

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MORGAN T. CRALL,

Claimant,

vs.

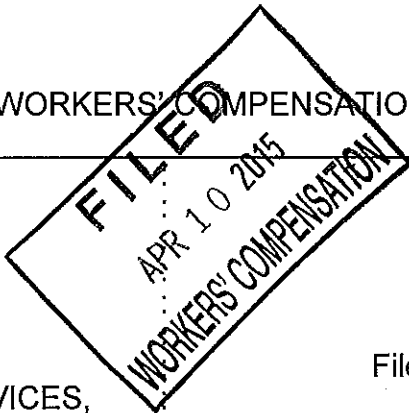
PARK PROFESSIONAL SERVICES,

Employer,

and

UNITED HEARTLAND,

Insurance Carrier,
Defendants.



File No. 5051876

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, Morgan Crall.

The alternate medical care claim came on for hearing on April 9, 2015. The proceedings were recorded which constitutes the official record of this proceeding. This ruling is designated final agency action, and any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code 17A.

The record consists of claimant's exhibits 1 – 4 and defendants' exhibits A – E. The claimant testified. No other witness testified.

ISSUES

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of designation of Lynn Rankin, M.D. as the authorized treating neurologist for claimant. Authorization and payment for medical bills of Dr. Rankin, an MRI, payment of services at On With Life and other providers. Claimant is requesting that Kari Uhl, M.A., LMHC, NCC, be designated as her mental health counselor.

FINDINGS OF FACT

The undersigned having considered all of the testimony and evidence in the record finds:

Defendants admitted liability for an injury occurring on August 23, 2014.

Claimant is 22 years old. Claimant has worked as a wedding planner at Honey Creek State Park. On August 23, 2014 claimant was unloading a trailer. When she unlatched the trailer apparently items in the trailer came out and knocked the claimant to the ground crushing her. Claimant was taken to the emergency room at Mercy Hospital in Centerville, Iowa. Claimant had a broken left ankle. She has had surgery on this ankle and is awaiting a second surgery on this ankle. Claimant also injured her hip, had blurred and double vision in her left eye, hearing problem in her right ear, migraines and dizzy spells. A CT scan at the time of the injury shows a 3mm brain bleed in the right temporal lobe. (Exhibit 3, page 1; Claimant's Testimony)

The claimant developed severe amnesia for about the past 5 – 6 years of her life. (Ex. 1, p. 1; Ex. A, p. 4) Claimant has been diagnosed with retrograde amnesia.

Claimant said that she had a trauma followup examination on September 9, 2014. At this examination Dr. Platz (No first name or certification provided) referred claimant to a neurologist Steve Adelman, D.O. Defendants did not prove a referral to a neurologist. (Cim. Tes.) Claimant said that not having a neurologist adversely impacted her care in that her dizziness was not being addressed and that her ankle surgery was delayed, as no neurologist has okayed her going under anesthesia. (Cim. Tes.) Claimant testified that numerous providers asked her why she did not have a neurologist and she was informed she should see a neurologist. Claimant said that Drs. Galles, Wood, Mallory and Rankin were all floored that she had not had any neurological care and told her it was unacceptable.

On October 29, 2014 claimant had a neuropsychological assessment by Daniel Tranel, Ph.D. at the University of Iowa. Claimant said there were about eight hours of testing, and she spent up to 20 minutes with Dr. Tranel. Dr. Tranel's sole finding was claimant had retrograde amnesia, that claimant lost about five years of recent memory. He opined the claimant's retrograde amnesia was highly likely to be psychogenic and not related to her brain damage. (Ex. A, p. 4) He wrote, "We strongly recommend that Ms. Crall seek psychotherapy with a PhD-level clinical psychologist." (Ex. A, p. 5) On December 15, 2014 the insurance carrier wrote Dr. Tranel and informed him that the carrier had contacted many PhD therapists and was told that it would be two to three months before an appointment could be made. The insurance carrier asked if it would be acceptable that claimant see "a Master's prepared psychotherapist or a licensed prepared social worker?" (Ex. B, p. 1) Dr. Tranel answered yes. (Ex. B, p. 1) The defendants scheduled claimant an appointment with Brian Simmons (no certification level provided) in Ottumwa, Iowa.

Claimant attended an appointment with Mr. Simmons on January 9, 2015. Claimant sad that Mr. Simmons told her he was not qualified to provide her treatment. Claimant said that Mr. Simmons' practice was with children. Claimant testified that at this time she was suicidal.

Claimant and her family had claimant's primary care provider, Amy Wood (no certification provided,) arrange an examination with neurologist, Lynn Rankin, M.D. Dr. Rankin saw claimant on February 10, 2015. Dr. Rankin wrote,

Plan/Discussion

Morgan is nearly 6 months out from a traumatic brain injury. She had a small contusion in the right temporal lobe, and rather dramatic retrograde amnesia for the last 4 years of her life, with slowly improving anterograde memory function. She has many symptoms consistent with postconcussion syndrome and I gave her printed information on that and posttraumatic headaches. She was a known migraine sufferer before but has had increased migraines since the injury. I explained preventative and abortive medication approaches. I explained that there is a risk of development of seizures, especially with injury to the temporal lobes, and I think MRI of the brain is warranted to look more closely at her temporal lobes. I would like MRI of the cervical spine because of her brisk reflexes and positive Hoffman sign on the right.

I believe strongly that she would benefit from cognitive rehabilitation and all types of therapy at On With Life which is the best TBI Center in the area. Only after that level of evaluation would we be able to determine when she might be able to return to work.

