

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KEVIN LANCIAL,

Claimant,

vs.

CITY OF DES MOINES,

Employer,
Self-Insured,
Defendant.

FILED

MAR 13 2019

File No. 5059608

WORKERS COMPENSATION ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

This is a contested case proceeding under Iowa Code chapters 85 and 17A. The expedited procedures of rule 876 IAC 4.48, the "alternate medical care" rule, are invoked by claimant, Kevin Lancial.

This alternate medical care claim came on for hearing on March 13, 2019. 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 in this case consists of Claimant's Exhibits 1-2, Defendant's Exhibit A, and the testimony of claimant

ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of authorization to treat with a psychiatrist.

FINDINGS OF FACT

Defendant accepts liability for an injury occurring on June 7, 2017. On that date claimant was injured when he was inserting a pressure washer into a sewer drain. When the hose was turned on, the pressure in the pipe caused the pipe to explode and claimant was hit in the face with pieces of the pipe.

Claimant was knocked unconscious for a few minutes following the explosion. Claimant lost his right eye, had multiple facial fractures, a laceration of his right ear, hearing loss, a mild traumatic brain injury, and a cervical sprain because of the accident. Claimant also had problems with anxiety, sleep and headaches. He was assessed as having an adjustment disorder caused by the accident. (Arbitration Decision, pages 2-4)

On September 5, 2018, claimant was evaluated by Paul Ascheman, Ph.D. Records note claimant had an adjustment disorder substantially contributed to by his work injury. Claimant indicated he did not believe additional psychological services were needed. Based on a mutual agreement between claimant and Dr. Ascheman, psychological services were terminated. Claimant's discharge diagnosis was an adjustment disorder with mixed disturbance of emotion and conduct, in remission. (Exhibit A)

In a February 21, 2019 letter, claimant's counsel indicated claimant was having difficulty with depression and post-traumatic stress disorder (PTSD). A request was made for authorization for claimant to see a psychiatrist in the Des Moines area for claimant's mental health issues. (Ex. 1)

On March 2, 2019, claimant was evaluated by James Gallagher, M.D., a psychiatrist. Claimant indicated that since his work accident, he was a changed person. Claimant described himself as impulsive, irritable and unhappy. Claimant had some active thoughts of self-harm, but told Dr. Gallagher he would not act upon them. Dr. Gallagher assessed claimant as having a major depressive disorder. He opined claimant required treatment consisting of both medication and counseling. Claimant was prescribed mirtazapine. Claimant was to follow-up with Dr. Gallagher on March 15th. He was instructed to contact Dr. Gallagher if he became desperate. (Ex. 2)

In a professional statement, claimant's counsel indicated he wrote the February 21, 2019 letter to defendant's counsel as he was afraid claimant was going to hurt himself or hurt someone else. Claimant's counsel told claimant to stay home and said, he told claimant he would do what he could to get claimant authorized mental health treatment.

Claimant testified he felt like he had a mental breakdown and was concerned with hurting himself or others. He said he has been taking the medication prescribed by Dr. Gallagher and it appears to help him. He said he felt Dr. Ascheman was helpful and would have no problem with returning to him for further counseling. Claimant testified he would like to continue to treat with Dr. Gallagher.

In a professional statement, defendant's counsel indicated defendant is willing to return claimant for treatment with Dr. Ascheman.

CONCLUSIONS OF LAW

Iowa Code section 85.27 provides, in relevant part:

For purposes of this section, the 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.

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 Company, 528 N.W.2d 122 (Iowa 1995).

Offering no care is the same as offering no care reasonably suited to treat the injury. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 436 (Iowa 1997).

Claimant was injured in a work accident occurring on June 7, 2017. The accepted work injury did result in claimant receiving mental health treatment. That treatment was discontinued in September of 2018 upon mutual agreement by claimant and Dr. Ascheman. (Ex. A)

In a February 21, 2019 letter, claimant's counsel asked defendant to authorize claimant to see a psychiatrist. In a professional statement, claimant's counsel indicated the letter was prompted, in part, by a concern claimant would harm himself or others. (Ex. 1)

The record indicates claimant's mental health condition has flared up. Claimant has recently been assessed as having a major depressive disorder and requires both medication and counseling. (Ex. 2)

Defendant gave no response to the February 21, 2019 letter until the day of hearing when it offered to return claimant to Dr. Ascheman for counseling.

I can appreciate defendant's position. The last records from Dr. Ascheman indicate claimant no longer required mental health treatment.


However, defendant did not respond to the February 21, 2019 request for a referral to a psychiatrist until the day of hearing. An offer to return claimant to Dr. Ascheman was not made until approximately three weeks after the request for treatment.

Given this record it is found the approximate three-week delay in offering any response to the February 21, 2019 request for care is an unreasonable delay in care. As the delay in care is found to be unreasonable, claimant has carried his burden of proof he is entitled to the requested alternate medical care.

ORDER

Claimant's petition for alternate medical care is granted. Defendant shall authorize claimant be allowed to continue treatment with Dr. Gallagher.

Signed and filed this 13th day of March, 2019.


JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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