BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

GLADYS ADAMS,

Claimant,

vs.

DELTA AIR LINES, INC.,

Employer,

and

UNKNOWN,

Insurance Carrier,
Defendants.

File No. 5065812

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

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, Gladys Adams. The employer is Delta Air Lines, Inc. Its insurance carrier is unknown, possibly self-insured, however, Gallagher Bassett is the third-party administrator (TPA). Claimant appeared personally and through attorney, Dennis Currell. Defendant employer appeared through its attorney, Jason Kidd.

The alternate medical care claim came on for hearing on October 23, 2018. 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 exhibit 1 and defense exhibits A through D, which were received without objection. Administrative notice is taken of the agency file, including the prior alternate medical care determination by Deputy Stanley McElderry on April 27, 2017. Claimant has alleged she suffered an injury on August 1, 2016, to her low back which eventually caused a sequela injury in her right ankle. The defendants do not dispute liability for claimant's August 1, 2016, work injury.

ISSUE

The issues presented for resolution are whether the claimant is entitled to a further order from this agency directing the defendant to cease and desist from interfering with claimant's medical treatment and whether claimant is entitled to the treatment recommended by the treating medical provider.

FINDINGS OF FACT

The claimant sustained an injury to her low back on August 1, 2016, which arose out of and in the course of her employment for Delta Air Lines. The defendant authorized care with Tina Stec, M.D., who provided treatment. Ms. Adams developed chronic low back pain which radiated down her right leg. In April 2017, claimant filed an alternate care claim alleging that the defendant had failed to follow the treatment recommendations of its own provider. At that time, the claimant was only being treated for her low back and spine. On April 24, 2017, this agency found that the employer "failed to promptly provide the care recommended" and it has "shown a disregard for the health of the claimant." (Alt Care Dec., page 3, April 24, 2017) The Order stated claimant "may choose the providers necessary for the evaluation and treatment of her work injuries, and defendants shall promptly pay for the treatment." (Id.) This decision was never appealed and is final.

Sometime after the first alternate medical care hearing, claimant began to develop right ankle symptoms.

In July 2018, claimant established treatment with Stanley Mathew, M.D., for her back. Dr. Mathew evaluated Ms. Adams on July 10, 2018. He diagnosed "enthesopathy of the lumbar spine, sacroiliitis, trochanteric bursitis, L4-L5 radiculopathy, Achilles tendinitis, right ankle pain, gait and balance dysfunction, and chronic pain syndrome." (Defendants' Exhibit C) He has provided chronic pain treatment including pain medications, injections and aqua therapy. For the ankle, he recommended an MRI. This was ordered on July 10, 2018 and CRS Pain Clinic immediately began efforts to achieve authorization for this test. Claimant testified, Dr. Mathew referred her to a podiatrist, Roy Lidtke, DPM.

On August 14, 2018, defense counsel wrote a letter to Dr. Mathew which appears to be an attempt to determine whether the right ankle condition is causally connected to the August 1, 2016, work injury. (Def. Ex. B) On August 20, 2018, Dr. Mathew responded to this letter, and confirmed that claimant's right ankle condition is directly related to her work injury. (Def. Ex. C, p. 5)

Claimant saw Dr. Lidtke on August 30, 2018. The MRI had still not been authorized at that time. (Cl. Ex. 1, p. 8) Dr. Lidtke verified that the MRI needed to be accomplished before he could provide further treatment. (Cl. Ex. 1, pp. 7, 10) On September 4, 2018, Jenna Elliott from Gallagher Bassett, the employer's TPA, authorized the MRI. (Cl. Ex. 1, p. 9) On September 6, 2018, Dr. Lidtke provided a

TENS unit for pain management and attempted to proceed with scheduling the MRI. (Cl. Ex. 1, p. 10) Gallagher Bassett insisted upon handling the scheduling of the MRI. (Cl. Ex. 1, p. 11)

The MRI itself is not in the record, however, it was done between September 10, 2018, and September 14, 2018. (Cl. Ex. 1, p. 12) After reviewing the MRI, Dr. Lidtke noted the MRI showed significant tendon tears in her right ankle and referred claimant to an orthopedic surgeon. (Cl. Ex. 1, pp. 13-14) At the time of hearing, the surgical referral had not been authorized.

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).

In this case, there is a previous adjudication which strips the employer of its authority to direct medical treatment under Section 85.27. Specifically, the claimant is authorized to choose the treatment providers for the evaluation and treatment of her injury and the employer must promptly pay.

The claimant argues that she established care with Dr. Mathew who recommended an MRI on July 10, 2018. The employer failed to authorize this MRI until approximately September 4, 2018. Claimant argues this is a violation of Deputy McElderry's April 24, 2017, Order which allowed claimant to direct her own care. The claimant asks the agency to now enter a more specific order, instructing defendant to "communicate their lack of ability to legally 'select care' or 'authorize treatment' to Claimant's providers." Claimant also seeks an order instructing defendant to "cease and desist from further conduct that implies that they have any legal capability to determine or direct claimant's medical care."

The defendant argues that it was merely investigating the causal connection of the right ankle condition, which developed long after the original back injury.

I find that the employer does have a right to investigate legitimate issue of causal connection, even after an Order is entered granting the claimant the authority to direct her own medical care. For example, it would be possible for a claimant to develop leg problems following a back incident which are not causally connected to the original incident of injury. An employer would not be responsible for treatment associated with a condition which is not causally connected to the work injury, simply because an authorized treating physician recommended it.

It is unclear in this record, why there was a delay between July 10, 2018, and August 14, 2018, when defense counsel first wrote the letter to Dr. Mathew seeking a causal connection opinion for the right ankle condition. It is also unclear why it took from August 20, 2018, until September 4, 2018, for the defendant to authorize the MRI after receiving Dr. Mathew's report that the right ankle condition was, indeed, causally connected to the original work injury.

Once care has been stripped from an employer under Section 85.27, the employer should not interfere with the injured worker's medical treatment in any way. As mentioned above, the defendant, however, does have a right to investigate legitimate causal connection issues. It appears this was a legitimate causal connection issue.

While there was a delay of approximately two months to get authorization for the MRI, I do not find this delay significant enough to warrant a more specific order at this time. A portion of the delay was reasonable to investigate the causal connection of claimant's new condition.

ORDER

THEREFORE IT IS ORDERED:

It appears the recommended surgical consultation had not been authorized at time of hearing. To the extent this is true, the defendant is ordered to provide the surgical consultation with the orthopedic surgeon.

Signed and filed this 24th day of October, 2018.

JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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