

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

NANCY BODNAR,

Claimant,

vs.

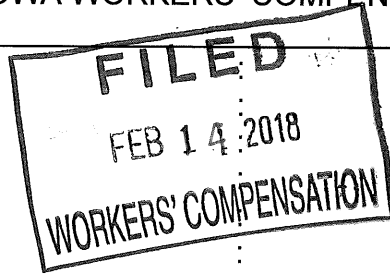
DUBUQUE COUNTY,

Employer,

and

IMWCA,

Insurance Carrier,
Defendants.



File No. 5061260

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, Nancy Bodnar.

The alternate medical care claim came on for hearing on February 12, 2018. The proceedings were digitally recorded, which constitutes the official record of this proceeding. By order filed February 16, 2015, this ruling is designated final agency action.

The record consists of claimant's exhibit 1, pages 1-10; defendants' exhibits A-F. Claimant also offered a seven-page response to defendants' answer and addendum to defendants' answer. The undersigned advised claimant's counsel I could consider this a brief, but such briefs are limited to three pages or he could simply make his arguments during the hearing. Claimant's counsel opted to make his arguments during the hearing. Therefore, claimant's written response to defendants' answer and addendum is not considered.

It should be noted that at the beginning of the hearing claimant withdrew her request for skilled physical therapy interventions as recommended by the Mayo Clinic.

Claimant alleges a date of injury of March 8, 2017. During the course of hearing, defendants admitted the occurrence of a work injury on March 8, 2017, and liability for the neck, upper extremities, and mental health conditions sought to be treated by this

proceeding. Counsel offered oral arguments to support their positions; claimant was the only witness to offer testimony at the hearing.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care.

FINDINGS OF FACT

Claimant, Nancy Bodnar, sustained an injury arising out of and in the course of her employment with Dubuque County Sheriff's Department on March 8, 2017. The relief claimant is seeking through her alternate medical care petition is: an MRI, CT of the neck, an evaluation with a neurosurgeon or orthopedic surgeon, chiropractic care with Amy Vaassen, D.C., and counseling with Gary Ludwig, Ph.D. (Alt. Care Pet.)

Claimant, Ms. Bodnar, was involved in a motor vehicle accident while working as a criminal investigator for Dubuque County Sheriff's Department. Ms. Bodnar provided a detailed account of the accident during her testimony. Following the accident, she was taken via ambulance to the emergency room. While at the emergency room several CT scans were obtained, including one of her cervical spine. The scans were reviewed by the radiologist and the emergency room doctors. They were not reviewed by a neurosurgeon or an orthopaedic surgeon. (Testimony)

The day after the accident Ms. Bodnar was seen at Tri-State Occupational Health by Dr. Kennedy. Claimant testified that the doctor spent five minutes with her and did not conduct an examination. Dr. Kennedy released Ms. Bodnar to return to work without restrictions. Ms. Bodnar did not feel mentally or physically capable of returning to work, so she asked the defendants for another opinion. Defendants sent Ms. Bodnar to Physician's Assistant Emily Armstrong, who practices under the direct supervision of Dr. Kennedy. Since that time, Emily Armstrong, PA-C has been the primary authorized provider of care. (Testimony)

Through this expedited preceding claimant is seeking additional or alternate medical care.

First, Ms. Bodnar is seeking a CT of her cervical spine. Ms. Bodnar was referred to Ronald S. Sims, M.D. by Emily Armstrong, PA-C. Dr. Sims saw Ms. Bodnar on one occasion to conduct EMG/NCS of the right upper extremity. On September 22, 2017, Dr. Sims recommended a CT of the cervical spine. (Exhibit 1, page 2; testimony)

In response to claimant's request, defendants state that Ms. Bodnar has already had a CT of her cervical spine on March 8, 2017, in the emergency room. She also had an MRI which included her cervical spine on May 10, 2017 when she was at the Mayo Clinic. After the May 2017 MRI, she had a follow-up appointment with A. McKeon, M.D. at The Mayo Clinic. (Exs. A, B, and C) Claimant testified that since the prior CT scans have been performed her symptoms have gotten progressively worse.

Emily Armstrong, PA-C referred Ms. Bodnar to Dr. Sims, effectively making Dr. Sims an authorized medical provider. Dr. Sims conducted testing and then recommended a CT of the cervical spine. (Ex. 1, p. 2) While Ms. Bodnar has already had a prior CT and prior MRI of her cervical spine, Dr. Sims, an authorized provider, recommended that she have another CT of her cervical spine. Defendants are not entitled to interfere with the medical judgment of its own treating physician. As such, I find that claimant has shown that with regard to her request for a CT of her cervical spine her petition for alternate medical care should be granted.

