

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KANEISHA JAKAYLA TAYLOR,

Claimant,

vs.

POPEYES LOUISIANA KITCHEN,

Employer,

and

SOCIETY INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 23002920.03

ALTERNATE MEDICAL

CARE DECISION

Head Note No: 2701

STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapters 85 and 17A. By filing an original notice and petition for alternate medical care, claimant, Kaneisha Jakayla Taylor, invoked the expedited procedure of rule 876 IAC 4.48.

The alternate medical care claim came on for telephonic hearing on May 31, 2023. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Claimant appeared personally and through her attorney, Casey Steadman. Defendants appeared through their attorneys, Joseph Moser and Jacob Wassenaar.

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. Any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code section 17A.

Claimant's original notice and petition asserts injuries to her left hand, left upper extremity, complex regional pain syndrome, as well as injuries to the body as a whole. Defendants admit claimant sustained a left upper extremity injury. However, defendants deny any injury or causal connection for the remainder of the conditions. Any claims for treatment of injuries to claimant's left hand, complex regional pain syndrome, or to the body as a whole were dismissed at the commencement of the hearing. See Brewer-Strong v. HNI Corp., 913 N.W.2d 235 (Iowa 2018). However, the claims for injuries and treatment of the left upper extremity injury proceeded to formal alternate medical care hearing.

The evidentiary record consists of claimant's exhibits 1 through 3, consisting of ten pages. Defendants' offered exhibits A through C, which also consist of ten pages. Defendants' exhibits were received into the evidentiary record. Ms. Taylor testified on her own behalf. Defendants called a nurse case manager, Jane Collins, to testify. No other witnesses testified at the hearing. The evidentiary record closed at the conclusion of the telephonic hearing. Both counsel were permitted an opportunity to present argument and filed hearing briefs.

ISSUE

At the commencement of the hearing, claimant conceded she is satisfied with and that the medical treatment offered by defendants is reasonable. However, she is dissatisfied with and requests an order limiting the participation of the nurse case manager in her claim. Therefore, the sole issue presented for resolution is whether the care being offered by defendants is unreasonable given the involvement of the nurse case manager and whether the nurse case manager's participation should be limited in some manner.

FINDINGS OF FACT

The undersigned having considered all the evidence in the record finds:

Kaneisha Taylor sustained a burn to her left arm as a result of her work duties at Popeyes Louisiana Kitchen on February 17, 2023. As a result of that left arm burn, Ms. Taylor required treatment at the University of Iowa Hospitals and Clinics burn unit. For purposes of this alternate medical care proceeding, the specific course of her treatment is not relevant or necessary to be discussed. Ms. Taylor is satisfied with the care she has and continues to receive treatment through the University of Iowa Hospitals and Clinics.

Ms. Taylor is dissatisfied with the participation and efforts demonstrated by the nurse case manager, Jane Collins. Claimant asserts that Ms. Collins has intervened and interfered with her treatment and specifically with her physical restrictions. Claimant asserts that Ms. Collins has demanded "veto" power over physical restrictions issued by treating physicians.

Claimant points to a medical appointment at the burn clinic on April 13, 2023. At that appointment, a nurse practitioner evaluated claimant outside the presence of Ms. Collins. During the evaluation, claimant testified that the nurse practitioner evaluated her strength and recommended she not return to work at that time because of the risk of re-injury and because of claimant's ongoing pain. Claimant testified that the supervising physician, Robert P. Bertellotti, M.D., at that same appointment also recommended Ms. Taylor remain off work. Claimant introduced Exhibit 1, page 2, which is a written medical excuse in which Dr. Bertellotti indicated claimant should be excused from work until her next follow-up on May 18, 2023.

After the evaluation with Dr. Bertellotti finished, Ms. Collins was invited into the examination room. She questioned the medical providers, requesting clarification of claimant's physical abilities rather than simply a statement that claimant should be off work. Ms. Collins explained that she is tasked with clarifying these issues to ensure claimant's safety both at the workplace and away from the workplace. Ms. Collins waited with claimant until Dr. Bertellotti was again available and obtained clarification from Dr. Bertellotti.

The specifics of the interaction with the claimant, Ms. Collins, and Dr. Bertellotti is disputed between claimant and Ms. Collins. Regardless, after being asked for clarification, Dr. Bertellotti issued a revised medical excuse, which imposed restrictions that included "no use of the left hand" until the next evaluation on May 18, 2023. (Cl. Ex. 1, p. 3) Claimant asserts and believes that Ms. Collins was interfering with her treatment and inappropriately interfering or manipulating the treating physician to obtain this revised work status and restrictions. Ultimately, I find that Ms. Collins' inquiries to obtain clarification of work restrictions is a legitimate function of a nurse case manager.

Medical providers are not always privy to work conditions, the ability of an employer to accommodate work restrictions, or even that accommodated, light duty work may be available to an injured worker. A nurse case manager is fulfilling a legitimate function when clarifying work (as well as outside of work) abilities and limitations. In and of itself, it is not inappropriate for a nurse case manager to seek the type of clarification sought by Ms. Collins. I do not find the evidence demonstrates she was inappropriately influencing the medical providers.

