BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ANITA HOYT, Claimant, vs. MANSON GOOD SAMARITAN, Employer, and SENTRY INSURANCE, Insurance Carrier, Defendants.	File No. 5063709 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, Anita Hoyt.

The alternate medical care claim came on for hearing on July 19, 2017. The proceedings were digitally recorded which constitutes the official record of this proceeding. This ruling is designated final agency action and any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code 17A.

The record consists of Claimant's Exhibits 1 and 2 and Defendants' Exhibits A, B and C. No testimony was taken of a party or witness. Counsel provided legal argument.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of providing the care that Ted George, D.O., recommended on June 16, 2017.

FINDINGS OF FACT

The undersigned having considered all of the testimony and evidence in the record finds:

Defendants admitted liability for an injury occurring on January 13, 2017 and admit claimant sustained an injury to her left knee, left shoulder and head. The defendants have denied that this work injury has injured her right hip.

As defendants have denied the claimant has an injury to her right hip the request for physical therapy for claimant's right hip and right piriformis syndrome are dismissed. Defendants may not assert a lack of authorization defense if claimant obtains medical care for these conditions and proves they are related to the January 13, 2017 injury.

Claimant fell at work on January 13, 2017. The defendants authorized Ted George, D.O., to provide care to the claimant for her work injuries. Dr. George is a general practitioner, not a specialist.

On May 11, 2017, Christy Stolze-Josta, a medical case manager, emailed the insurance carrier and stated that Dr. George did not believe claimant's headaches were related to her head injury. The email stated that referrals were being considered to a number of physicians, including Dr. Gill at Nebraska Spine in Omaha. (Exhibit A, p. 1)

On June 16, 2017, Dr. George examined claimant. Dr. George recommended claimant have three more chiropractic treatments, physical therapy as previously recommended for her right hip and piriformis syndrome and due to persistent concentration and short-term memory issues she should have a neurology consultation. (Ex. 1, p. 1) Claimant expressed concern about her memory and focusing issues to Dr. George. (Ex. 2, p. 2)

Ms. Stolze-Josta prepared a report on June 16, 2017 and sent it to the employer on June 19, 2017. (Ex, B, pp. 1 – 4) Ms. Stolze-Josta wrote that Dr. George would like to have claimant seen by a neurologist. Ms. Stolze-Josta told Dr. George that the defendants were arranging claimant to be seen by Dr. Gill and she wrote Dr. George would defer neurology evaluation based upon Dr. Gill's opinion. (Ex. B, p. 2) Claimant was seen by Dr. Gill on or about July 17, 2017. No records were available. No evidence was submitted as to whether Dr. Gill evaluated the claimant for memory and concentration issues.

Defendants stated at hearing that if Dr. Gill recommended a neurological evaluation they would make a referral to a neurologist.

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. 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 14(f)(5); 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). In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997), the court approvingly quoted Bowles v. Los Lunas Schools, 109 N.M. 100, 781 P.2d 1178 (App. 1989):

> [T]he words "reasonable" and "adequate" appear to describe the same standard.
>
> [The New Mexico rule] requires the employer to provide a certain standard of care and excuses the employer from any obligation to provide other services only if that standard is met. We construe the terms "reasonable" and "adequate" as describing care that is both appropriate to the injury and sufficient to bring the worker to maximum recovery.

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., 562 N.W.2d at 437.

Reasonable care includes care necessary to diagnose the condition and defendants are not entitled to interfere with the medical judgment of their own treating physician. Pote v. Mickow Corp., File No. 694639 Review-Reopening June 17, 1986).

Defendants agreed to provide two additional chiropractic treatments and are bound by this stipulation so no other ruling is made of this medical care issue.

Dr. George is the authorized treating physician. Dr. Gill was a onetime evaluating physician. There is no evidence that Dr. Gill evaluated or considered claimant's concentration or short-term memory issues.

Defendants pointed out that claimant raised her memory and concertation issues with Dr. George. Defendants imply that it is somehow inappropriate or not as legitimate for a patient to raise medical concerns to a physician. Quite to the contrary, it is entirely appropriate for a patient to discuss with a physician any medical concerns. Dr. George using his medical judgement wrote that a referral to a neurologist was appropriate medical care.

I find that the defendants have interfered with the medical treatment of the authorized treating physician. The only report from a physician is that a referral to a neurologist should be made.

I find that the failure to provide a referral to neurologist is a failure to provide reasonable care.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is granted in part and denied in part.

Defendants shall promptly refer claimant to a neurologist.

Claimant request for physical therapy is denied as defendants have denied liability for this condition.

Signed and filed this 19th day of July, 2017.

JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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