

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CYNTHIA DEJONG,

Claimant,

vs.

ORANGE CITY AREA HEALTH,

Employer,

and

UNITED WISCONSIN INS. CO.,

Insurance Carrier,
Defendants.

File No. 21000064.02

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. The expedited procedure of rule 876 IAC 4.48 is invoked by claimant, Cynthia Dejong. Claimant appeared personally and through attorney, Ron Pohlman. Defendants appeared through their attorney, Andrew Portis. Jenny Van Wyk also participated in the hearing.

The alternate medical care claim came on for hearing on June 28, 2022. 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 A through E and defense exhibits F and G, which were received without objection. The defendants do not dispute liability for claimant's November 19, 2018, work injury.

ISSUE

The issue presented for resolution is whether it was unreasonable for defendants to deauthorize Gregory Neely, M.D., as a treating physician.

FINDINGS OF FACT

Cynthia Dejong works for Orange City Area Health System as a supervisor in Housekeeping. She sustained a work-related injury to her right foot area in November 2018. In approximately October 2020, Phinit Phisitkul, M.D., became her treating physician. Dr. Phisitkul performed right foot reconstruction surgery in December 2020. Ms. Dejong continued to follow up with Dr. Phisitkul throughout 2021, having regular appointments. In December 2021, the following is documented in Dr. Phisitkul's treatment notes:

The patient is a 61-year-old lady who returns for follow-up regarding her right foot pain. . . . The patient has been getting better. She has met 80% improvement since the start of physical therapy. She feel [sic] that she is about 50% improved since surgery. The pain level is about 3-4 at the medial aspect of the ankle joint. She is not taking gabapentin or amitriptyline. She is receiving the external ankle brace today.

Physical examination

The patient has excellent right ankle and foot alignment. She has full range of motion. She has intact sensation to touch. She has normal strength in all muscle groups. She has mild to moderate tenderness on palpation along the posterior tibial tendon.

Impression

1-year old status post right foot reconstruction for work-related injury doing well. The patient may have residual pain from the scar tissue, irritation with sutures, or some nerve irritation which should not limit her daily activities. She has reached maximal medical improvement as of today.

Plan

The patient will use an external ankle brace for work without restrictions. Follow-up as needed. In the future, If [sic] the patient continues [to] have difficulties we might need to consider MRI investigation.

(Claimant's Exhibit D)

Ms. Dejong testified live and under oath at hearing. I find her to be a highly credible witness. She testified that she asked Dr. Phisitkul for an MRI at the time of that appointment. While this is not documented in the record, I believe her. She testified that she told him about her increasing pain in her tendon area and Dr. Phisitkul did not respond to her request for an MRI. She testified she felt as though he was just trying to "be done" with her. (Hearing Testimony) She testified that she had difficulty

communicating with Dr. Phisitkul at times and she communicated primarily through his nurses. In essence, she testified that because of this appointment she lost trust in Dr. Phisitkul.

After this appointment, Ms. Dejong went to her human resources department and complained that Dr. Phisitkul had released her and, essentially, he was not offering her any further care. At this point the employer authorized Ms. Dejong to seek treatment with another physician, Dr. Neely. (Cl. Ex. A) It is unclear in this record exactly how many times Ms. Dejong has seen Dr. Neely. Dr. Neely ordered an MRI, which was performed in April 2022. (Cl. Ex. B) The defendants paid for this and received an expert opinion report from Dr. Phisitkul in March 2022. (Def. Ex. F) Dr. Phisitkul confirmed that Ms. Dejong needed the MRI and that her ongoing symptoms were related to the original work injury. (Def. Ex. F) Ms. Dejong returned to Dr. Neely on May 11, 2022. He ultimately recommended a follow-up surgery. (Cl. Ex. C, pp. 6-7) Meanwhile the defendants had arranged a follow-up appointment with Dr. Phisitkul following her MRI. Ms. Dejong testified she did not attend that appointment. (See *a/s/o* Def. Ex. G)

On June 13, 2022, the defendants de-authorized care with Dr. Neely and directed Ms. Dejong to return to Dr. Phisitkul for evaluation. Ms. Dejong testified that her symptoms have been worsening in her right foot and ankle since she last saw Dr. Phisitkul in December 2021. She testified that she has pain and limps. Her job requires her to perform a great deal of standing and walking and some physical labor. She testified essentially that she has lost confidence in Dr. Phisitkul and that she would like to pursue treatment through Dr. Neely.

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. 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).

The claimant contends that the defendants have attempted to unreasonably de-authorize an authorized treating physician, Dr. Neely and that this has resulted in an unreasonable delay and denial of treatment. The defendants contend that Ms. Dejong has merely expressed a preference for one physician over another and that the care which Dr. Phisitkul has offered is reasonable as evidenced by the fact that they have paid for all of his treatment recommendations. The defendants argue that one of the primary safeguards for employers in the Iowa Workers' Compensation Act is their right to direct medical care.

Having reviewed all of the evidence in the record, I find that in December 2021, Dr. Phisitkul had released Ms. Dejong, placing her at maximum medical improvement with no impairment and no restrictions. At that point, he was offering her no further treatment. I further find that the defendants did, in fact, authorize claimant's treatment with Dr. Neely after her release from Dr. Phisitkul. Dr. Neely thereby became an authorized treating physician for the defendants. After a further work-up authorized by defendants, he provided treatment recommendations which were more expansive and better suited to treat claimant's ongoing and worsening condition, than those provided by Dr. Phisitkul.


I find that, in the specific circumstances presented herein, it was unreasonable for the defendants to de-authorize Ms. Dejong's treatment with Dr. Neely in an effort to return care to Dr. Phisitkul. In fact, there was no good reason articulated in this record why Dr. Neely's treatment should be de-authorize. Ms. Dejong has seen Dr. Neely on multiple occasions and has developed excellent communication and trust with him which had broken down with Dr. Phisitkul. It appears that the defendants simply believe that Ms. Dejong should have given Dr. Phisitkul another opportunity. This attempt to de-authorize claimant's treatment has resulted in an unreasonable delay to her treatment.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is GRANTED.
Defendants shall immediately authorize claimant's treatment with Dr. Neely.

Signed and filed this 28th day of June, 2022.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Ron Pohlman (via WCES)

Andrew Portis (via WCES)