

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JAMES CARDWELL,

Claimant,

vs.

LOWE'S HOME CENTERS, INC.,

Employer,
Self-Insured,
Defendant.:
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File No. 21000504.01

ALTERNATE MEDICAL

CARE DECISION

Head Note No: 2701

STATEMENT OF THE CASE

On June 15, 2021, claimant filed a petition for alternate medical care pursuant to Iowa Code 85.27 and 876 Iowa Admin. Code 4.48. The defendant filed an answer admitting liability for the claim relating to the lower back, indicating that the claim remained under investigation. During the hearing, the undersigned confirmed that the defendant does not dispute liability for the injury of December 4, 2020, for which the claimant is seeking treatment.

The matter was scheduled for hearing on June 28, 2021, at 10:30 a.m. The undersigned presided over the hearing held via telephone and recorded digitally on June 28, 2021. That recording constitutes the official record of the proceeding under 876 Iowa Admin. Code 4.48(12). Claimant participated personally through his attorney, Gary Mattson. The defendant participated via their attorney, Lori Scardina Utsinger.

The record consists of:

- Claimant's Exhibits, numbered 1 through 6, comprised of seven pages of documents attached to their brief in support of their petition for alternate medical care.
- Defendant's Exhibits, labeled A through E, comprised of five pages.
- Testimony from James Cardwell.

On February 16, 2015, the Iowa Workers' Compensation Commissioner issued an order delegating authority to deputy workers' compensation commissioners, such as the undersigned, to issue final agency decisions on applications for alternate care. Consequently, this decision constitutes final agency action, and there is no appeal to the commissioner. Judicial review in a District Court pursuant to Iowa Code 17A is the avenue for an appeal.

ISSUE

The issue under consideration is whether claimant is entitled to alternate care via a referral to a back specialist pursuant to the recommendations of Dr. Miller.

FINDINGS OF FACT

James Cardwell, the claimant, sustained an injury to his lower back on December 4, 2020. This injury arose out of, and in the course of, his employment with Lowe's Home Centers. The defendant accepted liability for the injury in their answer, and at the hearing conducted on June 28, 2021.

The dispute in this case is whether a referral for an IME with Trevor Schmitz, M.D., is suitable treatment based upon the recommendations of authorized treating provider Daniel C. Miller, D.O.

Mr. Cardwell started employment with Lowe's Home Centers in July of 2020. (Testimony). In December of 2020, he injured his lower back. (Testimony). The defendant sent him to treat with Dr. Miller. (Testimony). Dr. Miller provided previous referrals to physical therapy and work hardening. (Testimony). Dr. Miller felt that these provided counterproductive results and thus felt that a referral to a back specialist was warranted. (Testimony). Dr. Miller provided this referral in April. (Testimony). Dr. Miller saw Mr. Cardwell on at least ten occasions. (Testimony). Mr. Cardwell continues to visit Dr. Miller. (Testimony).

In a return-to-work status note on Lowe's Home Centers letterhead dated April 15, 2021, Dr. Miller indicated that Mr. Cardwell had low back pain. (Claimant's Exhibit 2). Dr. Miller provided restrictions including no lifting over 40 pounds, no pushing and pulling over 100 pounds, avoid repetitive bending and twisting, and continue current medications. (CE 2). Dr. Miller also indicated that Mr. Cardwell needed a referral to a back pain specialist. (CE 2).

In early May of 2021, claimant's counsel sent defendant's counsel a letter requesting a referral to a back specialist per the recommendations of Dr. Miller. (CE 3). Claimant's counsel wrote another letter to defendant's counsel that the claimant slipped and further injured his back while at work. (CE 4).

On May 20, 2021, counsel for defendant requested that Mr. Cardwell submit an executed patient waiver and provide a list of all medical providers and employers for the previous 10 years. (Defendant's Exhibit B). Claimant responded to this request on June 8, 2021. (DE C, D).

