

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ANNA VAN LOON,	:	
	:	File No. 21700315.03
Claimant,	:	
vs.	:	ALTERNATE MEDICAL
	:	
HORMEL FOODS CORPORATION,	:	CARE DECISION
	:	
Employer,	:	
Self-Insured,	:	
Defendant.	:	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, Anna Van Loon. Claimant appeared telephonically and through her attorney, MaKayla Augustine. Defendant appeared through its attorney, Abigail Wenninghoff.

The alternate medical care claim came on for hearing on February 15, 2022. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's February 16, 2015 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 of claimant's testimony, claimant's exhibit 1, pages 1-7, and defendant's exhibit A, pages 1-8.¹ No other witnesses were called. Counsel offered oral arguments to support their positions.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of authorization for continuing medical treatment with Shannon Remington, D.O., and authorization for Dr. Remington's referral to Allen Eckhoff, M.D., and for an EMG study.

FINDINGS OF FACT

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

¹ Defendant's exhibits are attached to the answer filed on February 3, 2022.

Claimant sustained an injury to her right shoulder and neck while working on March 26, 2021. The injuries have been accepted as compensable by the employer. Claimant testified that near the end of April, 2021, she was sent for treatment with Dr. Vincent (first name unknown), an orthopedic surgeon. She saw Dr. Vincent on three occasions, the last being August 16, 2021. Dr. Vincent's treatment was not effective, and he referred claimant to Christopher Kim, M.D., also an orthopedic specialist.

Claimant saw Dr. Kim on November 5, 2021. (Claimant's Exhibit 1, p. 7) Dr. Kim's record notes that he was able to review a prior MRI report of claimant's right shoulder, which stated there were no tears, and mild tendinitis within the rotator cuff. Dr. Kim noted claimant had full range of motion and excellent strength in her shoulder, but "certainly did have pain with shoulder range of motion." He noted that she had previously had four injections with no relief, which made him suspicious that "perhaps her pain is originating from somewhere other than the shoulder." Dr. Kim recommended against orthopedic intervention for the shoulder but did agree that her ongoing pain "may warrant further investigation." (Cl. Ex. 1, p. 7)

Claimant testified that following her appointment with Dr. Kim, she was not provided with any additional treatment. She was working in a light duty position based on work restrictions assigned by Dr. Vincent. In January 2022, she was moved to a different light duty position, which caused a significant aggravation to her right shoulder and neck symptoms. Claimant reported the aggravation to her supervisor, who directed her to see the on-site MedCor nurse. Claimant had conservative treatment with the MedCor nurse several times per week for about three weeks.

At some point on or prior to January 27, 2022, claimant asked the MedCor nurse if she should see someone else for her ongoing pain, as it was not improving. She testified that sometime later, the nurse told her she had spoken with Hormel management, and was told to direct claimant to seek her own care, and her "hands are tied." Claimant advised the nurse she was going to go to the Knoxville Hospital Clinic, and testified that the nurse agreed that would be appropriate.

On January 27, 2022, claimant saw Shannon Remington, D.O., at the Knoxville Hospital Clinic. (Cl. Ex. 1, pp. 4-6) Dr. Remington's record states that claimant reported right shoulder and neck pain after a work injury in March 2020.² Claimant explained that she had previously been getting care through workers' compensation, but did not feel her shoulder and neck pain with right arm weakness had been properly evaluated. (Cl. Ex. 1, p. 4) Since starting the new light duty job, claimant stated her neck pain, which had previously been intermittent, had become chronic daily pain that radiates down her right arm. (Cl. Ex. 1, pp. 4-5) On physical examination, Dr. Remington found restricted range of motion of the right shoulder, and diffuse pain with palpation. She also found spasm in the right C-spine and trapezius spasm. (Cl. Ex. 1, p. 5)

Dr. Remington ordered both a cervical spine and right shoulder MRI, and recommended an EMG. (Cl. Ex. 1, p. 6) On January 28, 2022, claimant's attorney emailed defendant's attorney seeking authorization for the MRIs, the EMG, and ongoing care with Dr. Remington. (Cl. Ex. 1, p. 3) Defense counsel replied the same day, seeking some additional information. (Defendant's Exhibit A, pp. 6-7) The attorneys

² Claimant's injury occurred in March 2021, so it is assumed the year in the medical record is a typographical error.

exchanged a few additional emails between January 29, 2022 and February 1, 2022. (Def. Ex. A, pp. 3-6) On February 1, 2022, defense counsel advised that claimant was authorized to return to Dr. Vincent for her current complaints, and defendant would follow his recommendations regarding scheduling MRIs and additional testing. (Def. Ex. A, p. 3) Later on February 1, 2022, claimant's attorney advised defense counsel that claimant presented to Dr. Remington because she was directed to seek treatment on her own by Hormel's on-site nurse. (Def. Ex. A, p. 1) Defense counsel replied and reiterated that defendant had accepted the shoulder injury and neck complaints, and had authorized treatment with Dr. Vincent. The petition for alternate medical care followed on February 3, 2022, and defendant filed an answer the same day.

