

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

HEDAYAT KHALDAR SAGHIR,

Claimant,

vs.

MENARDS,

Employer,

and

XL INSURANCE,

Insurance Carrier,
Defendants.

FILED

APR 14 2015

WORKERS COMPENSATION

File No. 5052229

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

This is a contested case proceeding under Iowa Code chapter 17A. Claimant sustained a work-related injury on January 1, 2015. Claimant filed a petition for alternate medical care. The petition was filed on April 2, 2015. Claimant stated he was dissatisfied with the quality of care he was receiving as defendants refuse to authorize medical treatment for claimant. (Original Notice and Petition)

Defendants did not file an answer. However, in the case in chief, defendants admitted the work injury.

The hearing administrator set the case for a telephone hearing on April 14, 2015, at 10:30 a.m. The hearing was not recorded by digital means. The attorneys waived the recording of the proceeding.

According to the Iowa Workers' Compensation Commissioner, the deputy workers' compensation commissioner presiding at the contested case in an application for alternate medical care, pursuant to rule 876 IAC 4.48, is hereby delegated the authority to issue the final agency decision on the application, Iowa Code section 86.3. There is no right of intra-agency appeal on this decision. Continental Telephone Co. v. Colton, 348 N.W.2d 623 (Iowa 1984) and Leaseamerica Corp. v. Iowa Dept. of Revenue, 333 N.W.2d 847 (Iowa 1983).

If claimant is dissatisfied with the medical care he has been receiving, he must communicate his dissatisfaction to the employer. Such dissatisfaction must be

communicated to the employer prior to the filing of the original notice and petition. Iowa Code section 85.27.

Iowa Code section 85.27(4) 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.

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).

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).

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).

A referral by an authorized physician to another practitioner is generally found to be authorized care. Coleman v. Coleman Indus. Cleaning, 4 Iowa Indus. Comm'r Rep. 67 (1984).

Claimant had been treating with Dr. Ajax, (first name unknown). Dr. Ajax referred claimant to the University of Iowa. At the time of the hearing, defendants had attempted to make an appointment for claimant at the University of Iowa, but had been unsuccessful in securing an appointment.

Ms. Lindsay Mills, counsel for defendants, indicated during the hearing, her clients are willing to send claimant to the University of Iowa Hospitals and Clinics. However, defendants have been unable to schedule the appointment.

The referral to the University of Iowa Hospitals and Clinics is found to be authorized care. Defendants shall schedule an appointment for claimant at the earliest date possible. Defense counsel shall also notify counsel for claimant of the progress that is being made. Such notice shall be made on or before April 21, 2015.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall schedule an appointment for claimant as soon as possible at the University of Iowa Hospitals and Clinics.

Defense counsel shall notify counsel for claimant on or before April 21, 2015, of the progress that defendants are making in securing the appointment for claimant.

Signed and filed this 14th day of April, 2015.



MICHELLE A. MCGOVERN
ACTING WORKERS'
COMPENSATION COMMISSIONER

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