claimant,

vs.

TOWNHOUSE PIZZA, INC., d/b/a TOWN HOUSE PIZZA & LOUNGE,

Employer,

and

ILLINOIS CASUALTY COMPANY,

Insurance Carrier,
Defendants.

File No. 5064523

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, Lisa Muhlbauer. Claimant appeared personally and through attorney, Richard Maher. Defendants appeared through their attorney, Dru Moses.

The alternate medical care claim came on for hearing on July 26, 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 5, which were received without objection. The defendants do not dispute liability for claimant's August 18, 2017, work injury.

ISSUE

The issue presented for resolution is whether the claimant is entitled to return to the authorized treating physician.

FINDINGS OF FACT

The claimant sustained an injury to her bilateral knees on or about August 18, 2017, when she fell at work. (Claimant's Exhibit 1) Prior to that date, she had healthy

knees. Subsequently, Michael Nguyen, M.D., became her authorized physician. Dr. Nguyen initially believed she had suffered a meniscus tear. (Cl. Ex. 2, p. 2) He later reviewed an MRI and ordered physical therapy. (Cl. Ex. 3, p. 1) Ms. Muhlbauer attended two physical therapy sessions. She testified she was told that physical therapy was not going to fix her knee. She further testified that the therapy office was not open during convenient hours for her; however, she could have received therapy through a different provider. Ms. Muhlbauer did not wish to continue therapy because she did not feel it was going to help her condition.

Ms. Muhlbauer testified that she has had ongoing symptoms, particularly in her right knee. It is painful and it "catches." In December 2017, Dr. Nguyen released Ms. Muhlbauer from all restrictions, placed her at maximum medical improvement and recommended no further treatment. (Cl. Ex. 5) Dissatisfied, Ms. Muhlbauer asked for further treatment through legal counsel. Instead of offering treatment, in May 2018, defendants offered an independent medical examination with a physician in Omaha, Nebraska. Claimant's counsel characterized this physician as "a well-known defense physician." Claimant refused to attend this evaluation.

Ms. Muhlbauer testified she would like to see Mark Goebel, M.D., an orthopedic surgeon in Omaha, Nebraska. (Cl. Ex. 4) Dr. Goebel provided treatment to her family members who were satisfied with his care. She has confidence in Dr. Goebel.

I find that the claimant has ongoing symptoms which warrant ongoing medical care. With the benefit of hindsight, it probably would have been advisable for Ms. Muhlbauer to comply with Dr. Nguyen's recommendations for physical therapy; however, she provided a reasonable explanation for her actions.

At the time of hearing, defendants were offering no treatment or care for the claimant, and instead, offered an independent medical evaluation. I find this is unreasonable under the circumstances.

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).

Having found that the defendants' failure to offer any treatment to the claimant is unreasonable, I conclude that she is entitled to alternate medical care. The defendants did offer an IME to the claimant with a physician claimant's counsel found undesirable. An IME is not the same as offering treatment. It is unclear whether defendants intended to follow any treatment recommendations from the IME physician or if there was some other purpose for the IME. Based upon the record before me, it does not appear defendants attempted to compel the IME. In any event, I conclude an IME is not a substitute for medical treatment. Ms. Muhlbauer is entitled to medical treatment.

Ms. Muhlbauer wants to get better. She continues to be symptomatic, particularly in her right knee. It is now nearly a year after the original injury. Further evaluation and treatment should not be delayed.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is GRANTED. Defendants shall immediately authorize an orthopedist other than Dr. Nguyen to evaluate and treat the claimant.

Signed and filed this 26th day of July, 2018.

JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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