

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BERNADETTE MEYERHOFER,

Claimant,

vs.

TRINITY HEALTH CORPORATION,
d/b/a MERCYONE NORTH IOWA
MEDICAL CENTER,Employer,
Self-Insured,
Defendant.

File No. 19006511.02

ALTERNATE MEDICAL

CARE DECISION

Head note: 2701

STATEMENT OF THE CASE

On August 27, 2021, claimant filed a petition for alternate medical care pursuant to Iowa Code 85.27(4) and 876 Iowa Administrative Code 4.48. The defendant did not file an answer; however, during the hearing, the defendant verbally confirmed that they accepted liability for the injuries related to the November 18, 2019, work incident.

The undersigned presided over the hearing held via telephone and recorded digitally on September 9, 2021. That recording constitutes the official record of the proceeding pursuant to 876 Iowa Administrative Code 4.48(12). Claimant participated personally, and through her attorney, Rick Schmidt. The defendant participated through their attorney Lee Hook. The evidentiary record consists of three exhibits from the claimant, one attached to the petition, and the others labeled 1 and 2, and six exhibits from the defendant labeled A through F. All of the exhibits were received into evidence without objection. Testimony was also received under oath from the claimant and Shelley Foss, R.N.

On February 16, 2015, the Iowa Workers' Compensation Commissioner issued an order delegating authority to deputy workers' compensation commissioners, such as the undersigned, to issue final agency decisions on applications for alternate care. Consequently, this decision constitutes final agency action, and there is no appeal to the commissioner. Judicial review in a district court pursuant to Iowa Code 17A is the avenue for an appeal.

ISSUE

The issue under consideration is whether claimant is entitled to an order for alternate medical care via treatment with a counseling provider of the claimant's choosing.

FINDINGS OF FACT

Claimant, Bernadette Meyerhofer, alleges that she sustained a work injury to her back, right arm, left arm, right wrist, left wrist, right foot, left foot, right hip, left hip, body as a whole, and mental health on November 18, 2019. These injuries arose out of, and in the course of her employment with the defendant. The defendant accepted liability for the back injury and mental health treatment stemming therefrom at the outset of the hearing.

Ms. Meyerhofer lives in Osage, Iowa, and does not travel to medical appointments outside of the Osage area without transportation. (Testimony).

Erin Peterson, D.O., was claimant's treating physician. (Testimony). On June 14, 2021, Dr. Peterson examined the claimant. (Testimony; Claimant's Exhibit page 1). Ms. Meyerhofer complained to Dr. Peterson of issues with sleep due to her pain. (CE pg. 1). The doctor also noted that the claimant had a spinal cord stimulator implanted. (CE pg. 1). Ms. Meyerhofer complained of pain at her surgical site, along with stiffness and overall discomfort. (CE pg. 1). Dr. Peterson diagnosed Ms. Meyerhofer with chronic back and bilateral lower extremity pain, spinal cord stimulator placement, neuropathic leg pain, lower extremity swelling, and insomnia. (CE pg. 2). Dr. Peterson recommended that Ms. Meyerhofer have her lower extremity swelling addressed with her primary care provider. (CE pg. 2). She further recommended that the claimant have her spinal cord stimulator evaluated. (CE pg. 2). Finally, most pertinent to this proceeding, Dr. Peterson recommended that Ms. Meyerhofer pursue six to twelve sessions of counseling to address coping with chronic pain. (CE pg. 3). Dr. Peterson noted, "[s]he would benefit from somebody with experience in treating those dealing with chronic pain, but if not directly available, it is reasonable for her to see somebody who is willing to address these issues with whom she is comfortable from previous care." (CE pg. 3). Dr. Peterson further noted that she hoped the provider would address conservative care, pain management techniques, catastrophizing, pain avoidance behaviors, quality of life despite disability, and formulating relationships. (CE pg. 3).

In response to Dr. Peterson's recommendations, Ms. Meyerhofer sought out a counselor in Mason City, Iowa. (Testimony). The claimant began counseling sessions with Michelle Bolt at Turning Leaf in July of 2021. (Testimony). Around the same time, Shelley Foss, R.N., a medical case manager employed by Genex, began seeking out counselors experienced with chronic pain patients. (Testimony). Ms. Foss testified that she looked for counselors with that experience in the Mason City, Iowa, area, on or about July 16, 2021. (Testimony). She called several potential providers, including Turning Leaf. (Testimony). They all indicated that they did not have counselors who could provide the applicable treatment for Ms. Meyerhofer. (Testimony; Defendant's Exhibit F:10). Since Ms. Foss could not find a provider in Mason City, she reached out to Amy Mooney, Ph.D., LMHC, NCC, ACS. (Testimony). Dr. Mooney specializes in chronic pain, anxiety disorders, posttraumatic stress disorder, depression, and catastrophic trauma cases. (DE B:3). Ms. Foss sent records to Dr. Mooney's office, and Dr. Mooney agreed to see Ms. Meyerhofer. (Testimony).

Ms. Bolt counseled Ms. Meyerhofer on methods of coping with her anxiety, and attaining better sleep. (Testimony). Ms. Meyerhofer attended three sessions of counseling with Ms. Bolt. (Testimony).

