BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KEVIN SNODGRASS, Claimant, vs. NEVADA MONUMENT COMPANY, Employer, and UNITED FIRE CASUALTY CO., Insurance Carrier, Defendants.	File No. 22013055.03 ALTERNATE MEDICAL CARE DECISION Head Note: 2701

On October 5, 2023, claimant filed an original notice and petition for alternate medical care under Iowa Code section 85.27, invoking the provisions of rule 876 IAC 4.48. Defendants filed an answer accepting that claimant sustained an injury to the neck on November 17, 2022, which arose out of and in the course of employment.

This alternate medical care claim came on for hearing on October 17, 2023, at 10:30 a.m. The proceedings were recorded digitally and constitute the official record of the hearing.

The record consists of Claimant's Exhibits 1 through 4, which include a total of 6 pages. Defendants offered Exhibits A through E, which include a total of 7 pages. Mr. Snodgrass was the only witness to provide testimony. Counsel for both parties provided argument.

ISSUE

The issue presented for resolution is whether claimant is entitled to alternate medical care consisting of the removal of Michael Jacoby, M.D., as an authorized neurologist due to breakdown in the physician-patient relationship.

FINDINGS OF FACT

Having considered all the evidence and testimony in the record, the undersigned finds:

On November 17, 2022, Kevin Snodgrass injured his neck following a slip and fall on ice. (Exhibit 3, page 1).

Defendants authorized treatment through Trevor Schmitz, M.D. (See Exhibit 1). Claimant received conservative treatment consisting of muscle relaxers and cervical medial branch block injections. Despite conservative treatment, claimant continued to report neck pain, headaches, and "feeling a catch in his neck." (Ex. 1, p. 1)

To address claimant's ongoing complaints, Dr. Schmitz recommended claimant be referred for a neurology consultation. Defendants authorized the recommended referral and scheduled claimant for an evaluation with Michael Jacoby, M.D. (See Ex. 2, p. 1) The neurological evaluation was scheduled to occur on June 27, 2023.

A May 22, 2023, correspondence from defendants provided that Dr. Jacoby would be claimant's authorized treating neurologist. The correspondence further provided that the purpose of the June 27, 2023, appointment with Dr. Jacoby was for evaluation and treatment recommendations. (Ex. 2, p. 1)

At the June 27, 2023, appointment, Dr. Jacoby advised Mr. Snodgrass that he was not establishing a patient-physician relationship, but was instead performing an independent medical examination. (Claimant's Testimony) Dr. Jacoby conducted the evaluation and produced a report on August 11, 2023. (Ex. 3, p. 1) The report is consistent with claimant's testimony. The report notes that claimant presented for an "Independent Medical Evaluation" on June 27, 2023, and, "He was informed of the IME process and that no patient/physician relationship would be established." (Id.)

Following the June 27, 2023, appointment, Mr. Snodgrass renewed his request for medical treatment with a neurologist. (Claimant's Attachment 1) In response, defendants relayed that Dr. Jacoby is claimant's authorized treating neurologist and is willing to provide treatment to Mr. Snodgrass. Defendants scheduled claimant for a follow-up appointment with Dr. Jacoby on September 12, 2023. (Exhibit D, p. 5)

In an August 25, 2023, letter to defendants, Dr. Jacoby apologized for any misunderstanding that occurred during the June 27, 2023, appointment. (Ex. C, p. 4) The letter provides, "When I saw Mr. Snodgrass, it was to evaluate him and to determine if I could provide any additional care." (Id.) The letter explains that Dr. Jacoby mistakenly used an independent medical examination template when writing his report. (Id.) Dr. Jacoby opined that Mr. Snodgrass has not reached maximum medical improvement, and he would be happy to see him as a treating physician. (Id.) The letter also contains recommendations for additional treatment. (Id.)

Claimant objects to returning to Dr. Jacoby as he has lost trust and confidence in Dr. Jacoby's ability to serve as a treating provider following his miscommunication and performance of an independent medical examination. According to Claimant's Attachment 1, "Claimant is not arguing Dr. Jacoby is an expert witness on behalf of Defendant but rather is arguing that the misunderstanding and miscommunication

resulting in Dr. Jacoby performing an independent examination undermines Claimant's trust in Dr. Jacoby as an ongoing treating provider." Essentially, claimant alleges that it is not reasonable for defendants to offer care through Dr. Jacoby because there has been a breakdown in the physician-patient relationship.

Importantly, claimant is not asserting that the neurological care being offered by Dr. Jacoby is unreasonable. Claimant similarly does not object to Dr. Jacoby's qualifications, training, or expertise.

CONCLUSIONS OF LAW

The employer has the right to select the medical care an injured worker receives as a result of an injury occurring in the course and scope of employment. See Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010);

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.

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); R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 196-96 (Iowa 2003). Determining what care is reasonable under the statute is a question of fact. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 436 (Iowa 1997) (quoting Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (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).

Determining what is reasonable under the statute is a question of fact. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). "[W]hen evidence is presented to the commissioner that the employer-authorized medical care has not been effective and that such care is 'inferior or less extensive' than other available care requested by the employee . . . the commissioner is justified by section 85.27 to order the alternate care." Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997).

Claimant asserts there has been a breakdown in the physician-patient relationship.

This agency has held that a breakdown in the physician-patient relationship is sufficient reason and basis to find offered medical care is no longer reasonable. Alternate care includes alternate physicians when there is a breakdown in a physician/patient relationship. Seibert v. State of Iowa, File No. 938579 (September 14, 1994); Neuaone v. John Morrell & Co., File No. 1022976 (January 27, 1994); Williams v. High Rise Const., File No. 1025415 (February 23, 1993); Wallech v. FDL, File No. 1020245 (September 3, 1992) (aff'd Dist Ct June 21, 1993).

The fighting issue is whether claimant is entitled to alternate medical care because of a breakdown in the physician-patient relationship between claimant and his authorized treating neurologist.

Based on the above findings of fact, it is concluded that claimant failed to prove a breakdown in the physician-patient relationship between claimant and Dr. Jacoby. Claimant's distrust in Dr. Jacoby stems from a simple misunderstanding. Claimant offered no other evidence of a breakdown in the physician-patient relationship. Importantly, claimant's distrust has nothing to do with Dr. Jacoby's treatment recommendations or qualifications. Dr. Jacoby's treatment recommendations appear reasonable. There is no evidence in the record that Dr. Jacoby is not providing care reasonably suited to treat claimant's condition. For these reasons, it is found that there has not been a sufficient breakdown in the physician-patient relationship to warrant an order of alternate medical care as it relates to Dr. Jacoby.

ORDER

THEREFORE, IT IS ORDERED,

Claimant's petition for alternate medical care is denied.

Signed and filed this ____19TH____ day of October, 2023.

MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Shane Michael (via WCES)

Paul Barta (via WCES)