BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RHONDA HEDGECOCK,

Claimant,

vs.

ANJINOMOTO HEARTLAND, LLC,

Employer,

and

TRAVELERS,

Insurance Carrier,
Defendants.

File No. 5030697

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, Rhonda Hedgecock. Claimant appeared personally and through her attorney, Mr. Randall Schueller. Defendants appeared through their attorney, Mr. James Bryan.

The alternate medical care claim came on for hearing on February 29, 2016. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's February 16, 2015 Order, the undersigned has been delegated authority to issue a final agency decision in this alternate medical care proceeding. Therefore, this ruling is designated as 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 and 2, which include a total of two (2) pages. The record also contains defendants' exhibit A, which contains three (3) pages. All exhibits were received without objection. The claimant, Rhonda Hedgecock testified and counsel offered helpful argument.

ISSUE

Under Iowa Code section 85.27(4) is the medical care currently provided by defendant to claimant, which is treatment with Donna Bahls, M.D., reasonable when Dr.

Bahls intends to stop providing treatment to claimant after June 30, 2016, due to a shift in the scope of her medical practice. (Exhibit 2) If so, claimant seeks an order directing defendants to schedule an appointment with Kurt Smith, D.O.

FINDINGS OF FACTS

The undersigned having considered all the evidence in the record finds:

In an order following review-reopening, on February 27, 2015, Deputy Gerrish-Lampe granted defendant's application for rehearing ordering that "claimant's treatment can be transferred to Dr. Bahls." (Ex. A, p. 2)

For about the past year, claimant has received authorized treatment from Dr. Bahls. Prior to seeing Dr. Bahls, claimant had been receiving treatment from another employer selected physician, Dr. Smith. (Claimants' testimony).

On February 1, 2016, Dr. Bahls, sent a letter to claimant stating that, "As of June 30, 2016, I will no longer be providing care as a Physiatrist, as I will be transitioning my practice to performing EMG's only." (Ex. 2) Dr. Bahls also stated in the letter that: "With this change, no further prescriptions will be provided after June 30, 2016." (Id.)

The claimant filed her application for alternate medical care on February 17, 2016, asserting the reason for dissatisfaction and relief sought under paragraph five (5) of the petition to be: "Defendant refuses to make an appointment with its authorized physician, Dr. Smith." (Alt. Care Petition, p.1)

The claimant stated in argument that the February 1, 2016, letter from Dr. Bahls, triggered the filing of the alternate care petition.

Claimant's exhibit 1 is a letter from claimant's counsel to defense counsel dated February 9, 2016. Exhibit 1, refers to Dr. Bahls letter advising of the change in the scope of her practice and advises that Dr. Bahls, "is no longer willing to see Ms. Hedgecock as Dr. Bahls is leaving her practice of physical medicine and rehabilitation." (Ex.1)

However, claimant did not testify that Dr. Bahls was refusing to treat her prior to June 30, 2016, nor was there argument or suggestion from either side that Dr. Bahls would not, in fact, continue to see claimant until June 30, 2016. Therefore, based upon Dr. Bahls' letter and the lack of evidence to the contrary, the undersigned finds that claimant continues to treat with Dr. Bahls at this time and that Dr. Bahls will continue to be available to provide treatment to claimant until June 30, 2016. (Ex. 2)

Claimant testified that she liked treating with Dr. Smith. She also testified that Dr. Smith, in years past, had provided injections into her shoulder in addition to medication. Claimant testified that Dr. Bahls has not provided injections for her shoulder and that she believes that she had greater pain relief with Dr. Smith due to receiving those

injections. There were no medical records provided to support claimant's contentions concerning the effectiveness of the injections. Also, there were no records provided concerning whether or not Dr. Smith would presently recommend injections or if he would suggest any different treatment than what is currently being provided by Dr. Bahls. It would be unreasonable for the undersigned to find that treatment that might be offered by Dr. Smith would be superior to treatment currently provided by Dr. Bahls as there is no medical evidence in the record to suggest what sort of treatment Dr. Smith would currently recommend.

There was no evidence presented that treatment being provided by Dr. Bahls has not been offered promptly or was unduly inconvenient for the claimant. Although claimant testified that she preferred treatment with Dr. Smith, there was no medical evidence to suggest that the treatment provided by Dr. Bahls was not reasonably suited to treat the injury.

REASONING AND CONCLUSION OF LAW

Iowa Code section 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.

In this case, claimant's counsel sent a letter to defense counsel dated February 9, 2016, that claimant was not satisfied with the current care. (Ex. 1) The basis for dissatisfaction communicated in the letter is that "Dr. Bahls is no longer willing to see Ms. Hedgcock as Dr. Bahls is leaving her practice of physical medicine and rehabilitation." (Id.) Claimant argued that Ms. Hedgecock should not be required to continue with treatment with Dr. Bahls, when it is known to all parties that Dr. Bahls will not treat claimant after June 30, 2016. Claimant argued that she should be allowed to move forward with treatment now, with a physician that will continue to treat her for the foreseeable future. Claimant specifically sought an order requiring defendant to schedule an appointment for claimant with Dr. Smith.

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See Iowa R. App. P 14(f)(5); Bell Bros. Heating v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); 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. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). 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).

Undoubtedly claimant would like to be seen by Dr. Smith, however, claimant has failed to show that the care currently being provided by Dr. Bahls is unreasonable. In this case, I find that claimant has failed to carry her burden of proof. Claimant has not shown that the medical care currently provided by defendant through the authorized treating physician, Dr. Bahls, is not being provided promptly, or that it is not reasonably suited to treat the injury, or that it is being provided in such a way as to cause an undue inconvenience to the claimant.

Of course, when Dr. Bahls is no longer available to provide medical care for claimant after June 30, 2016, defendant will remain under the requirements of Iowa Code section 85.27 to provide reasonable medical care related to the work injury.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is denied.

Signed and filed this 1st day of March, 2016.

TOBY J. GORDON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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