I acknowledge Claimant's Exhibit 1, page 4, which documents a call from Ms. Collins. That medical chart notes that Ms. Collins requested that clinic staff okay any appointments or work status changes with her. Claimant perceives this as Ms. Collins exercising "veto" power over any medical provider scheduling an appointment or changing work restrictions. However, there is no evidence that the authorized medical providers felt or feel coerced to act in a particular manner or to modify work restrictions at the direction of Ms. Collins. Again, requesting clarification of work abilities is an acceptable and reasonable function for a nurse case manager to perform. Claimant offers no complaints about Ms. Collins' ability and efforts to schedule her appointments and keep her treatment moving forward. In fact, it appears that Ms. Collins has done a sufficient job of scheduling and coordinating care to date, and that claimant is satisfied with the actual medical care she has received.

That being said, Ms. Taylor asserts that there has been a breakdown in the relationship between claimant and Ms. Collins. On cross-examination, Ms. Collins conceded that there has been a breakdown in that relationship. Medical records document that an occupational therapy session was cut short due to an argument between Ms. Taylor and Ms. Collins. (Cl. Ex. 1, p. 1) I find that there is a breakdown in the relationship between Ms. Taylor and Ms. Collins that makes it difficult, if not unmanageable, for the two to work together to move Ms. Taylor's care forward in a positive manner. Therefore, I find that it is unreasonable to permit ongoing personal communication between Ms. Taylor and Ms. Collins.

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. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 16, 1975).

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); Bell Bros. Heating v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); 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. Long v. Roberts Dairy Co., 528 N.W.2d 122 (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).

Reasonable care includes care necessary to diagnose the condition and defendants are not entitled to interfere with the medical judgment of their own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening Decision June 17, 1989). In this instance, I do not find that defendants, or the nurse case manager, unduly interfered with the medical judgment of the authorized medical providers. Therefore, claimant's request for alternate medical care is denied in this respect.

However, claimant asserts an alternative basis for entry of an alternate medical care order. Specifically, claimant contends there has been a breakdown in the relationship between herself and Ms. Collins. Ms. Collins concedes that a breakdown in the relationship has occurred.

Alternate medical care can be awarded when there is a breakdown in the physician-patient relationship. Seibert v. State of Iowa, File No. 938579 (September 14, 1994); Nueone v. John Morrell & Co., File No. 1022976 (January 27, 1994); Williams v. High Rise Const., File No. 1025415 (February 24, 1993); Wallech v. FDL, File No. 1020245 (September 3, 1992) (aff'd Dist Ct June 21, 1993). Typically, this involves transfer of care from one physician to another. However, I conclude that a breakdown in the relationship between claimant and the nurse case manager can support and result in an alternate medical care order as well.

Although Ms. Collins asserts that she is not providing medical care or a treating medical provider, she is clearly part of the mechanism that is scheduling and coordinating claimant's care. The breakdown in the relationship between Ms. Taylor and Ms. Collins has resulted in distrust, arguments, and at least one appointment being cut short due to an argument. Likely there is some misunderstanding and blame to be shared by both parties for this breakdown in the relationship. Nonetheless, the breakdown has occurred, and it makes future treatment more difficult.

Ultimately, I conclude defendants are permitted to maintain a nurse case manager on this claim. Defendants may retain a different nurse case manager that will be permitted the full scope of contact and abilities otherwise exercised by a nurse case manager. Alternatively, defendants are also permitted to continuing using Ms. Collins. However, given the breakdown in the relationship between Ms. Taylor and Ms. Collins, the interactions between claimant and the nurse case manager must be modified or eliminated.

Specifically, if defendants wish to continue using the services of Ms. Collins, as the nurse case manager, all future communications between claimant and Ms. Collins should be conducted through claimant's counsel. Although it eliminates some efficiencies with using the nurse case manager, Ms. Collins should not have any personal or written interactions with claimant. Again, all efforts to coordinate care shall be routed through claimant's attorney.

Having found no undue influence by Ms. Collins, she may continue to speak with authorized medical providers but should do so outside the presence of claimant, after an evaluation has concluded and Ms. Taylor has exited an examination room. Ms. Collins may continue to interact with medical personnel and staff to make inquiries about work abilities, coordinate care, obtain diagnoses, obtain medical records, and other typical duties of a nurse case manager. She simply may not interact with claimant and must route all communications with claimant through claimant's attorney.

ORDER

THEREFORE, IT IS ORDERED:

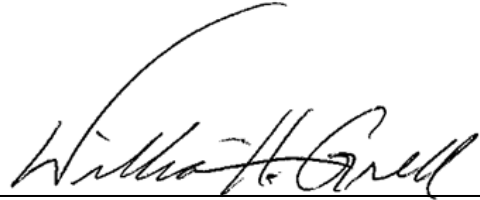
The claimant's petition for alternate medical care is partially granted.

Defendants may retain the services of a different nurse case manager, who will be permitted the full scope of all access and communications typically exercised by a nurse case manager.

Alternatively, defendants may continue to use the services of Jane Collins as a nurse case manager.

However, if Ms. Collins continues as the assigned nurse case manager, she may not have personal communication with claimant, all as outlined in greater detail in the body of this decision.

Signed and filed this 1st day of June, 2023.

A handwritten signature in black ink, reading "William H. Grell", written over a horizontal line.

WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Casey W. Steadman (via WCES)

Joseph F. Miller (via WCES)