BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KRISTINA SMITH,	File No. 5039640
Claimant,	ALTERNATE MEDICAL
vs.	CARE DECISION
TARGET CORPORATION,	
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, Kristina Smith. Claimant appeared through her attorney, Matt Dake. Defendant appeared through its attorney, Jeff Lanz.

The alternate medical care claim came on for hearing on June 28, 2016. 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 of claimant's exhibits 1 through 5; and defendant's exhibits A through F. Official notice was taken of the agency file including an Agreement for Settlement approved on October 6, 2014.

ISSUE

The issue presented for resolution is whether the claimant is entitled to treatment from Sunny Kim, M.D.

FINDINGS OF FACT

The facts of this case are mostly uncontested. In February 2010, the claimant suffered an injury which arose out of and in the course of her employment. This injury has caused disability in her bilateral shoulders and arms. The claims were settled in October 2014 and her medical remained open. The parties agree that Stanley Mathew, M.D., was the "gatekeeper" physician at the time of the settlement. Dr. Mathew is a

physical medicine and rehabilitation specialist at St. Luke's. (Claimant's Exhibit 1) Prior to the settlement, the claimant had also been evaluated by other physicians, including Dr. Kim. In July 2012, Dr. Kim diagnosed "bilateral RTC tendonopathy with partial unretracted tears." (Cl. Ex. 2, p. 3) He recommended she continue her care with Dr. Mathew and Lisa Coester, M.D. "HTA is not medically necessary at this point in time." (Cl. Ex. 2, p. 3) He said she could return as needed (PRN). In September 2012, Dr. Kim then discharged her from his care. (Def. Ex. A, p. 3)

In 2016, Dr. Mathew referred claimant back to Dr. Coester, the surgeon. Dr. Coester recommended surgery. (Def. Ex. B, p. 5; Def. Ex. D, p. 8) This treatment has been authorized. (Def. Ex. C) In April, claimant's counsel requested a second opinion with Mederic Hall, M.D., at the University of Iowa Hospitals and Clinics, for an opinion about injections. (Def. Ex. D) Instead of visiting Dr. Hall, the claimant returned to see Dr. Kim on May 9, 2016. Dr. Kim recommended "regenerative cell based therapies with injection of PRP to L supraspinatus and biceps tendon tears . . ." (Cl. Ex. 3, p. 2) Dr. Kim contends the injections are less invasive than surgery and may obviate the need for surgery. (Cl. Ex. 5, p. 2) On June 9, 2016, claimant specifically asked to have Dr. Kim's treatment authorized. (Cl. Ex. 4)

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. Assman 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 Dec. January 31, 1994).

There are potentially numerous, interesting legal arguments to explore in this case. My job is to simplify this matter as best as possible.

The claimant has two main arguments. First, she contends that Dr. Kim is an authorized treating physician and it is unreasonable to deny a specific treatment modality recommended by an authorized treating physician. According to the claimant, notice is required. Second, she contends that the treatment offered by Dr. Kim is more extensive and better suited to treat her injury than the treatment offered by the defendant.

The defendant argues that Dr. Kim had not treated the claimant since September 2012, when she was released from his care. Defendant further argues that it is entitled to de-authorize Dr. Kim at any time so long as it is offering reasonable treatment.

It is, ordinarily, unreasonable for an employer to de-authorize an authorized treating physician because of the modality of treatment recommended. This has been longstanding precedent in this agency as set forth above. This, however, is not what happened in this case. In this case, the claimant was specifically authorized to see Dr. Hall for consideration of injections. The claimant apparently had no objection to Dr. Hall. (*See* Def. Ex. D) Instead of seeing Dr. Hall or addressing this issue with the defendant, claimant chose on her own, to return to see Dr. Kim. While the claimant did not testify, I suspect she did not see this as a big deal. Dr. Kim had been authorized previously and the two physicians apparently do similar types of work. The defendant obviously believed this to be an encroachment upon its right to direct the medical care.

I find that the defendant has authorized Dr. Mathew, Dr. Coester and Dr. Hall at this time. I agree with the defendant that this care is reasonable and I can find no basis to order alternate medical care. The right of the employer to select the medical provider is a cornerstone of Section 85.27.

I find no evidence in the file that the defendant de-authorized Dr. Kim because of the type of treatment recommended. Rather, the defendant had authorized Dr. Hall and communicated this to the claimant who was represented by counsel. She had not seen Dr. Kim for nearly four years and Dr. Kim was not the gatekeeper physician. Dr. Kim had specifically released the claimant in 2012. Claimant did not object to treating with Dr. Hall, but, after having some difficulty getting in to see Dr. Hall, simply chose instead to return to Dr. Kim. I do not find that these circumstances warrant a finding of unreasonable care.

In this decision, I make no finding as to whether that office visit with Dr. Kim is authorized or payable under the ruling in Ramirez-Trujillo v. Quality Egg, LLC, 878 N.W.2d 759 (Iowa Ct. App. 2015). I simply find that the defendant has provided reasonable care by authorizing Dr. Coester, Dr. Hall and Dr. Mathew to provide her treatment.

The defendant, of course, is required to comply with the treatment from its authorized treating physicians. The claimant should proceed with evaluation by Dr. Hall at this time as the defendant has authorized.

ORDER

THEREFORE IT IS ORDERED:

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

Signed and filed this 28th day of June 2016.

JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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