

FINDINGS OF FACT

Claimant sustained a work-related injury to her cervical spine on January 9, 2018. She underwent a C4-C7 anterior cervical discectomy and fusion (ACDF) in 2018, performed by Dr. Henderson. (Claimant's Exhibit 2, p. 4) Since that time, claimant has continued to receive authorized treatment with Brandi Booth, ARNP. (Cl. Ex. 1, p. 2) ARNP Booth's treatment has mainly consisted of medication management for claimant's ongoing symptoms.

Claimant's symptoms have progressively worsened since the ACDF surgery, to the extent that she resigned from employment at B&G in March of 2022. (Cl. Ex. 2, p. 4) She has qualified for disability through her employer, and has also qualified for Social Security Disability. ARNP Booth issued an opinion on August 2, 2022, which noted that since her ACDF surgery, she has gradually worsening chronic neck pain and headaches, compensatory pain in her upper back and shoulders, and increasing depression. (Cl. Ex. 2, pp. 4-5)

Claimant's attorney had claimant attend an independent medical evaluation with Robert Rondinelli, M.D., which took place on October 19, 2022. (Cl. Ex. 1, p. 1) Claimant's attorney stated at hearing that his report was not received until late November or early December, 2022. Dr. Rondinelli felt that claimant "appears to have a significant residual component of cervical myelopathy with profound myelopathic upper limb weakness strongly suggestive of a focal anterior spinal cord injury at the C5-C7 spinal level." (Cl. Ex. 1, p. 2) Dr. Rondinelli stated that her "condition appears to have progressed since her surgery and likely has significantly contributed to her progressive inability to continue working at this time."

Dr. Rondinelli recommended a repeat cervical MRI with contrast, followed by a neurosurgical follow-up. On December 2, 2022, claimant's attorney wrote to defense counsel to request authorization of Dr. Rondinelli's recommended cervical MRI, along with an appointment to see Dr. Henderson, claimant's original neurosurgeon who performed the ACDF. (Cl. Ex. 2, p. 5) Claimant's attorney followed up on that request via email on December 21, 2022, January 5, 2023, and January 12, 2023. (Cl. Ex. 2, pp. 4-8) On January 12, 2023, defense counsel indicated the treatment was "being set up," but no appointments were scheduled. (Cl. Ex. 2, p. 8) Claimant filed the petition for alternate medical care on January 23, 2023, and hearing took place on February 3, 2023.

Defense counsel indicated at hearing that defendants attempted to obtain a referral for the MRI from ARNP Booth, but were told that claimant had not been seen there since July 2022. As such, she needed to be seen prior to the referral being made. Defendants have scheduled a follow-up with ARNP Booth to take place on February 6, 2023, and plan to follow her recommendations for care.

Claimant's attorney indicated that claimant has no issue with continuing to see ARNP Booth, but the delay in scheduling the appointment was unreasonable. Claimant's attorney indicated she was advised the day before hearing, on February 2, 2023, that the appointment with ARNP Booth had been scheduled. Therefore, to prevent further delays, claimant requests an order requiring defendants to authorize and schedule the cervical MRI and follow-up visit with Dr. Henderson.

Defendants have now authorized an appointment with ARNP Booth, and agree to follow her recommendations for care. Therefore, claimant has not demonstrated that the care offered by defendants is unreasonable. However, defendants must work diligently to authorize and schedule the care ARNP Booth recommends as quickly as possible.

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 or 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. 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).

At the time of hearing, the defendants had scheduled an appointment with ARNP Booth, to take place on February 6, 2023. However, claimant's counsel pointed out that claimant is entitled to prompt treatment for her work-related condition. Defendants have had two months, since December 2, 2023, to schedule the appointment with ARNP Booth in order to get the MRI referral. There was no reason provided for the delay, and I find it was unreasonable. However, the appointment is now scheduled to take place in three days. Defendants have agreed to follow ARNP Booth's recommendations for treatment. Therefore, defendants are offering reasonable care.

Defendants are obligated to promptly provide treatment. Therefore, defendants are ordered to work diligently to schedule whatever follow-up care ARNP Booth recommends. Defendants are cautioned that failure to promptly authorize and provide care could result in defendants losing their right to select care.

ORDER

THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care is denied. However, defendants are ordered to promptly provide authorization for the treatment recommended by ARNP Booth as quickly as possible following claimant's appointment on February 6, 2023.

Signed and filed this 3rd day of February, 2023.



JESSICA L. CLEEREMAN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Saffin Parrish-Sams (via WCES)

Jason Kidd (via WCES)