On August 23, 2021, Ms. Foss sent a letter to claimant's counsel indicating that Ms. Meyerhofer had an appointment scheduled with Dr. Mooney on September 14, 2021, at her office in West Des Moines, Iowa. (DE A:1). Ms. Foss noted that transportation was arranged through One Call Transport. (DE A:1). Finally, she noted that only the first examination with Dr. Mooney would need to be in person. (DE A:1). Subsequent examinations would be via telehealth. (DE A:1).

Claimant's counsel responded to the letter of Ms. Foss by sending an e-mail to defendant's counsel. (CE 1:1). The e-mail expressed dissatisfaction with the selection of Dr. Mooney, and requested that care be continued with Michelle Bolt from Turning Leaf. (CE 1:1).

On August 31, 2021, Cody Williams of Turning Leaf Counseling sent a letter indicating that Ms. Bolt was not formally trained in pain management therapy. (CE 2:3). Mr. Williams recommended that Ms. Meyerhofer change counselors to Adam Lewis, LISW. (CE 2:3). The letter notes that Mr. Lewis is trained in the "CBT-Pain Management" model from the Beck Institute in New York, New York. (CE 2:3). Interestingly, Mr. Lewis's website makes no mention of training or specializing in pain management therapy. (DE D:6-8).

Ms. Meyerhofer indicated a concern about a referral to Dr. Mooney. (Testimony). Primarily, Ms. Meyerhofer was concerned that Ms. Mooney's profile included reference to being a provider of independent medical evaluations ("IMEs"). (Testimony). The claimant also noted that she has general anxiety, manic depression, and posttraumatic stress disorder ("PTSD"). (Testimony). She previously received extensive counseling and treatment for her mental health issues. (Testimony). She claimed a flare in her symptoms since care was arranged with Dr. Mooney because she was not comfortable with moving counselors. (Testimony). However, the claimant testified that she did not know anything about Mr. Lewis's background or history in treating chronic pain. (Testimony). As of the time of the hearing, Ms. Meyerhofer had not had any counseling sessions with Mr. Lewis. (Testimony). However, she noted that she had an appointment with him later on the day of the hearing. (Testimony). Ms. Meyerhofer indicated that she enjoys telehealth visits, but that she found no difference between in-person and telehealth visits. (Testimony).

CONCLUSIONS OF LAW

Iowa Code 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.

Iowa Code 85.27(4). See Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

“Iowa Code section 85.27(4) affords an employer who does not contest the compensability of a workplace injury a qualified statutory right to control the medical care provided to an injured employee.” Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 769 (Iowa 2016) (citing R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 195, 197 (Iowa 2003)). “In enacting the right-to-choose provision in section 85.27(4), our legislature sought to balance the interests of injured employees against the competing interests of their employers.” Ramirez, 878 N.W.2d at 770-71 (citing Bell Bros., 779 N.W.2d at 202, 207; IBP, Inc. v. Harker, 633 N.W.2d 322, 326-27 (Iowa 2001)).

The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Iowa Code 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening, October 16, 1975). 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). Reasonable care includes care necessary to diagnose the condition, and defendants are not entitled to interfere with the medical judgment of its own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening Decision, June 17, 1986).

By challenging the employer’s choice of treatment - and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See e.g. Iowa R. App. P. 14(f)(5); Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). An injured employee dissatisfied with the employer-furnished care (or lack thereof) may share the employee’s discontent with the employer and if the parties cannot reach an agreement on alternate care, “the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order the care.” Id. “Determining what care is reasonable under the statute is a question of fact.” Long, 528 N.W.2d at 123; Pirelli-Armstrong Tire Co., 562 N.W.2d at 436. As the party seeking relief in the form of alternate care, the employee bears the burden of proving that the authorized care is unreasonable. Id. at 124; Gwinn, 779 N.W.2d at 209; Pirelli-Armstrong Tire Co., 562 N.W.2d at 436. Because “the employer’s obligation under the statute turns on the question of reasonable necessity, not desirability,” an injured employee’s dissatisfaction

with employer-provided care, standing alone, is not enough to find such care unreasonable. Id.

In this matter, the claimant sought out care with Turning Leaf on her own volition. She initially was provided with a counselor whose experience did not meet her needs. Turning Leaf then referred her to another counselor within their office. As of the time of the hearing, she had not met with that counselor. There is also conflicting evidence as to whether or not Mr. Lewis has experience or expertise in pain management counseling.

The defendant offers care via treatment with Dr. Mooney. Based upon the evidence in the record, Dr. Mooney is well qualified for the treatment recommended by Dr. Peterson. The claimant indicated that she is comfortable with either in-person or telehealth treatment, although she expressed a desire for telehealth treatment. Outside of the first appointment with Dr. Mooney, the evidence indicates that the remainder of the appointments would be via telehealth. The claimant alleges that changing therapists would aggravate her pre-existing mental health conditions; however, the evidence for this is not convincing. Ms. Meyerhofer testified that she had not met or treated with Mr. Lewis as of the time of the hearing, nor did she have any knowledge of Mr. Lewis's background, qualifications, or experience.

Based upon the evidence in the record, the care provided by the defendant with Dr. Mooney is not unreasonable. The claimant has failed to meet her burden.

IT IS THEREFORE ORDERED:

The claimant's petition for alternate care is denied.

Signed and filed this 10th day of September, 2021.



ANDREW M. PHILLIPS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Richard Schmidt (via WCES)

Lee Hook (via WCES)