

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

NATHAN RICHARDS,

Claimant,

vs.

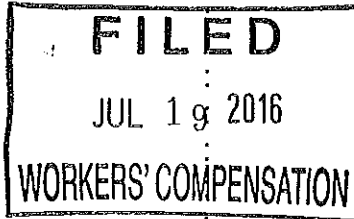
PEPSI BEVERAGES COMPANY,

Employer,

and

OLD REPUBLIC INSURANCE,

Insurance Carrier,
Defendants



File No. 5045018

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

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, Nathan Richards. Claimant filed a petition on July 5, 2016. He alleged at paragraph 5 of his petition:

Reason for dissatisfaction and relief sought: CARRIER TERMINATED PSYCHIATRIC SERVICES ORDERED BY THE COMMISSION.

Defendants filed an answer on July 13, 2016. Defendants admitted the occurrence of a work injury on April 28, 2008 and liability for the mental condition sought to be treated by this proceeding.

The alternative medical care claim came on for hearing on July 15, 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 exhibits 1 through 5, defendants' exhibits A and B, and the testimony of the claimant. Defendants submitted a hearing brief; claimant declined to submit a hearing brief.

ISSUE

The issue presented for resolution is whether claimant is entitled to alternate medical care in the form of continued psychotherapy sessions.

FINDINGS OF FACT

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

Claimant sustained a stipulated work related injury on April 28, 2008 which necessitated multiple surgical procedures and ultimately resulted in chronic pain of the bilateral shoulders and arms. As a result of the pain with which he suffered, claimant developed depression. (Claimant's testimony) An arbitration decision of April 7, 2014 found claimant was entitled to alternate care in treatment of his depression, specifically psychotherapy. (Ex. 1, p. 1) In January 2015, claimant began treating his mental health conditions at Plains Area Mental Health Care. Christel Rinehart, ARNP, provided medication management and Glenna Nockells, LISW, provided psychotherapy. (Claimant's testimony)

Defendants arranged for Philips Ascheman, Ph.D., to perform a psychological evaluation of claimant on March 14, 2016. Dr. Ascheman noted he previously treated claimant in 2014, at which time he opined claimant was "poorly motivated for psychological intervention," as claimant was in search of a "physical cure" rather than learning to adapt to his circumstances. (Ex. A, p. 1) Dr. Ascheman reviewed claimant's subsequent counseling records of Ms. Nockells. He specifically noted Ms. Nockells had opined cognitive behavioral therapy (CBT) had resulted in little positive impact and planned to utilize Eye Movement Desensitization and Reintegration (EMDR). (Ex. A, p. 2)

Claimant informed Dr. Ascheman he attended counseling once every two weeks and found sessions quite helpful in managing his mental condition. Dr. Ascheman noted claimant complained of the following symptoms of depression: significant time sleeping; becoming anxious due to a belief he would develop pain; occasional asocial behavior; irritability; lack of interest; suicidal thoughts; and feelings of hopelessness and worthlessness. Claimant expressed belief therapy sessions allowed him to remain "stable." He indicated he hoped therapy would allow him to learn to notice the signs of depression and the ability to stop the symptoms from escalating. (Ex. A, p. 3) Claimant participated in MMPI-2 testing; Dr. Ascheman opined the validity configuration results suggested claimant "significantly over-endorsed symptoms." (Ex. A, p. 3)

Following evaluation, Dr. Ascheman indicated his opinion from 2014 remained unchanged; specifically, that claimant was looking for a "physical cure" and was "not interested in trying to adapt to his current circumstances." Dr. Ascheman opined claimant had shown minimal progress thus far and described claimant as poorly motivated for psychological intervention. Dr. Ascheman opined no treatment was likely

to be effective for claimant, including CBT, EMDR, or other modalities. He opined this to be the case due to claimant's lack of motivation to improve and opined claimant was "vested in maintaining a view of himself as being disabled and incapable of being happy." (Ex. A, p. 4)

In March of April 2016, Ms. Nockells implemented EMDR therapy. (Claimant's testimony)

On May 5, 2016, claimant presented to a therapy session with Ms. Nockells. Ms. Nockells initiated a discussion regarding claimant's need to separate his pain from his depression in order to allow resolution of the depression despite ongoing pain. Claimant stated he was capable of distinguishing between the two and had been performing activities to cope and clear his mind during periods of pain. However, on high pain days, claimant indicated his coping skills and strategies were overcome. (Ex. B, p. 9) Ms. Nockells opined utilization of the Beck Depression Inventory was not accurate with respect to claimant's depression, as the questions posed allowed answers which reflected claimant's pain and not his mood; for example, sleeping habits, tiredness, fatigue, and irritability. After completing testing, Mr. Nockells expressed belief the PHQ-9 methodology more accurately reflected claimant's condition. (Ex. B, p. 10)

In response to a letter authored by claimant's counsel on May 19, 2016, Ms. Rinehart recommended continued pharmacological intervention in treatment of claimant's conditions. (Ex. 3, pp. 6-7)