Second, Ms. Bodnar is asking defendants to authorize her to be seen by a neurosurgeon or orthopedic surgeon. Defendants argue they have not authorized such an appointment because this has not been recommended by any of the authorized treating physicians or by any of the physicians at The Mayo Clinic where claimant sought treatment on her own. Defendants point out that Dr. McKeon at Mayo did not feel it was appropriate to refer her on to a neurosurgeon or orthopedic surgeon, as claimant is requesting. Claimant argues he did not make any such referral because she was at Mayo for a different purpose.

Also, defendants have scheduled an appointment for claimant to see Joseph Chen, M.D. a physical medicine and rehabilitation specialist at the University of Iowa Hospitals and Clinics on February 23, 2017. Although exhibit 1, page 1 states that the appointment is for an IME, defendants' counsel stated on the record that that letter was in error, and the appointment is for care and treatment. Defendants argue that Dr. Chen will be able to make referrals as he sees appropriate.

I find that claimant has failed to carry her burden of proof to show that the care offered by defendants is not reasonable. Claimant wishes to have a referral to a neurosurgeon or orthopedic surgeon. However, the record is void of any medical provider making such recommendation. With regard to claimant's request to see a neurosurgeon or orthopedic surgeon, claimant's petition for alternate medical care is denied at this time.

Third, claimant is seeking a transfer of her chiropractic care from Peter Lynch, D.C. to Amy Vaassen, D.C. On June 19, 2017, Emily Armstrong, PA-C ordered chiropractic care for Ms. Bodnar. At that time, she noted that Ms. Bodnar was not having radicular symptoms; therefore, she did not feel an MRI of her neck or back was warranted at that time. Emily Armstrong, PA-C wanted her to start the chiropractic care as soon as possible. She noted that Ms. Bodnar had "chiropractic care in the past and prefers Dr. Peter Lynch of Dubuque, IA. Therefore, I am suggesting that he be the treating chiropractor." (Ex. 1, p. 10) Defendants authorized Ms. Bodnar to treat with Dr. Lynch and she treated with him for some time.

At this alternate care hearing, Ms. Bodnar testified that she was not happy with Dr. Lynch. She feels that the way in which he manually adjusts her neck is very forceful and has actually caused her headaches to increase. Because of this Ms. Bodnar has stopped going to Dr. Lynch. Instead, on her own, Ms. Bodnar sought treatment with a

different chiropractor that she selected. She went to see Dr. Vaassen for her neck; this is not authorized treatment. Ms. Bodnar prefers the treatment of Dr. Vaassen because she does not use the same type of manipulation as Dr. Lynch; rather, she uses a pressure gun on the cervical spine. Defendants argue that she has been treating with Dr. Lynch and care should continue with him. (Testimony)

I find that the chiropractic care defendants authorized with Dr. Lynch is reasonable. Defendants have the right to select the care. Defendants have authorized Dr. Lynch as the authorized provider for chiropractic treatments. When defendants authorized Dr. Lynch they were allowing Ms. Bodnar to continue treating with the chiropractor she had treated with prior to the work accident. Ms. Bodnar testified that she became dissatisfied with his treatment. Rather than express her dissatisfaction to the defendants, Ms. Bodnar went on her own and began treatment with another chiropractor. Ms. Bodnar now states that she desires to have her treatment transferred. Although Ms. Bodnar desires to have her care transferred to Dr. Vaassen, she has failed to demonstrate that the care defendants have offered is not reasonable. I find claimant failed to carry her burden of proof on this issue. As such, claimant's petition for alternate medical care is denied with respect to the change in chiropractic care.

Fourth, claimant is seeking mental health counseling with Gary Ludwig, Ph.D. for issues regarding depression, anxiety, and PTSD. Defendants had authorized Ms. Bodnar to treat with Amanda Reynolds, LISW. Ms. Bodnar testified that Ms. Reynolds' specialty is treating individuals with drug abuse. She did not find her appointments with Ms. Reynolds to be helpful. Additionally, Ms. Bodnar testified that Ms. Reynolds' office was approximately one block away from the law enforcement center where she works. This was problematic because when Ms. Bodnar would go to an appointment with Ms. Reynolds, some of her co-workers would see her and people at work talked about Ms. Bodnar seeing the counselor. Ms. Bodnar felt this was a privacy issue for her and she was embarrassed to be seen seeking treatment. (Testimony)

