

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LANEY BUYERT,

Claimant,

vs.

SANFORD SHELDON MED. CENTER,

Employer,

and

DAKOTA TRUCK UNDERWRITERS,

Insurance Carrier,
Defendants.

File No. 21000590.01

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 claimant, Laney Buyert. She filed her application for alternate medical care on February 1, 2023. Claimant appeared personally and through attorney, Joseph Lyons. Defendants appeared through their attorney, Thomas Shires.

The alternate medical care claim came on for hearing on February 13, 2023. 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 and defense exhibit A, which were received without objection. The claimant testified live and under oath at hearing. I find her testimony to be highly credible. The defendants do not dispute liability for claimant's April 29, 2020, work injury.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care. She is seeking chiropractic and massage therapy treatment.

FINDINGS OF FACT

The claimant sustained an injury to her low back on or about April 29, 2023. The defendants authorized appropriate medical treatment. Her authorized treating physician was Troy Gust, M.D.

A summary of her condition and treatment, as of August 2022, prepared by Thomas Flesher, M.D.:

Patient injured her lumbar spine April 29, 2020 while lifting. At the time she was employed by a nursing facility. She subsequently was found to have herniated lumbar disc at L5-S1 on the left. She failed conservative therapy and underwent microdiscectomy on 12/10/20. Postoperatively she is continued to have some pain in her back radiating into her left leg. She was last communicated with by her treating physician April 27, 2022. Patient reports she continues to have fairly constant low back pain with an achy pain during the day. She reports that she has significant pain if she tries to lie supine on the floor. She can lie in bed without significant pain. If she sits for any length of time she will occasionally get numbness radiating into her left leg. This is intermittent. Any type of bending stooping or lifting causes pain in her low back that radiates to her left leg. Currently she works for a bank and she can change positions if needed. This is important in her work. Patient reports it is difficult for her to go up and down steps. Patient has had a postoperative MRI scan which does show postoperative change at L5-S1 on the left, but no nerve root impingement.

(Defendants' Exhibit A, page 8) At that August 2022, visit, Ms. Buyert was placed at maximum medical improvement and assigned a 12 percent whole body impairment rating. Based upon the record before the agency, it appears that this is the last time Ms. Buyert has seen any physician. There are no treatment recommendations of any kind in the final report.

On January 11, 2023, claimant's counsel wrote an email requesting further medical care. "In addition, due to Laney's continued symptoms, she is interested in seeing a chiropractor and massage therapist." (Cl. Ex. 1, p. 2) This was eventually forwarded to a claims representative for defendants. "Will you authorize treatment with a chiropractor and/or massage therapist? Otherwise I will be filing an alt care petition." (Cl. Ex. 1, p. 1) Claimant filed the petition in this matter on February 1, 2023. On February 2, 2023, the claims representative responded. "She is authorized to return to Dr. Gust as he is the designated treating doctor. No other treatment is approved." (Def. Ex. A, p. 10)

Ms. Buyert testified at hearing. Her testimony is highly credible. She testified regarding her current symptoms. Her testimony is consistent with the foregoing medical

notes from August 2022. She continues to have significant pain and symptoms with essentially any physical activity, including sitting and standing. It is her opinion that she needs massage therapy to help relax her muscles and chiropractic care because her alignment is “out of whack from overcompensating” with her low back. (Testimony)

At the time of hearing, the only care offered by the defendants is a return to the authorized treating physician, Dr. Gust. Dr. Gust performed the surgery on Ms. Buyert in December 2020. It is somewhat unclear in this record whether Dr. Gust has any additional treatment to offer Ms. Buyert. It does not appear that Dr. Gust was offering any specific treatment in October or December of 2021. (Def. Ex. A, pp. 1-2) It is also somewhat unclear in this record why Ms. Buyert has not returned to Dr. Gust to see if he has any further treatment to offer her.

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 18, 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).

Importantly, it is claimant's burden to prove that the care being offered by the defendants is somehow unreasonable. In this case, the defendants have offered a return visit to Dr. Gust. There is not enough evidence in this record to demonstrate that this course of care is unreasonable.


Ms. Buyert did testify regarding the reasons she would like to have chiropractic and massage treatment. Her logic makes sense. There may be some benefit to these types of treatment. These are conversations which should be had with a treating physician which is an option available to her.

ORDER

THEREFORE IT IS ORDERED:

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

Signed and filed this 13th day of February, 2023.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Joseph Lyons (via WCES)

Thomas Shires (via WCES)