Dr. Miller examined Mr. Cardwell on May 24, 2021. (CE 5:1-2). Mr. Cardwell complained of lower back pain and noted that he slipped in water and twisted his back. (CE 5:1). Mr. Cardwell also told Dr. Miller that he had not heard anything about the previously requested referral to a back pain specialist. (CE 5:1). Dr. Miller did not alter Mr. Cardwell's restrictions. (CE 5:1).

On June 21, 2021, defendant's counsel indicated that she contacted Iowa Ortho for an appointment. (CE 6). Defendant's counsel sent another letter to claimant's counsel indicating that an appointment for an independent medical examination ("IME") with Trevor Schmitz, M.D., on July 6, 2021, at 12:45 p.m., in Pella, Iowa. (DE A). Defendant's counsel indicated in her letter, "[p]ending results of the IME, Dr. Trevor Schmitz will be considered as an authorized provider for Mr. Cardwell's back." (DE A).

The morning of the hearing, counsel for the defendant e-mailed counsel for the claimant indicating that an IME was the "quickest way to get Mr. Cardwell an appointment." (DE E). During the hearing, counsel for the defendant indicated to the undersigned the same information as provided by Dr. Schmitz's office. The claimant testified that he would like a referral to a back specialist and would seek care with one if a referral was provided. (Testimony).

CONCLUSIONS OF LAW

Iowa Code 85.27(4) provides, in relevant part:

For purposes of this section, the employer is obligated 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.

Iowa Code 85.27(4). See Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997). An application for alternate care shall concern only the issue of alternate care. 876 IAC 4.48(5).

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care they have 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 right to select the provider of medical treatment to an injured worker does not include the right to determine how an injured worker should be diagnosed, evaluated, treated, or other matters of professional medical judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988). 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 Decision, June 17, 1986).

"Determining what care is reasonable under the statute is a question of fact."
Long, 528 N.W.2d at 123.

There is no dispute in this case that Dr. Miller is an authorized treating physician. The defendant was within their rights under the statute to select Dr. Miller. Dr. Miller first recommended a referral to a back specialist in April.

In this case, the defendant referred Mr. Cardwell to Dr. Schmitz for the purpose of an IME pursuant to Iowa Code section 85.39. The defendant indicates that the appointment is considered an IME because this was the quickest way to get Mr. Cardwell in to see Dr. Schmitz. This explanation strains credulity. The defendant indicated in their original answer, amended answer, and in several exhibits, that Mr. Cardwell's lower back issues remain under investigation; hence, the scheduling of the IME with Dr. Schmitz. Rather than offer care, the defendant appears to be attempting to avoid offering care. While the defendant is entitled to select a provider of their own choosing, the defendant does not have a right to interfere with the medical judgment of the authorized treating physician. See e.g. Assmann v. Blue Star Foods, Inc., File No. 866389 (Declaratory Ruling, May 19, 1988); Bolinger v. Trillium Healthcare Group, LLC, File No. 5060856 (Alternate Medical Care Decision, April 11, 2018). The defendant selected Dr. Miller. Dr. Miller recommended a referral to a back specialist.

The defendant is free to request that Mr. Cardwell attend an IME provided the requirements of Iowa Code section 85.39 are met. At the same time as the defendant pursues an IME, Mr. Cardwell could be offered treatment pursuant to the recommendations of the authorized treating physician with a separate doctor of the defendant's choosing.

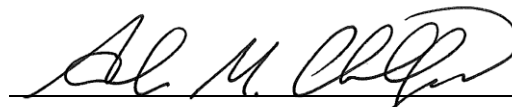
The actions of the defendant in this matter are neither reasonable, nor prompt, as required by Iowa Code section 85.27.

The claimant is entitled to alternate medical care.

IT IS THEREFORE ORDERED:

1. The claimant's petition for alternate medical care is granted.
2. The defendant shall immediately authorize and timely pay for treatment with a back specialist pursuant to the recommendation of Dr. Miller.

Signed and filed this 28th day of June, 2021.



ANDREW M. PHILLIPS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Gary Mattson (via WCES)

Lori Nichole Scardina Utsinger (via WCES)