BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DEVIN STILLMAN,	
Claimant,	File No. 2001555.01
vs.	
WORLD OF WHEELS, INC.,	ALTERNATE MEDICAL CARE
Employer,	DECISION
and	
EMPLOYERS MUTUAL CAS. CO.,	
Insurance Carrier, Defendants.	Head Note: 2701

On October 20, 2021, claimant filed an original notice and petition for alternate medical care under Iowa Code section 85.27, invoking the provisions of rule 876 IAC 4.48. On October 29, 2021, Defendants filed an Answer accepting that claimant sustained a head injury, which arose out of and in the course of his employment on November 4, 2020.

This alternate medical care claim came on for hearing before the undersigned on November 1, 2021, at 10:30 a.m. The proceedings were recorded digitally and constitute the official record of the hearing. By an order filed by the workers' compensation commissioner, this decision is designated final agency action. Any appeal would be a petition for judicial review under Iowa Code section 17A.19.

The record consists of Claimant's Exhibits 1 through 4 and Defendants' Exhibits A through C. Counsel for both parties provided argument. No witnesses were called at hearing.

ISSUE

The issue presented for resolution is whether claimant is entitled to alternate medical care consisting of a return appointment with the UnityPoint Concussion Clinic.

FINDINGS OF FACT

Having considered all evidence and testimony in the record, the undersigned finds:

Claimant, Devin Stillman, sustained a work-related injury on November 4, 2020. Defendants have provided medical treatment and authorized medical care for the work injury. Initially, defendants authorized medical treatment with Marc Molis, M.D. and the UnityPoint Concussion Clinic. Between November 11, 2020, and December 21, 2020, Mr. Stillman presented to Dr. Molis on five occasions. (Ex. A, p. 4) On November 18, 2020, Dr. Molis prescribed medications, referred claimant to physical therapy, referred claimant to speech therapy, and referred claimant to Dr. Shapiro for neuropsychology. (See Ex. A, p. 4) Claimant first presented to physical therapy on November 30, 2020, and to Dr. Shapiro on December 2, 2020.

Following his examination of claimant on December 21, 2020, Dr. Molis received notice from defendants that they would not be authorizing any additional appointments and that claimant's care was being transferred to On With Life. (See Ex. 2, p. 5) Defendants contend claimant was sent to On With Life based on a recommendation from Dr. Shapiro. (Ex. C, p. 10) However, no explanation is provided as to why claimant's medical treatment with Dr. Molis was abruptly discontinued.

Claimant's care was abruptly transferred to On With Life. (See Ex. 2, p. 5) When notified of the same, Dr. Molis expressed concern and ultimately disagreed with defendants' decision. (See Ex. 2, pp. 5-6) In a report, dated December 21, 2020, Dr. Molis explained that such a transfer was "very concerning" considering On With Life does not have an actual physician on staff to handle claimant's medication management for his head injury. (Ex. 2, pp. 5-6) He further explained that the concussion clinic uses a multi-disciplinary approach that is not duplicated anywhere else in the Des Moines area. (Id.) Despite Dr. Molis' concerns, defendants moved forward with the transfer of claimant's medical treatment. Claimant first presented to On With Life for therapy on December 22, 2020.

Between December 22, 2020, and April 27, 2021, claimant obtained prescription medication from his primary care physician. (See Ex. A, p. 5)

With no physician oversight at On With Life, defendants referred claimant to Joseph Chen, M.D., of Rehab Medicine and Pain Coaching LLC. (See Ex. 4, p. 3) According to his initial report, defendants requested that Dr. Chen be the primary treating workers' compensation physician. More specifically, defendants requested that Dr. Chen address "if medications are needed, determination of MMI, work release in the future, and testing." (Ex. 4, p. 1) To date, defendants have not produced a copy of the letter that was sent to Dr. Chen, requesting care.

Dr. Chen diagnosed claimant with "a rather severe traumatic brain injury" and remarked that claimant received appropriate treatment with Dr. Molis, the UnityPoint Concussion Clinic, and On With Life. (Ex. A, p. 7) Dr. Chen placed claimant at maximum medical improvement, assigned permanent impairment, and recommended no permanent restrictions on April 27, 2021. (Id.)

At hearing, claimant's counsel asserted that Dr. Chen is not qualified to treat claimant's head injury. In this respect, Dr. Chen's curriculum vitae documents his practice has not focused on traumatic brain injuries since approximately 2015. (See Ex. A, pp. 1-2). Claimant's counsel asserts Dr. Chen was only retained for the purposes of

an independent medical evaluation. Indeed, Dr. Chen's report certainly reads like an IME report.

