

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DESTRIA FISK,

Claimant,

VS.

FIRST RESOURCES CORPORATION,

Employer,

and

ACCIDENT FUND GENERAL INS. CO.,

Insurance Carrier,
Defendants.

File No. 19700150.01

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, Destria Fisk. Claimant appeared personally and through attorney, Philip Miller. Defendants appeared through their attorney, Laura Ostrander. Both parties were well-represented.

The alternate medical care claim came on for hearing on August 22, 2019. 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 claimant's exhibits 1 through 8 and defense exhibits A through E, which were submitted successfully through the electronic filing system and received without objection. The defendants do not dispute liability for claimant's September 2014, work injury.

ISSUE

The issue presented for resolution is whether the defendants unreasonably interfered with or delayed the claimant's physical therapy.

FINDINGS OF FACT

The claimant, Destria Fisk, sustained an injury to her mid to upper back on June 3, 2019, while working for the employer. The defendants do not contest liability for this injury or the condition in her thoracic area of her back at this time. Ms. Fisk testified under oath at hearing. Her hearing testimony is credible in all respects.

On July 16, 2019, claimant saw defendants' authorized treating physician, Matthew Doty, D.O., who recommended physical therapy. At that time, Ms. Fisk explained that she suffered also suffered symptoms in her low back from a prior, non-work related injury. She told Dr. Doty that she was receiving physical therapy through Southeast Iowa Physical Therapy for that condition. After evaluating Ms. Fisk, Dr. Doty determined that she should have a 30 pound lifting restriction and receive physical therapy through Southeast Iowa Physical Therapy. (Claimant's Exhibits 2 and 3) On July 17, 2019, claimant's counsel wrote the insurance representative and asked that the therapy be authorized without delay. The physical therapy was not authorized immediately.

There is a "referral receipt" from One Call Physical Therapy dated July 17, 2019, which states a referral was made to One Call Physical Therapy on that date. (Def. Ex. C, p. 1) There is another note in the record documenting that One Call Physical Therapy left messages for Ms. Fisk, in an apparent effort to arrange physical therapy appointments. In fact, the claims representative wrote to claimant's counsel on July 26, 2019, indicating that Ms. Fisk was not returning One Call Medical's phone calls.

Ms. Fisk testified credibly that she does not answer phone calls from numbers she does not recognize and that she does not listen to her voicemail every day. She testified that once her attorney contacted her instructing her to contact One Call Physical Therapy, she did so immediately, around July 27, 2019. She testified credibly that she was transferred to different individuals in an effort to locate someone who could help her. She ultimately spoke with Ryan. Ms. Fisk testified that Ryan told her that Southeast Iowa Physical Therapy needed to complete certain steps before her treatment could be authorized. Specifically, Ms. Fisk testified that Southeast Iowa Physical Therapy needed to return some form to One Call Physical Therapy. Ms. Fisk attempted to facilitate this, however, Southeast Iowa Physical Therapy claimed they never received a form such as this.

Ms. Fisk returned to Dr. Doty on July 30, 2019. He again specifically recommended physical therapy through Southeast Iowa Physical Therapy (2 times per week for 4 weeks). (Cl. Ex. 5) The following day, claimant's counsel wrote to the insurance representative again and asked to have the therapy authorized. (Cl. Ex. 6) On August 1, 2019, claimant's counsel wrote again, more specifically demanding that the physical therapy be authorized promptly. (Cl. Ex. 7-8) The letter also challenged the claims adjustor's understanding of Iowa law with regard to medical treatment. The same letter was re-sent to the carrier on August 7, 2019, indicating no response had been received. (Cl. Ex. 7-8)

