

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

GARY YANDA,

Claimant,

vs.

KIRKWOOD COMMUNITY COLLEGE,

Employer,

and

WEST BEND MUTUAL INS.,

Insurance Carrier,
Defendants.

File No. 23700292.01

ALTERNATE MEDICAL CARE
DECISION

Headnote: 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, Gary Yanda.

The alternate medical care claim came on for hearing on April 13, 2023. Claimant appeared through his attorney Matthew Dake. Defendants appeared through their attorney Edward Rose. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding.

Pursuant to the Commissioner's February 16, 2015, 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 hearing record consists of:

- Claimant's exhibits 1-5;
- Defendants' exhibit A;
- Claimant's hearing brief

Counsel for both parties provided argument. The record closed at the end of the alternate medical care telephonic hearing.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care in the form of:

- Authorization to treat with physiatrist, Stanley Mathew, M.D.

FINDINGS OF FACT

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

On April 19, 2022, claimant sustained a work-related injury to his sternoclavicular joint. (See Petition; Hearing Testimony). Defendants admitted liability for the injury¹ and authorized treatment with a variety of different medical providers. (Hearing Testimony). According to defendants, claimant was originally authorized to treat with Jeffrey Westpheling, M.D., an occupational medicine specialist at Mercy Care Occupational Health at Prairie Creek in Cedar Rapids, Iowa. (Id.). Dr. Westpheling began treating claimant in June 2022. (Id.). At some point, Dr. Westpheling referred claimant to Mark Kline, M.D., a pain medicine specialist at Mercy Medical Center. (Id.). On July 1, 2022, Dr. Westpheling also made a referral to an orthopedist to see if anything could be done surgically for the claimant's condition.² (Id.). After receiving this referral, defendants contacted the University of Iowa Hospitals and Clinics and Steindler Clinic to see if they would evaluate the claimant's sternoclavicular injury. (Id.). Both declined. (Ex. 1, p.1; Ex. A, p. 10). According to correspondence between the parties, Steindler declined because they did not have a physician qualified to perform any necessary surgery or provide injections. (Ex. A, p. 10).

At some point, claimant's authorized treating physician changed from Dr. Westpheling to Nicholas Bingham, M.D. (Hearing Testimony). Dr. Bingham is also an occupational medicine specialist at Mercy Care. (Id.). He took over claimant's care because Dr. Westpheling took a new job in Dubuque, Iowa. (Id.). Dr. Bingham saw claimant in December 2022. (Id.). At that time, he recommended that defendants ask Mayo Clinic if they had an orthopedist willing to evaluate the claimant. (Id.). Defendants contacted Mayo Clinic, requesting an orthopedic evaluation for the claimant. (Id.; Ex. 1, p. 1; Ex. A, p. 10). Mayo Clinic also declined, stating their doctor would not treat claimant's type of injury. (Ex. A, p. 8; Ex. 1, p. 1). Since December 2022, defendants have also contacted Capital Orthopaedics & Sports Medicine, Physicians' Clinic of Iowa, Cedar Valley Medical Specialists, and ORA Orthopedics, requesting an appointment for the claimant. (Ex. 1, p. 1). All of them have declined to evaluate him. (Id.; Hearing Testimony). Not all of the medical facilities provided explanations for their refusal to see

¹ In their answer defendants admitted liability for an injury to claimant's left shoulder. (See Answer). However, at hearing, defendants verbally stated that they viewed the injuries as intertwined and have also accepted liability for claimant's sternoclavicular joint condition. (Hearing Testimony).

² During the hearing, claimant's counsel indicated that this referral actually took place in September 2022. (Hearing Testimony). Dr. Westpheling's records are not in evidence, so the undersigned cannot definitively state when the orthopedic referral was made.

claimant. (See Ex. A, p. 10). However, Dr. Fish at Capital Orthopaedics & Sports Medicine indicated that claimant's type of injury was "out of his wheelhouse." (Ex. A, p. 7).