Ms. Nockells authored an undated letter to claimant's attorney regarding her recommendations for claimant's care. Ms. Nockells indicated claimant was treating at Plains Area Mental Health Care for major depressive disorder, single episode, using a combination of psychotherapy and psychotropic medications. (Ex. 4, p. 8) Ms. Nockells noted that while claimant informed Ms. Nockells that CBT was helping him "tolerate and survive," Ms. Nockells indicated she had not seen a sustained reduction in claimant's depressed mood as measured on the Beck Depression Inventory. (Ex. 4, p. 8) Ms. Nockells opined the Beck Depression Inventory was a "less accurate measure" for claimant than the PHQ-9 methodology. Accordingly, Ms. Nockells indicated she changed the utilized method of measurement to better comport with claimant's "reporting style and understanding." (Ex. 4, p. 8)

Ms. Nockells represented that at therapy on February 8, 2016, Ms. Nockells and claimant had discussed his lack of progress. During this conversation, the two identified an overlooked "aspect" in claimant's treatment, claimant's psychological trauma of the injury and resultant inability to work. Thereafter, Ms. Nockells began to utilize EMDR treatment in order to "address shame, guilt and core negative beliefs of worthlessness." (Ex. 4, p. 8) Ms. Nockells opined after two such sessions, claimant showed decreased depression, with a PHQ-9 score indicative of mild depression. Ms. Nockells opined this improvement showed claimant was responsive to treatment and further opined claimant could benefit from additional sessions. (Ex. 4, p. 9) Ms. Nockells opined:

I feel strongly that [claimant] is a candidate for treatment and that stopping in the middle of treatment would be harmful to [claimant]. With support and time, [claimant] is capable of recovery.

(Ex. 4, p. 9)

Dr. Ascheman reviewed the correspondence authored by Ms. Rinehart and Ms. Nockells and issued a responsive letter dated July 13, 2016. Dr. Ascheman indicated his opinions remained unchanged; specifically that claimant had achieved maximum medical improvement with regard to his psychological issues. Dr. Ascheman opined claimant was likely to maintain stability from ongoing medication management, but had failed to show any consistent benefit from psychotherapy. Dr. Ascheman did not agree claimant would show improvement with EMDR, citing a failed past trial of the modality. Dr. Ascheman expressed belief Ms. Nockells had claimed improvement in claimant's symptomatology as a result of changing the methodology of measurement. (Ex. A, p. 5)

During hearing, claimant testified he has realized noticeable improvement in his depression as a result of therapy sessions with Ms. Nockells. Claimant testified he has learned to notice when depression begins to set in, which allows him to implement countermeasures to stop his symptoms from worsening. Claimant testified he has also learned calming strategies, which have allowed him to be more patient, social, and engaged with people and activities. Claimant acknowledged a trial of EMDR in September 2015 was not effective; however, he testified he finds the EMDR therapy course initiated in 2016 to be effective. Claimant was unable to explain a reason for the change in effectiveness, but hypothesized to a possible correlation with his ability to implement CBT along with receiving effective pain management. Claimant testified he has recently been prescribed Lidoderm patches to treat his pain. Claimant testified these patches have been very effective in reducing his pain and as a result, his depression is not triggered. Despite the effectiveness of the medication regimen, claimant testified he desires to continue therapy with Ms. Nockells. Claimant explained he and Ms. Nockells have discussed and implemented a plan for treatment that will allow claimant to wean the frequency of his sessions, to perhaps one visit every three months or six months. (Claimant's testimony)

Claimant has not returned to employment and continues to receive weekly workers' compensation benefits. In February 2016, claimant began participating in Tae Kwon Do classes. The classes allow him the benefits of the exercise required for his heart condition, socialization with his son, and improvement in his depression symptoms. He also recently applied for work; the position he described resembled that of a nursing aide for independently living handicapped individuals. Claimant testified the improvements he has realized with therapy have allowed him to recently become more active and functional. He explained he has learned coping strategies which allow him to better manage his pain and accordingly, be more active. Claimant testified his depression has lessened, especially with an effective medication regimen, which also allows increased function. Claimant believes his depression continues to progressively lessen, he has increased energy, and feels like a different person. Claimant believes

his therapy sessions play a vital role in the improvement. Claimant testified he was even anxious regarding applying for work until meeting with Ms. Nockells and discussing the topic. (Claimant's testimony)

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

As of the date of hearing in this matter, defendants continued to authorize medication management with Ms. Rinehart. Defendants have denied authorization for further counseling/therapy sessions. Defendants argue claimant has failed to show improvement with therapy sessions to date and continued performance of an unsuccessful treatment modality is not medically reasonable or necessary.

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 R. App. P. 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 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. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988).

Until recently, claimant's authorized treatment plan has included both medication management and psychotherapy for his work-related depression. In February 2016, Ms. Nockells opined claimant had failed to receive sustained progress as measured on the Beck Depression Inventory.

