

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

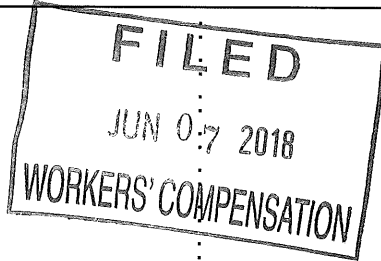
DAO NGUYEN,
Claimant,

vs.

ARAMARK UNIFORM SERVICES,
Employer,

and

ACE AMERICAN INSURANCE CO.,
Insurance Carrier,
Defendants.



File No. 5064010

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, Dao Nguyen. Claimant appeared through her attorney, John Hemminger. Defendants appeared through their attorney, Cory Abbas.

The alternate medical care claim came on for hearing on June 7, 2018. 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 6 and defense exhibit A, which were received without objection. Claimant did not present at hearing. Claimant seeks to prove her case based upon the exhibits.

The claimant is seeking treatment for a mental health injury associated with a September 13, 2016, work injury. The defendants do not dispute liability for claimant's September 2016, work injury.

ISSUE

The issue presented for resolution is whether the claimant is entitled to receiving psychological counseling services in Des Moines, Iowa, as opposed to traveling to Ames, Iowa for the same services.

FINDINGS OF FACT

The claimant is a resident of the southeast side of Des Moines, Iowa. Her primary language appears to be Vietnamese. She sustained an injury which arose out of and in the course of her employment on or about September 13, 2016. The defendants accepted her injury claim and have provided treatment for her injuries, including mental health treatment. Charles Jennisch, M.D., became claimant's authorized treating physician.

Dr. Jennisch has been prescribing medications and treating the claimant's condition appropriately. On April 1, 2018, Dr. Jennisch recommended claimant receive psychotherapy services in addition to the treatment with medications. (Claimant's Exhibit 1)

On May 9, 2018, a case manager for the defendants informed claimant's counsel that therapy services had been arranged at Ames Therapy, with Amy Mooney, Ph.D. (Cl. Ex. 2) Claimant does not challenge Dr. Mooney's qualifications, or the type of treatment she can provide. She objects to the distance of traveling from the southeast side of Des Moines, where she lives, to Ames, for this treatment. Claimant's counsel represented in argument that it is 37 miles from claimant's home to Ames, Iowa.

On the same date, claimant's counsel inquired to the case manager regarding the selection of Ames Therapy. The case manager responded as follows. "After Dr. Jennisch recommended counseling treatment, I was instructed to send the file to Dr. Ascheman. Dr. Ascheman declined to accept the file after review. I was then instructed to send the file to Ames Therapy and Consulting. These are the only two thus far." (Cl. Ex. 4) Claimant's counsel raised the objection about the distance to defense counsel. Defense counsel responded as follows. "There was some issue with finding a therapist willing to work through an interpreter, and the travel to Ames is not unreasonable." (Cl. Ex. 3) Defense counsel offered transportation if necessary.

On May 10, 2018, Dr. Jennisch saw claimant again. In addition to the counseling services, he also recommended neuropsychological testing. (Cl. Ex. 6, p. 2) Neuropsych testing apparently requires the involvement of a psychologist.

Counsel for the respective parties continued to communicate about claimant's dissatisfaction throughout much of May 2018. Claimant's counsel located a counselor in Des Moines who agreed to see claimant through workers' compensation insurance and with an interpreter. Defendants responded that claimant needed to be seen at a

facility with a psychologist on staff. (Cl. Ex. 5) The parties could not resolve the disagreement and claimant filed for alternate care.

Just prior to hearing, Dr. Jennisch submitted a clarification report on defense counsel letterhead. Therein, defense counsel spelled out the defendants' position regarding the treatment and asked Dr. Jennisch for his opinions. Dr. Jennisch verified that his preference would be to have claimant receive counseling in Des Moines, however, he conceded Ames would be reasonable if "services are not available in Des Moines". (Def. Ex. A, p. 2) He further stated that claimant could have her neuropsychological testing anywhere and still have her counseling "closer to home." (Def. Ex. A, p. 2)

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 (2017).

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). The purpose of the alternate medical care statute is to provide a modicum of due process for injured workers to have some voice in their medical care and treatment.

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).

In this case, Dr. Jennisch is the authorized physician. He has recommended counseling and some other treatment as well, including a neuropsychological evaluation. The defendants believe that any counseling should be performed under the direction of a psychologist, although Dr. Jennisch has not stated this in his recommendations.


I find the care offered by defendants is unreasonable. Dr. Jennisch has indicated a clear preference to have claimant's treatment closer to home or in Des Moines, if possible. I find that appropriate counseling services are available in Des Moines which would comply with all of the requirements recommended by the authorized treating physician.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is GRANTED. Defendants shall immediately authorize a follow-up appointment with Stepping Stones Family Services.

Signed and filed this 7th day of June, 2018.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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