

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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JAMES O'BRIEN,

**FILED**

Claimant,

JUN 29 2016

vs.

WORKERS COMPENSATION

WEBSTER COUNTY,

File No. 5035125

Employer,

ALTERNATE MEDICAL

and

CARE DECISION

IMWCA,

Insurance Carrier,  
Defendants.

HEAD NOTE NO: 2701

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STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapters 17A and 85. The expedited procedure of rule 876 IAC 4.48, the "alternate medical care" rule, is requested by claimant, James O'Brien. Claimant filed a petition on June 22, 2016. He alleged at paragraph 5 of his petition:

Reason for dissatisfaction and relief sought: Order adjuster to stop requiring prior approval on medications that are already authorized which cause delays in delivery to Claimant.

Defendants filed an answer on June 27, 2016. Defendants admitted the occurrence of a work injury on October 7, 2008 and liability for the claimant's left lower extremity and related chronic regional pain syndrome (CRPS) which is sought to be treated by this proceeding.

The alternative medical care claim came on for hearing on June 29, 2016. The proceedings were recorded digitally, and constitute the official record of the hearing. By an order filed February 16, 2015 by the workers' compensation commissioner, this decision is designated final agency action. Any appeal would be by petition for judicial review under Iowa Code section 17A.19.

The evidentiary record consists of claimant's exhibit 1, defendants' exhibit A, and the testimony of claimant and Chuck Williams.

## ISSUE

The issue presented for resolution is whether claimant is entitled to alternate medical care in the form of an order directing defendant-insurance carrier to remove any preapproval requirement with respect to prescriptions issued by Dr. Szczepanek.

## FINDINGS OF FACT

The undersigned, having considered all of the testimony and evidence in the record, finds:

Claimant's testimony was clear, direct and consistent with the remainder of the evidentiary record. The undersigned was presented with no reason to doubt claimant's veracity. Claimant is found credible.

Chuck Williams, claims examiner for defendant-insurance carrier, testified at evidentiary hearing. His testimony was consistent with the records in evidence. The undersigned was presented with no reason to doubt his veracity. Mr. Williams is found credible.

Claimant suffered an admitted work related injury while performing his duties as a Webster County Deputy Sheriff on October 7, 2008. As a result of this injury, claimant sustained disability to his left lower extremity and associated CRPS, for which defendants remain responsible for medical treatment. (Claimant's testimony; Exhibit A, page 1)

Since late 2015, claimant has received ongoing medical care from authorized physician, Andrzej Szczepanek, M.D., of Central States Medicine. (Claimant's testimony) Dr. Szczepanek has prescribed a number of medications for claimant's condition. When claimant receives a prescription, he is to contact his pharmacy, which then contacts Cypress Care, a pharmacy benefit manager, for authorization. (Claimant's testimony; Mr. Williams' testimony)

A Cypress Care log note of December 16, 2015 indicates claims examiner, Chuck Williams requested Cypress Care place claimant on an "All Prior Auth[orization] plan." (Ex. 1, p. 7) As a result, when Cypress Care received notification of a prescription from a pharmacy, Mr. Williams is sent an email request for authorization. (Mr. Williams' testimony)

In January 2016, claimant's oxymorphone and hydrocodone prescriptions were denied on the basis Dr. Szczepanek was not an authorized prescriber. (Ex. 1, pp. 7-8)

On January 26, 2016, defendants' counsel authored email correspondence to claimant's attorney which stated defendants were currently authorizing "treatment and corresponding modalities/medications" with Dr. Szczepanek. The correspondence notes Dr. Szczepanek "already understands" that defendants only accepted the left lower extremity and associated CRPS as compensable. Counsel indicated defendants

authorized the following prescriptions ordered by Dr. Szczepanek: cyclobenzaprine, amitriptyline, gabapentin, hydrocodone and oxymorphone. (Ex. 1, p. 4; Ex. A, p. 2)

In February 2016, Cypress Care advised claimant his medications required preauthorization prior to approval. (Ex. 1, p. 6)

On March 11, 2016, claimant's counsel authored a letter to defendants' counsel. Counsel stated Dr. Szczepanek was an authorized provider who accordingly, was authorized to provide the medications he felt were necessary in treatment of claimant's complaints. Counsel further represented that while Dr. Szczepanek's prescriptions were timely received, Cypress Care informed claimant it was unable to approve the prescribed medications due to a directive from Mr. Williams to seek approval from him prior to authorizing the refill. Counsel indicated he and the claimant did not "understand" why prescriptions ordered by Dr. Szczepanek required approval by Mr. Williams and described the scenario as "unnecessary and unsatisfactory," as it resulted in claimant going without medications. (Ex. 1, p. 5)

Later that month, Mr. Williams was again requested to preauthorize claimant's oxymorphone and hydrocodone. (Ex. 1, p. 6)