In March 2016, claimant underwent a psychological evaluation with former treating psychologist, Dr. Ascheman. Dr. Ascheman opined claimant had shown minimal progress with therapy and described claimant as poorly motivated for psychological intervention due to his opinion claimant sought a physical cure for his pain as opposed to a desire to adapt to his current circumstances. Dr. Ascheman opined no treatment was likely to be effective for claimant. Dr. Ascheman subsequently clarified he believed claimant would receive benefit from ongoing medication management, but would not receive improvement with therapy.

Thereafter, claimant continued therapy sessions with Ms. Nockells. At a session on May 5, 2016, Ms. Nockells opined the Beck Depression Inventory did not accurately reflect the severity of claimant's depression due to the possibility the questions posed allowed answers reflective of claimant's pain, as opposed to mood. Accordingly, Ms. Nockells chose to change the method of measurement of claimant's depression to the PHQ-9 methodology. She later explained this method better comported with claimant's specific reporting style. Ms. Nockells also implemented EMDR treatment, which she opined resulted in decreased depression as measured on the PHQ-9 after only two sessions. Based upon this result, Ms. Nockells opined claimant was responsive to EMDR, would benefit from additional sessions, and was capable of recovery. Furthermore, Ms. Nockells opined stopping in the middle of claimant's course of treatment would be harmful to claimant.

Ms. Nockells has provided therapy to claimant for a period of approximately 18 months. Until recently, therapy sessions regularly took place every two weeks. Given the frequency and duration of Ms. Nockells' treatment of claimant, I find her opinions on the effectiveness of treatment and claimant's ability to recover entitled to greater weight than the opinions of Dr. Ascheman. Dr. Ascheman opined claimant was unlikely to improve with additional therapy and EMDR sessions; however, claimant's treating counselor disagrees. Although Dr. Ascheman indicated Ms. Nockells only claimed improvement as a result of altering a measurement index, I see no convincing evidence that Ms. Nockells changed methodologies in order to justify additional therapy. Rather, it appears Ms. Nockells altered measuring methodologies in an attempt to better reflect

the specific reporting style of her patient. There is no evidence the new methodology she has utilized is flawed.

Additionally, Ms. Nockells opined claimant showed decreased depression as measured on the PHQ-9. This finding is consistent with claimant's credible testimony that he has shown improvement in recent months. Defendants have argued the timing of claimant's so-called improvement is not verified by therapy records; however, the undersigned finds the opposite to be true, given Ms. Nockells' statements of improvement following implementation of EMDR therapy. Defendants have also inferred claimant only demonstrated improvement following a discussion with Ms. Nockells regarding a lack of improvement; however, this argument fails to consider the fact that Ms. Nockells opined the measurement methodology she previously utilized was not accurate with respect to claimant. It also ignores the subsequent imposition of a new treatment regimen.

The facts presented at hearing support the conclusion that claimant has shown improvement of his depression symptoms in recent months. Although there is some confusion resulting from changes in methodology, claimant has recently increased his activity level by participation in Tae Kwon Do classes and importantly, by applying to reenter the labor force. Claimant testified the improvement in his physical and mental condition has allowed for the recent improvement in function. His physical and mental conditions are clearly intertwined and it appears to the undersigned that claimant and his treating providers have found a treatment regimen which has allowed improvement in claimant's pain levels and related depression. That successful treatment regimen includes therapy with Ms. Nockells. Claimant testified his sessions with Ms. Nockells have helped him manage his depression in multiple ways and the two have implemented a plan of care which involves weaning claimant to less frequent sessions.

I find objective signs of improvement do exist on the facts of claimant's case. That improvement appears predicated upon continuation of the existing, successful treatment plan of claimant's physical and mental conditions. Ms. Nockells has provided claimant treatment for approximately 1 ½ years. She opined claimant is receptive to treatment, would benefit from additional sessions, and is capable of recovery from his depression. Not only did she opine claimant would benefit from additional sessions, Ms. Nockells opined stopping claimant's treatment plan would be harmful to claimant. Given Ms. Nockells is in a superior position to know the specific needs of her patient and has made a powerful statement regarding the necessity of further therapy sessions, the undersigned finds it is unreasonable for defendants to deny claimant the treatment recommended by its chosen, authorized mental health provider.

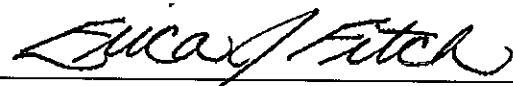
Additionally, it is relevant that defendants have not expressed doubt with respect to Ms. Nockells' qualifications or judgment and accordingly, recommended an alternative provider. Rather, defendants simply have elected to deny authorization for additional therapy which, as outlined above, has formed a component of a successful treatment plan. Therefore, it is determined the care offered by defendants is also less extensive than the care requested by claimant.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's application for alternate care is granted. Claimant is entitled to continued psychotherapy sessions.

Signed and filed this 19th day of July, 2016.



ERICA J. FITCH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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