

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ALAN DUFFY,

Claimant,

vs.

SHADE TREE SERVICE CO., INC.,

Employer,

and

ARGONAUT INSURANCE CO.,

Insurance Carrier,
Defendants.

File No. 19006588.01

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 the injured worker, Alan Duffy. He appeared personally and through attorney, Mark Sullivan. Defendants appeared through their attorney, Katie Johnson.

The alternate medical care claim came on for hearing on August 31, 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 claimant's exhibits 1 through 4 and defense exhibit A, which were received without objection. The defendants do not dispute liability for claimant's November 2019, work injury.

ISSUE

The issue presented for resolution is whether the care offered by the employer is unreasonable.

FINDINGS OF FACT

Mr. Duffy sustained an injury to his low back on or about November 18, 2019. Mr. Duffy was authorized to seek treatment with Tri-State Occupational Health, Jennifer Burds, ARNP. He underwent physical therapy as a result of this. Mr. Duffy testified live and under oath on the telephone hearing and is found to be a credible witness.

The physical therapy, which lasted until approximately January 2020, helped with his range of motion and strength, but did nothing to alleviate his ongoing symptoms of pain. He was referred to Hiroyuki, Oya, M.D., a neurosurgeon at the University of Iowa. Dr. Oya quickly opined that Mr. Duffy is not a surgical candidate and recommended further physical therapy. (Defendants' Exhibit A)

Mr. Duffy testified that he occasionally receives chiropractic treatment for stiffness in his neck. The chiropractors at Spine & Sport Chiropractic have also provided some adjustments to his low back. Mr. Duffy testified that this has provided pain relief. He further testified that he has not seen Ms. Burds since January 2020, and that, while he is not opposed to further physical therapy, he has no reason to believe it will provide pain relief, which is his primary goal. Mr. Duffy reasonably believes that Dr. Oya does not really have any treatment recommendations for the pain in his low back. In July 2020, claimant's counsel wrote the insurance carrier and expressed dissatisfaction with the care, requesting chiropractic treatment. (Cl. Ex. 1)

In this record, no physician has recommended chiropractic care for treatment of his low back condition. It, however, would obviously behoove all parties if Mr. Duffy received some beneficial care to relieve the pain in his low back. To state the obvious, the longer his symptoms continue without relief, the more likely it is that his low back condition could be deemed permanent. Mr. Duffy testified that he has already used the chiropractic care at his own expense and it is helpful. There is not enough evidence, however, in this record, to find that the defendants' actions in directing his care are unreasonable.

Based upon the evidence in this record, the alternate care petition must be denied, however, Mr. Duffy is authorized to return to Tri-State Occupational Health to receive further recommendations for pain management.

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).


Based upon the record before me, Mr. Duffy has failed to meet his burden of proving that the care authorized by defendants is unreasonable. Mr. Duffy though, has not been evaluated by the authorized providers at Tri-State Occupational Health since approximately January 2020. He is authorized to return there to see if there are any further recommendations for pain management.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is DENIED. Defendants, however, shall authorize a follow-up appointment with Jennifer Burds, ARNP, at Tri-State Occupational Health if requested.

Signed and filed this 31st day of August, 2020.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Mark Sullivan (via WCES)

Kathryn Johnson (via WCES)