Recommendations:

1. Refer to On With Life in Ankeny for speech therapy for cognitive rehabilitation, occupational therapy, vestibular therapy. Over time, they would benefit from couples therapy.
2. Trial of amitriptyline 25 mg to promote sleep and prevent migraines.
3. Trial of sumatriptan 50 mg p.r.n. migraine, #9 tablets per month.
4. MRI of the brain and cervical spine.
5. Phenergan 25 mg p.r.n. nausea or dizziness
6. Headache educational materials and a personalized headache plan were provided.
7. We reviewed sleep hygiene including limiting naps during the day to 30 minutes.

8. She will return in late March for neurological clearance prior to hip surgery.

(Ex. 3, pp. 4, 5)

Claimant had MRI of her brain on February 19, 2015. The impressions listed of this exam were,

IMPRESSION:

1. No acute abnormality in the cervical spine.
2. Punctate focus of increased susceptibility right temporal lobe corresponds with head CT abnormality from August 23, 2014. Additional right cerebral punctate foci of susceptibility. Findings most compatible old petechial hemorrhage.

(Ex. 4, p.2) Claimant testified that she was told the MRI showed three different areas of brain hemorrhage.

Claimant testified she attended occupational, speech and physical therapy with On With Life. She has completed her treatment at On With Life. (Clm. Tes.)

Claimant then contacted Kari Uhl for counseling. Ms. Uhl's office is in Urbandale, Iowa. Claimant stated she has developed a good relationship with Ms. Uhl and would like to continue to see her as a counselor.

Defendants stated at the hearing that that was the first time they had learned of Ms. Uhl and the desire of claimant to receive counseling from Ms. Uhl. It does not appear in the record that claimant requested of the defendants that she could see Ms. Uhl.

Claimant said that she received three days' notice of an appointment with Dr. Tranel in the end of February. She was not able to attend, as she had other medical appointments scheduled that day. She also said that due to a blizzard the night before she would not have been able to attend even if she did not have a conflict. Claimant testified that she had a medical appointment every working day in March 2015.

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. Section 85.27. Holbert v.

Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-reopen 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); 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). In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997), the court approvingly quoted Bowles v. Los Lunas Schools, 109 N.M. 100, 781 P.2d 1178 (App. 1989):

[T]he words "reasonable" and "adequate" appear to describe the same standard.

[The New Mexico rule] requires the employer to provide a certain standard of care and excuses the employer from any obligation to provide other services only if that standard is met. We construe the terms "reasonable" and "adequate" as describing care that is both appropriate to the injury and sufficient to bring the worker to maximum recovery.

The commissioner is justified in ordering alternate care when employer-authorized care has not been effective and evidence shows that such care is "inferior or less extensive" than other available care requested by the employee. Long, 528 N.W.2d at 124; Pirelli-Armstrong Tire Co., 562 N.W.2d at 437.

Reasonable care includes care necessary to diagnose the condition, and defendants are not entitled to interfere with the medical judgment of its own treating physician. Pote v. Mickow Corp., File No. 694639 (review-reopening decision June 17, 1986). I find defendants have not provided prompt and reasonable care.

Defendants did not have claimant examined by a neurologist. This was after there was a recommendation by Dr. Platz in early September 2014. This is inexcusable. I find that defendants abandoned claimant's care as to her being seen and treated by a neurologist. Defendants have lost the right to direct this care.

Fortunately, the claimant's parents and husband were able to assist the claimant in obtaining reasonable medical treatment. Without the aid of the defendants, claimant obtained the services of Dr. Rankin, therapy from On With Life and counseling with Ms. Uhl.

The defendants took 78 days to have claimant seen by Mr. Simmons. This is inexcusable. Additionally, the convincing evidence at the hearing is that Mr. Simmons was not qualified to treat claimant. The testimony of claimant and statement of claimant's attorney that Mr. Simmons was not qualified is most convincing. While Dr. Tranel wrote that Mr. Simmons is a qualified mental health provider, there is no

indication whatsoever that Dr. Tranel spoke to Mr. Simmons about his ability to provide competent services to claimant. Mr. Simmons was professional enough to recognize that he was not qualified to treat claimant, as his practice concerned children in divorce. He told the claimant he was not qualified. (Cm. Tes.) Dr. Tranel wrote Mr. Simmons was qualified to treat claimant. (Ex. E, p. 2) Dr. Tranel's endorsement of Mr. Simmons to treat claimant when Mr. Simmons does not believe he is qualified, raises serious concerns about the opinions of Dr. Tranel.

Defendants have arranged an independent medical examination (IME) of claimant with neurologist, Michael Cullen, M.D. in Moline, Illinois on May 15, 2015. Defendants are entitled have an IME pursuant to Iowa Code section 85.39. An IME is not a substitute for prompt and reasonable treatment.

Claimant has asked for an order to reimburse past medical expenses. I have no authority to award past medical expenses in the summary proceeding. If those issues are not resolved by the parties, it can be one of the issues in an arbitration case.

I am also not ordering the defendants to provide care with Ms. Uhl at this time. It does not appear that claimant asked for such care with Ms. Uhl before filing the petition for alternate care, and defendants did not have time to respond to this request.

ORDER

Therefore is ordered:

The claimant's petition for alternate medical care is granted in part and denied in part.


Dr. Rankin is the authorized treating neurologist in this case.

Defendants shall pay all future costs and followup care recommendations of Dr. Rankin's care in this case.

Claimant is not entitled to an award of past medical expenses in this summary proceeding.

Claimant is not entitled to an order, at this time, to require Ms. Uhl to be the designated mental health provider.

Signed and filed this 10th day of April, 2015.



JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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