In the fall of 2017, defendants also authorized Ms. Bodnar to see Mark Mittauer, M.D. Ms. Bodnar gets along with him very well and continues to see him once every three to four weeks. Dr. Mittauer provides her with medications. He recommends psychotherapy with Gary Ludwig, Ph.D. a psychologist in Moline, Illinois. He notes that the therapy she had already received with Dr. Ludwig had been helpful. (Ex. 1, p. 8) Ms. Bodnar sought out treatment with Dr. Ludwig on her own. She learned that he specializes in treating law enforcement officers who have been involved in trauma. She began treating with him in October of 2017 and has continued to treat with him through January of 2018. Initially, she saw him once per week, then due to the long distance to his office, she switched to once every two weeks. Ms. Bodnar must drive one hour and twenty minutes each way to see Dr. Ludwig. (Testimony)

I find that Dr. Mittauer is an authorized treating psychiatrist. I find that he has recommended that Ms. Bodnar continue her psychotherapy with Dr. Ludwig. Further, I find that the treatment offered by Dr. Ludwig is superior to that offered by Ms. Reynolds,

LISW because Dr. Ludwig has more experience and expertise in treating law enforcement officers who have experienced trauma. As such, I find that defendants shall authorize Ms. Bodnar's treatment with Dr. Ludwig. Claimant's petition for alternate medical care is granted with regard to counseling with Dr. Ludwig.

REASONING AND CONCLUSIONS OF LAW

Under Iowa law, the employer is required to provide care to an injured employee and is permitted to choose the care. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

[T]he 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.

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., 562 N.W.2d at 433, 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" care 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.

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).

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).

When a designated physician refers a patient to another physician, that physician acts as the defendant employer's agent. Permission for the referral from defendant is not necessary. Kittrell v. Allen Memorial Hospital, Thirty-fourth Biennial Report of the Industrial Commissioner, 164 (Arb. November 1, 1979) (aff'd by industrial commissioner). See also Limoges v. Meier Auto Salvage, Iowa Industrial Commissioner Reports 207 (1981).

First, claimant is requesting a CT of her cervical spine as recommended by Dr. Sims. As noted above, Ms. Bodnar was sent to Dr. Sims by an authorized provider, effectively making Dr. Sims an authorized medical provider. Defendants are not entitled to interfere with the medical judgment of its own treating physician. As such, with regard to her request for a CT of her cervical spine, I conclude that claimant has shown that her petition for alternate medical care should be granted.

Second, Ms. Bodnar is asking defendants to authorize her to be seen by a neurosurgeon or orthopedic surgeon. However, based on the above findings of fact, I conclude that claimant has failed to carry her burden of proof to show that the care offered by defendants is not reasonable. The record is void of any medical provider making such recommendation. With regard to claimant's request to see a neurosurgeon or orthopedic surgeon, claimant's petition for alternate medical care is denied.

Third, claimant is seeking a transfer of her chiropractic care from Dr. Lynch to Dr. Vaassen. Based on the above findings of fact, I conclude the authorized chiropractic care with Dr. Lynch is reasonable. Defendants have the right to select the care. Defendants have authorized Dr. Lynch as the authorized provider for chiropractic treatments. Ms. Bodnar now desires to have her treatment transferred. Although Ms. Bodnar desires to have her care transferred to Dr. Vaassen, she has failed to demonstrate that the care defendants have offered is not reasonable. I conclude claimant failed to carry her burden of proof on this issue. As such, claimant's petition for alternate medical care with respect to the change in chiropractic care is denied.

Fourth, claimant is seeking mental health counseling with Dr. Ludwig for issues regarding depression, anxiety, and PTSD. Dr. Mittauer is an authorized treating psychiatrist. He has recommended that Ms. Bodnar continue her psychotherapy with Dr. Ludwig. Further, I conclude that the treatment offered by Dr. Ludwig is superior to that offered by Ms. Reynolds, LISW. As such, I conclude that defendants shall authorize Ms. Bodnar's treatment with Dr. Ludwig. Claimant's petition for alternate medical care is granted with regard to counseling with Dr. Ludwig.

ORDER

THEREFORE IT IS ORDERED:

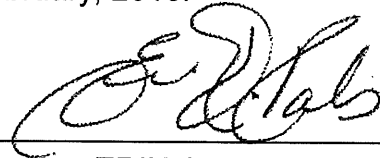
Claimant's petition for alternate medical care with regard to her request for a CT of her cervical spine is granted. Defendants shall authorize a CT of her cervical spine as recommended by Dr. Sims.

Claimant's petition for alternate medical care with regard to her request to see a neurosurgeon or orthopedic surgeon is denied.

Claimant's petition for alternate medical care with respect to the change in chiropractic care is denied.

Claimant's petition for alternate medical care with regard to counseling with Dr. Ludwig is granted. Defendants shall authorize treatment with Dr. Ludwig as recommended by Dr. Mittauer.

Signed and filed this 14th day of February, 2018.



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DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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