On October 7, 2021, claimant reported ongoing issues with his memory and concentration to defendants via e-mail. He subsequently requested additional treatment with Dr. Molis. (Ex. C, pp. 9-10) Defendants declined claimant's request to see Dr. Molis; however, they were willing to authorize return visits to On With Life and/or Dr. Chen. (Ex. C, p. 9)

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. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 16, 1975).

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 6.904(3)(e); Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); 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. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). 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).

To establish a claim for alternative medical care, an employee must show that the medical care furnished by the employer is unreasonable. Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010).

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."

Claimant seeks an order authorizing a referral back to Dr. Molis and the UnityPoint Concussion Clinic.

Claimant sustained a work-related injury on November 4, 2020. He continues to experience ongoing issues with his memory and concentration. As of the date of the alternate medical care hearing, defendants had not arranged for any additional medical treatment. Defendants have, however, offered to arrange repeat visits with On With Life and Dr. Chen.

Claimant asserts defendants interfered with the treatment recommendations of Dr. Molis.

In this case, it is clear that defendants exercised their right to direct medical care when they selected Dr. Molis as the authorized treating physician. Dr. Molis made a number of recommendations between November 11, 2020, and December 21, 2020, including medications, ongoing treatment with physical therapy, ongoing treatment with speech therapy, ongoing treatment with Dr. Shapiro, ongoing treatment with the UnityPoint Concussion Clinic, and a referral to ENT/Audiology for an evaluation of tinnitus. In making these referrals, Dr. Molis acted as an agent of the defendants. Without explanation, claimant's medical treatment with Dr. Molis was abruptly discontinued on December 21, 2020.

According to the records in evidence, it appears claimant received physical therapy, speech therapy, and counseling through On With Life between December 22, 2020, and April 27, 2021. It does not appear as though claimant continued to receive medication management or ongoing medical treatment with Dr. Shapiro once defendants abruptly transferred claimant's medical care away from Dr. Molis. Given his status as the authorized treating physician, it is assumed defendants were aware of Dr. Molis' recommendations for ongoing medical care with a physician. Nevertheless, there is no evidence defendants referred claimant to an alternate physician between December 22, 2020, and March 25, 2021.

Defendants have never provided an explanation for the abrupt change in claimant's medical care. It does not appear as though defendants have ever challenged Dr. Molis' qualifications. Ultimately, it appears that defendants simply disagreed with the treatment recommendations of Dr. Molis. Without justification, defendants challenged the medical judgment and recommendations of a then-authorized treating physician.

Dr. Molis' medical recommendations are reasonable. Refusing to authorize Dr. Molis' recommendations caused a delay in claimant's treatment. Defendants further delayed claimant's treatment by failing to seek an alternate medical opinion from an alternative physician between December 22, 2020, and March 25, 2021. Defendants did not address all of the treatment recommendations of Dr. Molis. While defendants did end up referring claimant to an alternative treating physician, the minimal treatment provided by Dr. Chen is clearly inferior to the medical treatment recommended and previously provided by Dr. Molis.

An employer's right to select the provider of medical treatment to an injured worker does not include the right to determine how an injured worker should be diagnosed, evaluated, treated, or other matters of professional medical

judgment. Assmann v. Blue Star Foods, Inc., File No. 866389 (Declaratory Ruling, May 19, 1988).

In this instance, I find that the defendants' attempts to challenge – and reject without explanation – an authorized treating physician's medical judgment and opinions caused delay in claimant receiving recommended medical treatment. Defendants still offer no reasonable basis for abruptly terminating claimant's ongoing medical treatment with Dr. Molis. Defendants' attempts to transfer care, their failure to provide all recommended care, as well as the resulting delay in treatment, are not reasonable.

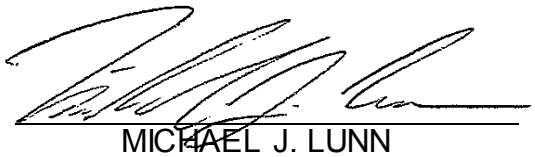
ORDER

THEREFORE, IT IS ORDERED:

Claimant's petition for alternate medical care is granted.

Within fourteen (14) days of the entry of this order, defendants shall re-authorize Dr. Molis as a treating physician and schedule claimant for a return evaluation.

Signed and filed this 3rd day of November, 2021.



MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Joseph Powell (via WCES)

Paul Barta (via WCES)