On February 4, 2022, claimant's attorney emailed defense counsel with claimant's January 31, 2022 medical records from Dr. Remington, and a list of upcoming appointments Dr. Remington had arranged. The list included the appointment with Dr. Eckhoff in pain management, and the appointment for the EMG. (Cl. Ex. 1, p. 1) Defense counsel replied and reiterated that defendant would not authorize the visits arranged by Dr. Remington, and would be directing care for the accepted injury. Claimant filed an amended petition for alternate medical care that day, and added the request for Dr. Eckhoff and the EMG to be authorized.

With respect to Dr. Vincent, claimant testified that she felt he was impersonal, downplayed her symptoms and dismissed her concerns, and made her feel "uneducated" when she would ask him questions about her treatment. To the contrary, she felt Dr. Remington listened to her, treated her respectfully, and wanted to find the cause of her symptoms. Claimant further testified that she felt her treatment through workers' compensation has been inferior to what Dr. Remington has offered, as the employer had not sent her to a physician since November of 2021 when she saw Dr. Kim. Claimant expressed concern that a full work-up of her condition has not been completed.

Defendant argued in closing that claimant has never been denied treatment. When she requested additional care in January of 2022 for her aggravated symptoms, she was provided treatment with the on-site nurse. Defendant argues there is no evidence that the nurse or any employer representative ever told claimant she would not receive any additional treatment. Defendant also argues that when claimant requested treatment, through her attorney, on January 28, 2022, she had already been seen by Dr. Remington. Finally, defendant was not aware until hearing that claimant was dissatisfied with Dr. Vincent's prior treatment, and counsel indicated defendant would authorize claimant to see Dr. Kim instead of Dr. Vincent if she would prefer, as they are both orthopedic specialists. However, defendant argued that Dr. Remington is not an appropriate provider, as she is a family practitioner who is not qualified to treat claimant's shoulder and neck injuries.

In response, claimant argued that when she initially requested additional treatment in early January, 2022, she was only allowed to see the on-site nurse. After three weeks of conservative care did not provide relief, the on-site nurse directed claimant to seek treatment on her own. Claimant did so, and Dr. Remington has now made referrals for additional testing and to see a pain management specialist, Dr. Eckhoff. Further, claimant argued that sending her back to Dr. Kim is no better than Dr. Vincent, as Dr. Kim specifically recommended against orthopedic intervention for the

right shoulder when he saw claimant on November 5, 2021. Finally, claimant argued there is no evidence that Dr. Remington is not qualified to treat claimant, as she is a licensed physician and has made referrals for additional testing and pain management in order to address claimant's complaints.

I find that claimant has established that defendant is not currently offering medical care that is reasonably suited to treat her right shoulder and neck injuries. Additionally, claimant has established that alternate treatment options exist that are more extensive and/or superior to the authorized treatment currently offered by defendant. The evidence, including claimant's credible testimony, proves that neither Dr. Vincent nor Dr. Kim were able to provide her with effective treatment. In his November 5, 2021 note, Dr. Kim specifically stated that orthopedic intervention is not recommended at this time. Dr. Kim also noted, however, that claimant's ongoing pain may warrant further investigation. Rather than provide additional treatment after her appointment with Dr. Kim, however, defendant did nothing until claimant's pain was aggravated in January 2022.

Claimant has established that she requested additional treatment in early January, 2022, and was directed to treat with the on-site MedCor nurses. After about three weeks of conservative treatment did not improve her symptoms, claimant asked to be seen elsewhere. Claimant provided credible, un rebutted testimony that the MedCor nurse directed her to seek treatment on her own, and agreed that her plan to go to the Knoxville Hospital Clinic was reasonable. Dr. Remington has recommended additional testing, including an EMG, and referral to a pain management specialist, Dr. Eckhoff. I find that the treatment requested by claimant is reasonable, necessary, reasonably suited to treat the work injuries, and more extensive and/or superior to the treatment currently offered by defendant.

REASONING AND CONCLUSIONS OF LAW

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.

Iowa Code § 85.27(4).

Defendant's "obligation under the statute is confined to *reasonable* care for the diagnosis and treatment of work-related injuries." Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995) (emphasis in original). In other words, the "obligation under the statute turns on the question of reasonable necessity, not desirability." Id.

Similarly, an application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care she 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. See Iowa Code § 85.27(4). Thus, 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); Long, 528 N.W.2d at 124.

Ultimately, determining whether care is reasonable under the statute is a question of fact. Long, 528 N.W.2d at 123. In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997), the supreme court held that "when 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."

I found that defendant is not currently offering medical care that is reasonably suited to treat claimant's right shoulder and neck injuries. Additionally, I found that claimant has established that alternate treatment options exist that are more extensive and/or superior to the authorized treatment currently offered by defendant. Therefore, I conclude that claimant has established entitlement to alternate medical care. Specifically, claimant has established entitlement to authorization for ongoing treatment with Dr. Remington and any reasonable and causally related treatment she recommends, including but not limited to the EMG and referral to Dr. Eckhoff.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's petition for alternate medical care is granted.

Defendants shall authorize Shannon Remington, D.O., to provide reasonable and necessary care for the accepted work injuries, including but not limited to authorization for the EMG she recommended, and authorization for her referral to Dr. Eckhoff.

Signed and filed this 16th day of February, 2022.



JESSICA L. CLEEREMAN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

MaKayla Augustine (via WCES)

Abigail Wenninghoff (via WCES)