On May 3, 2016, claimant returned to Dr. Szczepanek for evaluation. Claimant complained of left leg pain, from the knee to the foot, at a level 5 on a 10-point scale. He also reported numbness, tingling, cramps, and weakness of the left lower extremity. Dr. Szczepanek noted claimant reported good relief with use of his medication regimen. Despite this adequate relief, claimant initiated a discussion regarding "stopping all his opioid medications." Dr. Szczepanek noted:

[Claimant] has continuous problems with timely approval of his opioid medications. Virtually every month he is without opioids for 2-3 days before doubtful while [sic] is obtained. He stated that he has very unpleasant withdrawals. In spite of response to opioids. She [sic] still [sic] be gradually weaned off Opana ER and oxycodone as he is very discouraged by this situation.

(Ex. 1, p. 1)

56-year-old male with chronic left lower extremity pain secondary to CRPS type I. In spite of fairly satisfactory pain control with his current medical regimen, patient wishes to be weaned off opioids. He was provided with taper plan.

(Ex. 1, p. 3)

Claimant testified his opioid medications were repeatedly delayed two to three days, during which he time he went without pain medication. Claimant testified he would begin to suffer withdrawals during these periods. As a result, claimant became frustrated and indicated he requested Dr. Szczepanek taper him from use of these

medications. Following tapering from his opioid medications, claimant testified he suffered with a return of pain symptoms. He testified he would like to return to use of the medications, assuming Dr. Szczepanek would reinitiate his prior treatment plan. (Claimant's testimony) Claimant requests an order that Mr. Williams remove any required preauthorization which interferes with his timely receipt of the prescriptions issued by Dr. Szczepanek.

Mr. Williams testified defendant-insurance carrier possesses a policy which requires preapproval of chronic opioid medications. He described the rationale for the policy as a form of safeguard against misuse of such medications. (Mr. Williams' testimony)

### CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.14(6).

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).

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.

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 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. Assman 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 its 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 v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995).

Defendants admitted liability for claimant's left lower extremity condition and associated CRPS. Accordingly, defendants are responsible for providing medical treatment reasonably suited to treatment of the conditions. Defendants have designated Dr. Szczepanek is an authorized treating provider. Defendants have represented Dr. Szczepanek is aware defendants have only agreed to compensability of the left lower extremity and CRPS condition.

Given Dr. Szczepanek is authorized to treat claimant for these compensable conditions, defendants are not at liberty to interfere with Dr. Szczepanek's medical judgment or interfere with his treatment plan. Dr. Szczepanek's medical judgment led him to order prescriptions he believes are reasonable and necessary in treatment of claimant's conditions; the treatment plan proved beneficial to claimant by satisfactorily relieving claimant's pain. Defendants' imposition of a preapproval system has resulted in interference with claimant's treatment plan and has resulted in repeated and regular delays in claimant's receipt of medical treatment. While delays of two to three days may sound abstractly minor, I am certain a patient with chronic regional pain syndrome would vehemently disagree. Accordingly, it is determined defendants are failing to provide prompt treatment which is reasonably suited to treatment of claimant's conditions.

Furthermore, defendants' imposition of a preapproval mechanism has resulted in rendering an otherwise successful treatment plan, unsatisfactory. Claimant testified he received pain relief through the medication regimen ordered by Dr. Szczepanek. Dr. Szczepanek's records similarly reflect claimant received good relief of his symptoms under the treatment plan. However, as a result of the delays which repeatedly resulted from defendants' preapproval requirement, claimant unnecessarily suffered with withdrawal symptoms on a monthly basis. The withdrawal symptoms and frustration which resulted ultimately led claimant to request to be tapered from an otherwise successful treatment regimen. Therefore, it is determined defendants' imposed preapproval mechanism prevents claimant from receiving medical care which is reasonably suited in treatment of his conditions without undue inconvenience.

Finally, it is entirely unreasonable for defendants to impose a preapproval scheme with respect to medications which defendants have admitted are authorized in

treatment of compensable conditions and which are ordered by an authorized physician. By imposing these additional steps, claimant is left without treatment for which defendants are responsible. I see no legitimate purpose for this additional roadblock in claimant's care given defendants have authorized Dr. Szczepanek to provide treatment modalities/medications and specifically authorized the medications in question. Defendants can easily receive notice of the prescribed medications and review a treatment plan via another means which results in less harm to claimant. Defendants may request medical records from Dr. Szczepanek or a filled prescription log from Cypress Care; neither method would result in interference with claimant's treatment plan.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's motion for alternate care is granted. Defendants shall removal all preapproval requirements imposed upon prescriptions for cyclobenzaprine, amitriptyline, gabapentin, hydrocodone and oxymorphone which are ordered by Dr. Szczepanek.

Signed and filed this 29<sup>th</sup> day of June, 2016.

  
ERICA J. FITCH  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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