BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

GERALD LEACH,

Claimant,

vs.

REYES HOLDINGS, LLC,
d/b/a REINHART FOODSERVICE,

Employer,

and

INDEMNITY INSURANCE CO. OF N.A.,

Insurance Carrier,
Defendants.

File Nos. 5066102, 5066086

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, Gerald Leach. Claimant appeared personally and through attorney, Dennis Currell. Defendants appeared through their attorney, Dru Moses.

The alternate medical care claim came on for hearing on December 21, 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 3 and defense exhibit A, which were offered and received without objection, in addition to the claimant's testimony. The defendants do not dispute liability for claimant's August 8, 2018, work injury. Administrative notice was also taken of the Alternate Medical Care portion of File No. 5066086.

ISSUE

The issue presented for resolution is whether the defendants have abandoned medical care.

FINDINGS OF FACT

The claimant, Gerald Leach, sustained an injury to his low back on August 8, 2018, which arose out of and in the course of his employment.[1] Mr. Leach is a 49-year-old man who worked for Reinhart Foodservice delivering groceries. Defendants accepted this injury and authorized medical treatment. Mr. Leach had also suffered an injury to his left knee in June 2017. This is also a litigated file (File No. 5066086). The undersigned entered a decision on this matter on September 28, 2018, granting the claimant the authority to direct his own medical care on that file.

After Mr. Leach reported the injury, the defendants authorized reasonable treatment for him with Mercy, including an MRI, which occurred on September 10, 2018. Following the MRI, the authorized medical provider contacted Mr. Leach by telephone and informed him of a scheduled appointment with a back surgeon, Chad Abernathey, M.D. The defendants never sent a written notice to the claimant of this appointment. Mr. Leach did not attend this appointment, nor did he provide any notice. (Defendants' Exhibit 1) Mr. Leach testified that he did not attend this appointment because he believed the defendants had lost their authority to direct medical care. This was a mistaken belief. The defendants only lost their authority to direct medical care in relation to File No. 5066086, claimant's left knee condition.

Thereafter, there was no communication between the parties about the reason for the missed appointment, nor any effort to authorize additional treatment until December 5, 2018. On that date, claimant's counsel wrote to defense counsel requesting medical treatment for the low back.

> Please confirm one way or the other whether it will be necessary to initiate another Alternate Medical Care proceeding before the agency regarding medical care for Mr. Leach's back injury given the prior ruling that medical care has been abandoned by the employer and the fact that the employer has offered no medical care for Mr. Leach's accepted back injury since his separation from employment over 3 months ago on August 29, 2018.

(Claimant's Exhibit 3, page 1)

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[1] There is still some dispute as to whether the injury which is causing claimant's ongoing low back problems occurred or manifested on August 8, 2018, or August 28, 2018. Nevertheless, the defendants have accepted compensability for the claimant's low back condition which occurred sometime in August 2018.

Defense counsel responded the following day, pointing out that Mr. Leach did not attend his appointment with Dr. Abernathey. (Def. Ex. 5) Defense counsel further indicated that they were "in the process of scheduling him an appointment with a physician at Physicians Clinic of Iowa, P.C." (Def. Ex. 5) Claimant's counsel responded promptly, informing defendants of a variety of flaws and shortcomings in their failure to authorize medical treatment. (Cl. Ex. 3, pp. 2-3) Believing he was authorized to direct his own care, Mr. Leach undertook efforts to see a specialist. His efforts culminated in an appointment scheduled with Darin Smith, M.D., which is currently set for January 8, 2019.

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 Dec. January 31, 1994). Reasonable care includes care necessary to diagnose the condition and defendants are not entitled to interfere with the medical judgment of its own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening Decision June 17, 1986).

The question is whether the claimant has proven the defendants have failed to offer reasonable care.

The defendants have not attempted to authorize any care since October 10, 2018. On that date, Mr. Leach did not appear for his authorized appointment with Dr. Abernathey. He did not call in for it. He did not communicate with the employer about his failure to attend the appointment. He simply did not show up for the appointment and began attempting to arrange his own care on the mistaken belief that he had the right to direct his own care.

While I agree with the claimant that defendants have an obligation to monitor the course of treatment, I cannot find that the defendants have failed to provide reasonable care here. Unlike File No. 5066086, the defendants provided treatment with Mercy, including an MRI and then promptly made a referral to a qualified back surgeon to review the MRI. Mr. Leach chose not to attend this appointment based upon his mistaken belief that he had the right to direct his treatment. Neither party then communicated with the other on this subject until December 5, 2018. This is concerning from both parties. With the benefit of hindsight, it obviously would have resulted in a better outcome if either party had communicated with the other about why Mr. Leach skipped the October 2018 Dr. Abernathey appointment. Mr. Leach skipped the appointment, however, he undoubtedly had significant responsibility to initiate communication with defendants about his dissatisfaction with the care. Immediately after claimant's counsel notified the defendants of his desire for further care, the defendants began making efforts to locate a physician to see the claimant. The appropriate legal standard is whether the care offered by the defendants was unreasonable. I find the defendants offered reasonable care.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is DENIED. The defendants, of course, are still responsible for authorizing timely care for the claimant.

Signed and filed this 21st day of December, 2018.

JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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