In early February 2023, Christopher Vincent, M.D., an orthopedic surgeon at Iowa Ortho agreed to evaluate claimant. (Ex. A, pp. 4-6). However, Dr. Vincent would not provide an actual appointment date until he had reviewed claimant's past surgical records. (Id. at 4). Claimant has had a prior surgery on his left shoulder, as well as a prior cervical fusion. (Hearing Testimony; see also Ex. A, p. 5). From the exhibits, it appears defendants had copies of claimant's cervical fusion surgery, but no records from his shoulder surgery. (Ex. A, p. 4). On February 2, 2023, Kelley Texeira, the claims adjuster for defendants, requested claimant sign and return a medical waiver so that she could obtain the records from Mercy Medical Center in Cedar Rapids. (Ex. A, p. 6). It is not clear when defendants received the signed waiver from claimant. However, on March 10, 2023, Ms. Texeira sent claimant an email indicating that she had sent a request to Mercy Medical Center for the shoulder records and received a confirmation that the request was received. (Id. at 3). Another email from Ms. Texeira indicates she sent Mercy a second rush request later in March 2023. (Id. at 2). At the time of the hearing, defendants' counsel stated they still had not received the shoulder records from Mercy Medical Center. (Hearing Testimony). However, on April 4, 2023, defendants received an invoice from Mercy for the records and that has been paid. (Id.; Ex. A, p. 1).

While defendants worked to secure an evaluation with an orthopedist, claimant continued to receive treatment from Dr. Bingham and Dr. Kline. (Hearing Testimony). He also attended physical therapy. (Id.). According to defendants, in February 2023, claimant received a pain injection from Dr. Kline. (Id.). He also received treatment from Dr. Bingham, the last appointment taking place on March 7, 2023. (Id.; Ex. A, p. 3). At that appointment, Dr. Bingham recommended a cervical epidural steroid injection. (Ex. A, p. 3). That has been authorized by defendants. (Id.). Claimant has also undergone a cervical MRI. (Hearing testimony). Copies of these treatment records, however, are not in the hearing record.

On March 7, 2023, claimant's counsel provided Stanley Mathew, M.D., with a copy of an independent medical exam (IME) authored by Robert Broghammer, M.D. (Ex. 2, p. 1). According to the letter provided to Dr. Mathew, defendants sought an IME report from Dr. Broghammer in November 2022. (Id.). Apparently, in his report Dr. Broghammer also recommended that claimant be evaluated by an orthopedist.³ (Id.). Claimant's counsel asked Dr. Mathew if his office treated injuries like claimant's sternoclavicular condition, and whether he would be willing to treat claimant if the workers' compensation carrier agreed to authorize treatment. (Id.). He also asked if Dr. Mathew had recommendations for other providers that could treat claimant's condition. (Id.). On March 8, 2023, Dr. Mathew replied stating that his office did treat injuries like claimant's, he was willing to treat the claimant, and he recommended himself and Sunny Kim, M.D., as potential medical providers for claimant. (Id.).

³This IME report is not in evidence.

On March 30, 2023, claimant's counsel sent Ms. Texeira a copy of Dr. Mathew's response and requested that she authorize Dr. Mathew to treat the claimant. (Ex. 3). The letter indicated that the claimant would file a petition for alternate medical care if he did not receive authorization to treat with Dr. Mathew by April 3, 2023. (Id.). On March 31, Ms. Texeira wrote back to claimant's counsel indicating treatment with Dr. Mathew was not authorized. (Ex. 4). The letter stated defendants had already authorized an evaluation with Dr. Vincent, and if claimant needed treatment in the interim, he could return to Mercy Care Occupational Health. (Id.).

On April 3, 2023, claimant filed his petition for alternate medical care, requesting treatment with Dr. Mathew. (See Petition). On April 5, 2023, claimant's counsel sent Ms. Texeira a letter indicating that it had taken defendants too long to schedule the appointment with Dr. Vincent. (Ex. 5). The letter also stated that Dr. Vincent's office, which is located in Des Moines, Iowa, was too far away from claimant's home in Fairfax, Iowa. (Id.). The letter stated, "it does not appear there is a doctor within fifty miles that will provide care, so we are renewing our request for you to authorize Dr. Stanley Mathew." (Id.).

