

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BRENT LOZANO,	:	
	:	
Claimant,	:	File No. 5061968.01
	:	
vs.	:	
	:	ALTERNATE MEDICAL
POLK COUNTY, IOWA,	:	
	:	CARE DECISION
	:	
Employer,	:	
Self-Insured,	:	Head Note No: 2701
Defendant.	:	

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, Brent Lozano. Claimant appeared through attorney, Matt Sahag. Defendant appeared through attorney, Meghan Gavin.

The alternate medical care claim came on for hearing on March 17, 2020. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's 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 2 and defense exhibit A, which were received without objection. I have also taken administrative notice of the August 8, 2019, arbitration decision in this matter. The defendant does not dispute liability for claimant's March 16, 2016, injury.

ISSUE

The issue presented for resolution is whether the care offered by the County is reasonable.

FINDINGS OF FACT

The claimant sustained an injury which arose out of and in the course of his employment on March 16, 2016. He was a correctional officer. On that date, he twisted his ankle in an altercation with an uncooperative inmate. He had a difficult period of recuperation which included extensive physical therapy. Mr. Lozano eventually developed mental health symptoms associated with his physical condition. The County denied that his mental health symptoms were causally connected to the work injury and

the matter proceeded to hearing on May 13, 2019. (Arbitration, August 8, 2019, page 1) Prior to that date, Mr. Lozano received unauthorized medical care for depression from David Harrison, M.D. (Arb., p. 4) Both parties introduced medical causation evidence related to whether claimant's depression was substantially aggravated by the work injury. (Arb., pp. 5-6, 9) After considering all of the evidence, the Deputy Commissioner concluded that the "claimant has shown that he sustained an aggravation of a pre-existing mental condition as a result of the March 16, 2016 work injury." (Arb., p. 9) He awarded industrial disability benefits, as well as the following order: "Defendant shall promptly identify and authorize an appropriate medical provider to treat claimant's mental health condition related to the March 16, 2016 work injury." (Arb., p. 13) The Arbitration Decision was initially appealed, but the appeal was withdrawn on September 18, 2019.

On October 1, 2019, claimant's counsel wrote to defense counsel requesting mental health treatment. (Cl. Ex. 1, p. 1) On October 2, 2019, defense counsel promptly replied, indicating the County was working on it. Claimant's counsel followed up on October 7, 2019. On October 9, 2019, defense counsel arranged an appointment with Callie Brass, at Ames Therapy and Consulting Services, PC. (Cl. Ex. 1, p. 3) On December 3, 2019, claimant's counsel wrote an email to defense counsel indicating that Callie Brass was merely a "mental health counselor" and not a "doctor." (Cl. Ex. 1, p. 3) He asked to have claimant seen by a psychiatrist. In response, the County rescheduled an appointment with Ames Therapy and Consulting Services, including evaluation by "Dr. Amy Mooney" for the purpose of creating a treatment plan. (Cl. Ex. 1, p. 4) Defense counsel responded that Ames Therapy and Consulting Services has a psychiatrist at the clinic and that the evaluation would determine what treatment was needed. (Def. Ex. A) Claimant's counsel again refused this, indicating that Dr. Mooney is not a medical doctor. "Deputy Gordon ordered medical treatment and found the psychiatrist's opinion more credible than a psychologist. Please set him up to see a psychiatrist, otherwise, I will have no choice but to file an application for alternate medical care." (Cl. Ex. 1, p. 4)

On January 27, 2020, Polk County wrote a letter to Mr. Lozano, indicating that it had set up two appointments for him to attend at Ames Therapy and Consulting Services, which he did not attend. (Def. Ex. A, p. 9) This cost the County a no show fee of \$500.00. On February 4, 2020, the County again arranged an appointment with Ames Therapy and Consulting Services for March 4, 2020, and forwarded the details of this to claimant's counsel.

On or about February 6, 2020, James Gallagher, M.D., a psychiatrist, examined Mr. Lozano. He prepared a "check box" report providing medical opinions on claimant's counsel letterhead. He opined that neither a psychologist, nor a licensed mental health counselor is an appropriate medical provider to treat Mr. Lozano's mental health condition. (Cl. Ex. 2, p. 2) He further opined that Mr. Lozano should be evaluated and treated by a psychiatrist for his condition. This is at least partially based upon the fact that psychologists and mental health counselors are not licensed to prescribe medications and Mr. Lozano likely needs prescription medications. (Cl. Ex. 2, pp. 2-3)

REASONING AND 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. Iowa Code section 85.27 (2013).

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See 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).

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).

An employer's statutory right is to select the providers of care and the employer may consider cost and other pertinent factors when exercising its choice. Long, at 124. An employer (typically) is not a licensed health care provider and does not possess medical expertise. Accordingly, an employer does not have the right to control the methods the providers choose to evaluate, diagnose and treat the injured employee. An employer is not entitled to control a licensed health care provider's exercise of professional 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 January 31, 1994).

The only question presented at hearing is whether the mental health care offered by the County is reasonable under the circumstances. In this case, the County initially denied that claimant's mental health condition was causally related to his work injury. In August 2019, a Deputy Commissioner found that the condition is causally connected and ordered the County to provide mental health treatment. Prior to that decision, the only treatment claimant has received has been medication management through his family physician.

In response to the Arbitration Decision, the County authorized an evaluation by a licensed counselor and/or a psychologist, which would determine the treatment claimant needed. In the County's mind, if claimant needed medication treatment, this could be managed by a psychiatrist at the designated provider's office. Claimant has insisted

upon seeing a psychiatrist in the first instance. Therefore, he refused to attend the appointments arranged by the County.

The claimant then obtained a medical opinion from a psychiatrist that he, in fact, needs to be evaluated by a psychiatrist, not a psychologist or counselor. This evidence is un rebutted. Again, I understand that, in the County's mind, their treatment plan could include medication treatment by a qualified psychiatrist at the chosen treatment provider's office.

This is a close case simply because it is possible that the County's chosen treatment provider may have more quickly provided the needed treatment, including referral to a psychiatrist had the claimant simply attended the appointment to see how it would play out. It seems that both parties have demonstrated some stubbornness which has impeded claimant's ability to receive his medical care. The claimant could have cooperated with the evaluation to see where this led. The County could have simply authorized the psychiatrist at Ames Therapy and Consulting Services to see the claimant.


While this is a close case, my job is to apply the facts to the law. I find that it is unreasonable for the County to refuse to send claimant to a psychiatrist given the record before the agency. According the Arbitration Decision, the medical care claimant has received to date has primarily been medication management. The un rebutted medical evidence in this record from Dr. Gallagher confirms that medication management is needed and claimant requires a psychiatric evaluation in the first instance. While this opinion is somewhat self-serving, I find it is generally credible and it is certainly the best medical evidence in the record.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is GRANTED. Dr. Gallagher is designated as claimant's treating physician for his mental health condition and shall direct his related medical care.

Signed and filed this 17th day of March, 2020.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Matthew Sahag (via WCES)

Meghan Gavin (via WCES)

Julie Bussanmas (via WCES)