On August 6, 2019, Dr. Doty wrote a new prescription, authorizing physical therapy at Pella Regional Health Center (2 times per week for 4 weeks). There is no explanation for Dr. Doty's prescription note in the record. It is apparent that the claims representative contacted Dr. Doty to obtain this note, however, there is no indication of what happened during this interaction. On the same day, August 6, 2019, the claims representative sent an internal email of some type, indicating that "Dr. Doty has written us permission to allow claimant to treat at Pella Regional for PT, which is in network." (Def. Ex. B, p. 1) A medical services coordinator from One Call wrote to the claims representative indicating they were in the process of scheduling the therapy with Pella Regional. (Def. Ex. B, p. 1) Ms. Fisk testified Dr. Doty's nurse contacted her on August 6, 2019, and told her that the therapy was to be switched to Pella Regional. This was the first time she learned that Southeast Iowa Physical Therapy would not be authorized. She was told "Matt" from the insurance company was switching the therapy to Pella Regional. The claimant testified that she preferred to go to Southeast Iowa Physical Therapy because they have superior facilities, she is familiar with their staff and the therapy she has received from them for a non-work injury has been highly effective.

There is one additional email in the file, which documents One Call Physical Therapy's efforts to schedule Ms. Fisk's physical therapy. "We have attempted multiple days to contact the claimant to schedule or locate where attending with no response." (Def. Ex. D)

At hearing, defendants argued that it was perfectly reasonable for defendants to request that the therapy occur some place other than Southeast Iowa Physical Therapy since the claimant was receiving treatment with that provider for a non-work related injury. Defendants also argued that they have not received a signed patient's waiver authorizing them to evaluate her conditions. For his part, claimant's counsel promised to send the waivers to defense counsel that day.

Based upon the record before me, I find that the defendants unreasonably interfered with and otherwise delayed the claimant's medical treatment. The authorized treating physician, Dr. Doty, on two occasions ordered physical therapy be completed through Southeast Iowa Physical Therapy. Based upon the claimant's highly credible testimony, Dr. Doty was aware that she had treated there for a non-work related injury. He was apparently unconcerned with this as far as his treatment recommendations. In other words, even knowing of the claimant's non-work related low back concerns, Dr. Doty specifically recommended treatment through the same provider.

An independent organization, One Call Physical Therapy, attempted to contact Ms. Fisk on or about July 26, 2019, to schedule the therapy. Ms. Fisk contacted One Call Physical Therapy, the following day, July 27, 2019. She testified that they discussed getting authorization for treatment at Southeast Iowa Physical Therapy. There was allegedly some issue with Southeast Iowa Physical Therapy signing a needed authorization form. Based upon the record before me, it is unclear where the therapy would have been scheduled at that time. The first reference to switching the

therapy to Pella Regional is documented in an email dated August 6, 2019, approximately three weeks after the first physical therapy referral was made. On that date, Ms. Fisk was first notified that Southeast Iowa Physical Therapy would not be authorized and she had to go to the insurance carrier's preferred clinic, Pella Regional. There is no evidence in this record which suggests that Dr. Doty changed his opinion of where the physical therapy should occur based upon his medical judgment. Rather, the greater weight of evidence supports a finding that the insurance carrier simply preferred to utilize an "in-network" provider. Having reviewed the entire record, I find that this is an unreasonable interference with the claimant's medical care, which has caused some unreasonable delay in her care. This therapy likely would have been most beneficial and effective had it begun immediately. The most appropriate remedy at this time is for the defendants to immediately authorize the physical therapy originally ordered by Dr. Doty.

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).

When a designated physician refers a patient to another physician, that physician acts as the defendant employer's agent. Permission for the referral from defendant is not necessary. Kittrell v. Allen Memorial Hospital, Thirty-fourth Biennial Report of the Industrial Commissioner, 164 (Arb. November 1, 1979) (aff'd by industrial commissioner). See also Limoges v. Meier Auto Salvage, Iowa Industrial Commissioner Reports 207 (1981).

"Determining what care is reasonable under the statute is a question of fact." Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995).

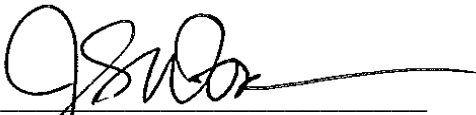
Based upon my findings of fact set forth above, the defendants are ordered to immediately authorize physical therapy with Southeast Iowa Physical Therapy.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is GRANTED.
Defendants shall immediately authorize physical therapy with Southeast Iowa Physical Therapy.

Signed and filed this 22nd day of August, 2019.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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