

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ROBERT OSTWINKLE,

Claimant,

vs.

MATHY CONSTRUCTION,

Employer,

and

ZURICH AMERICAN INSURANCE
COMPANY,

Insurance Carrier,
Defendants.



File No. 5052719

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, Robert Ostwinkle. Claimant appeared personally and through his attorney, Dirk Hammel. Defendants appeared through their attorney, Thomas Wolle.

The application for alternate medical care came on for telephone hearing on October 12, 2017. 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 record consists of claimant's exhibits 1 through 6, which total 8 pages. The exhibits were admitted without objection. No testimony was provided, and the attorneys provided professional statements and arguments. Claimant also requested that the undersigned take administrative notice of prior alternate care decisions in this file, dated September 27, 2016 and January 12, 2017.

ISSUE

Whether defendants have failed to provide reasonable medical care and claimant is entitled to an order for care from an appropriate medical provider.

FINDINGS OF FACT

The undersigned having considered all the evidence in the record finds that the underlying facts in this case are not significantly in dispute, and I find as follows:

This file was previously the subject of two separate applications for alternate medical care.

The first order for alternate medical care, filed September 27, 2016, resulted in defendants being ordered to identify a physician at the University of Iowa Hospitals and Clinics or the Mayo Clinic to evaluate and provide treatment concerning claimant's ongoing back and right leg complaints. Defendants attempted to comply with the order; however, both the University of Iowa and the Mayo Clinic declined to provide any treatment.

The second order for alternate medical care, filed January 12, 2017, required defendants to authorize claimant to be evaluated by Dr. Chapman, a previously authorized physician, in light of both the University of Iowa Hospitals and Clinics and the Mayo Clinic refusing to evaluate and treat claimant. However, Dr. Chapman also declined to provide medical care to claimant.

This present application for alternate care is now the third such application. Claimant again seeks an order authorizing treatment, but this time, there is no suggested physician to provide care. I note that at the time that both the first and second alternate medical care orders were issued, there did not appear to be any indication that the designated providers would refuse to provide treatment.

Since the second alternate care decision was issued and the parties were informed that Dr. Chapman would not provide care for claimant, defendants have also attempted to authorize care with Dr. Mouw, and Dr. Boarini, who both refused to provide medical treatment to claimant.

Therefore, defendants have attempted to arrange care with: 1) The University of Iowa; 2) The Mayo Clinic; 3) Dr. Chapman; 4) Dr. Mouw; and, 5) Dr. Boarini, and none of the providers have been willing to evaluate and provide treatment for claimant's work injury.

In the pending application for alternate care, claimant did not identify a physician or clinic that is agreeable to providing treatment for claimant's work injuries.

Although claimant desires additional treatment and defendants do not appear to be opposed to authorizing treatment with an appropriately qualified physician, no physician has been found by defendants or claimant who is willing to provide treatment. It appears under the present circumstances that defendants have made a reasonable effort to locate and authorize a willing provider, but without success.

Defendants cannot compel a physician to provide care, when that physician is unwilling to do so.

I had found in the second alternate decision, issued January 12, 2017, that there had been no change in the underlying facts since the September, 2016 hearing, only that, through no fault of either party the University of Iowa and the Mayo Clinic were unwilling to provide care. In the present circumstance I find that not only are the providers identified in the previous alternate care decisions not willing to provide care, but that defendants have reasonably sought out additional sources for medical care beyond what they were ordered to do and that no provider has been identified that is willing to provide medical care. Thus, I find that defendants have not acted unreasonably. If claimant becomes aware of an appropriate provider in the future that is willing to provide medical treatment and defendants refuse to authorize said provider, the circumstance may be different, but under the present circumstance, I cannot find that defendants have acted unreasonably in their attempts to provide medical care for claimant.

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); Bell Bros. Heating 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).

"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).

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."

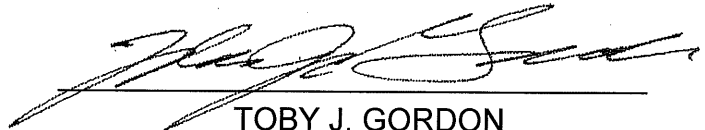
In this case, I have found that defendants have acted reasonably in their multiple attempts to locate and provide medical care for claimant. I also note that there is no specific medical provider that is willing to treat claimant that defendants have refused to authorize. I conclude that claimant has failed to carry his burden of proof under these circumstances that defendants have acted unreasonably concerning their obligation to authorize appropriate care.

ORDER

IT IS THEREFORE ORDERED:

The claimant's petition for alternate medical care is denied.

Signed and filed this 13th day of October, 2017.



TOBY J. GORDON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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