During the hearing, both parties agreed that finding an orthopedist to evaluate claimant has been challenging due to the "rarity of his condition." (Hearing Transcript). According to defendants, this sentiment was also expressed by Dr. Bingham on January 26, 2023. (Id.). Claimant's counsel acknowledged that Dr. Mathew is a physiatrist, and not an orthopedic surgeon. (Id.). However, counsel stated that claimant was in a lot of pain, and requested the agency order immediate treatment with a physiatrist while the appointment with Dr. Vincent was still pending. (Id.). Claimant's counsel did not argue that defendants have abandoned care, but stated the amount of time claimant has waited for treatment is not reasonable. (Id.).

At this time, no authorized providers have referred claimant to a physiatrist. (Hearing Transcript). Defendants indicated that if such a referral was made, they should have the right to choose that treating doctor. (Id.). Claimant has not attempted to return to Mercy Care Occupational Health for treatment since March 7, 2023. (Id.). Claimant's counsel argued that a return visit would be pointless because Dr. Bingham stated he has no further treatment to offer claimant. (Id.).

CONCLUSIONS OF LAW

Under Iowa law, an employer who has accepted compensability for a workplace injury has a right to control the care provided to the injured employee. Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 769 (Iowa 2016). The relevant statute provides as follows:

For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. . . . The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the

care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

Iowa Code § 85.27(4).

Defendants' "obligation under the statute is confined to *reasonable* care for the diagnosis and treatment of work-related injuries." Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995) (emphasis in original). In other words, the "obligation under the statute turns on the question of reasonable necessity, not desirability." Id. 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. See Iowa Code § 85.27(4). 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); Long, 528 N.W.2d at 124. Ultimately, determining whether care is reasonable under the statute is a question of fact. Long, 528 N.W.2d at 123.

Under Iowa Code section 85.27, claimant bears the burden of providing "reasonable proofs of the necessity" to order alternate care. Defendants have already authorized care with Dr. Westpheling, Dr. Bingham, and Dr. Kline. They authorized and provided physical therapy, a cervical MRI, and multiple injections. They have also contacted eight different medical facilities seeking an orthopedist that would agree to evaluate and treat the claimant. While claimant is understandably upset about the amount of time it has taken to find a qualified and willing orthopedic doctor to treat his condition, neither defendants nor the agency has the authority to demand that an orthopedist within his geographic vicinity accept him as a patient. Similarly, according to the evidence presented, Dr. Vincent is requesting to see claimant's shoulder surgery records before he will provide an appointment date. Dr. Vincent is the only orthopedist willing to treat claimant at this time. Claimant has not offered any alternative orthopedists. The undersigned does not have the authority to order Dr. Vincent to alter his requirements or scheduling process.

In this alternate care action, claimant is not requesting authorization to treat with a different, local orthopedist. Rather, he is requesting the agency order care with Dr. Mathew, a physiatrist. Defendants have already authorized ongoing care with Dr. Bingham and Dr. Kline, a pain medicine specialist. This treatment appears reasonable. Claimant argues it is not sufficient because Dr. Bingham said he has no further treatment to offer him. That statement is not supported by the evidence. On March 7, 2023, Dr. Bingham ordered a cervical epidural steroid injection. That has already been authorized by defendants.

The commissioner is justified in ordering alternate care when employer-authorized care has not been effective and evidence shows that such care is “inferior or less extensive” than other available care requested by the employee. Long, 528 N.W.2d at 124; Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997). At the hearing, claimant’s counsel was asked about the potential treatments being offered by Dr. Mathew and if they differ from those provided by Dr. Kline. (Hearing Transcript). He did not have any information about the treatments Dr. Mathew would provide. (Id.). Given this lack of evidence, the claimant has not shown that the care being offered by Dr. Bingham and Dr. Kline is inferior or less extensive than the care offered by Dr. Mathew. Claimant did not meet his burden. His request for alternate medical care with Dr. Mathew is denied.

I sympathize with claimant’s frustration at finding a willing and qualified orthopedist, as well as his issues with ongoing symptoms. If claimant feels a physiatrist’s care is necessary, he can present that referral request to Dr. Bingham, his authorized treating physician.

THEREFORE IT IS ORDERED:

Claimant’s petition for alternate medical care is denied.

Signed and filed this 14th day of April, 2023.

A handwritten signature in black ink that reads "Amanda Rutherford". The signature is fluid and cursive, with a horizontal line drawn underneath it.

AMANDA R. RUTHERFORD
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Matthew Dake (via WCES)

Edward Rose (via WCES)