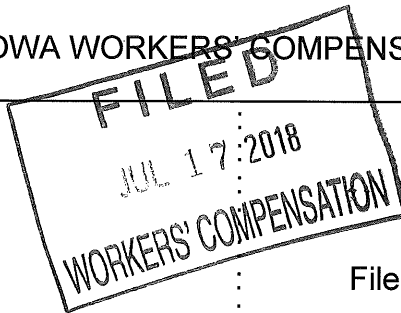
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



MARIE AZBILL, Claimant, vs. LINN-MAR COMMUNITY SCHOOL DISTRICT, Employer, and UNITED WISCONSIN INSURANCE COMPANY, Insurance Carrier, Defendants.	File Nos. 5060942, 5060943 ALTERNATE MEDICAL CARE DECISION HEAD NOTE NO: 2701

This is a contested case proceeding under Iowa Code chapters 85 and 17A. The expedited procedures of rule 876 IAC 4.48, the "alternate medical care" rule, are invoked by claimant, Marie Azbill.

This alternate medical care claim came on for hearing on July 17, 2018. The proceedings were recorded digitally and constitute the official record of the hearing. By an order filed by the workers' compensation commissioner, this decision is designated final agency action. Any appeal would be a petition for judicial review under Iowa Code section 17A.19.

The record in this case consists of Claimant's Exhibits 1-5, and Defendants' Exhibits A. Defendants' exhibits were paginated by the undersigned for clarity of the record

ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of treatment with Stanley Mathew, M.D.

FINDINGS OF FACTS

Defendants admit liability for a low back injury occurring on November 10, 2017. They deny liability for a hip injury.

On March 29, 2018 claimant had an alternate medical care hearing regarding her care. At the hearing, defendants indicated claimant would be evaluated by Cassim Igram, M.D. with the University of Iowa Hospitals and Clinics (UIHC). In the same hearing, defendants' counsel indicated defendants would authorize any treatment recommended by Dr. Igram. (Exhibit 1, page 1)

The Alternate Medical Care decision found claimant failed to carry her burden of proof she was entitled to alternate medical care. That decision was based, in part, on a finding of fact and understanding defendants would follow recommendations made by Dr. Igram. Azbill v. Linn Mar Community, File Nos. 5060942 and 5060943, (Alternate Medical Care decision, March 30, 2014)

In an April 12, 2018 letter, defense counsel wrote to Dr. Igram asking him to address specific questions regarding his evaluation of claimant scheduled for April 18, 2018. (Ex. A, pp. 7-8)

In an undated medical record, signed by Dr. Igram on April 23, 2018, claimant was assessed as having a low back strain. The note indicates claimant might benefit form physical medicine rehabilitation.

On June 8, 2018, claimant was evaluated by Stanley Mathew, M.D. Claimant was assessed as having chronic low back pain, and a potential L4-5 lateral disc protrusion. Dr. Mathew recommended physical therapy, and an electrodiagnostic study of the lower extremities. Claimant was given six trigger point injections and recommended to have more trigger point injections. She was prescribed medications for pain. (Ex. 3)

In a June 13, 2018 email, defendants wrote to the UIHC asking for a response from Dr. Igram regarding the April 12, 2018 letter. (Ex. A, p. 1)

In a June 20, 2018 email, the UIHC responded indicating Dr. Igram would not be able to answer the questions raised in the April 12, 2018 letter, on June 20, 2018, as he was dealing with an emergency situation. The UIHC indicated a response would follow on June 22, 2018.

Correspondence indicates the UIHC lost the original April 12, 2018 letter and requested a copy again be sent to Dr. Igram. (Ex. A, p.4)

In a June 22, 2018 letter, Dr. Igram indicated further care for claimant could consist of physical therapy and over-the-counter medication. Dr. Igram also noted that while claimant's back strain was work-related, problems with her hips were not work-related. (Ex. A, pp. 9-10)

In a June 25, 2018 letter, claimant's counsel asked defendants if they would authorize Dr. Mathew as a treating physician. (Ex. 4)

In a June 26, 2018 letter, defendants indicated claimant was scheduled to be evaluated by Joseph Chen, M.D. at the UIHC on August 3, 2018. (Ex. 5)

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

Iowa Code section 85.27(4) provides, in relevant part:

> For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. . . . The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

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. 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 Rule of Appellate Procedure 14(f)(5); 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).

Claimant's counsel indicated, in a professional statement, claimant had not received any authorized care since February of 2018. Defendants indicated in the March of 2018 alternate medical care hearing that defendants would authorize whatever treatment was recommended by Dr. Igram. (Ex. 1, p. 2)

At least by April 23, 2018, Dr. Igram recommended claimant be seen by a physical medicine rehabilitation specialist. (Ex. 2) I can appreciate defendants had follow-up questions to ask Dr. Igram. I appreciate that Dr. Igram's office delayed the

response to those questions. What is unclear is why defendants did not send claimant to a physical medicine specialist in late April or early May of 2018. Claimant was assessed as having a back strain by April 23, 2018. Defendants accepted liability for a back injury. Again, it is unclear why claimant's care was delayed.

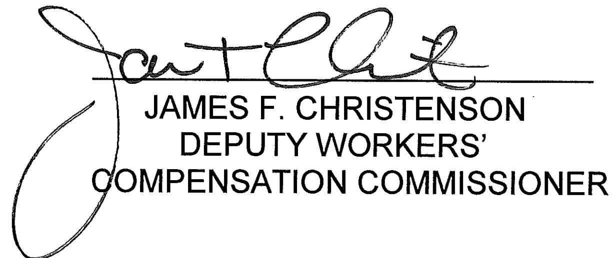
I am empathetic to claimant's situation. However, defendants have referred claimant to a physical medicine specialist for an early August appointment. It is also recognized that a small part of the delay in this case was due to Dr. Igram's office. Given this record, I cannot find the care now offered to claimant is unreasonable.

Defendants are respectfully requested to avoid further delays concerning claimant's care in the future, or run the risk of losing control of care in this case.

ORDER

Claimant's petition is denied at this time. Claimant may re-file a petition for alternate medical care if defendants delay claimant's care in the future. Defendants are respectfully requested to offer claimant prompt care in the future.

Signed and filed this 17th day of July, 2018.



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