

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

AMY SUE LEHMAN,	:	
	:	
Claimant,	:	File No. 23001751.02
	:	
vs.	:	
	:	ALTERNATE MEDICAL
FEDEX GROUND PACKAGE SYSTEM,	:	
INC.,	:	CARE DECISION
	:	
Employer,	:	
Self-Insured,	:	
Defendants.	:	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, Amy Lehman.

The alternate medical care claim was heard on March 16, 2023. Claimant appeared through her attorney Casey Steadman. Defendants appeared through their attorney Danielle Farha. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding.

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

The hearing record consists of:

- Claimant's exhibits 1-4
- Defendant's exhibits A and B

Claimant was the only witness to provide testimony. Counsel for claimant provided argument. The record closed at the end of the alternate medical care telephonic hearing.

ISSUE

The issues presented for resolution are whether the claimant is entitled to alternate medical care in the form of:

- Immediate referral and authorization of a leg specialist in the Cedar Rapids or Iowa City Area.
- Instructions from the agency that defendant must cease denying care ordered by authorized treaters.
- An immediate appointment at Work Well Clinic or a similar provider to address the need for immediate care and potential restrictions.

FINDINGS OF FACT

On December 5, 2022, claimant sustained a work-related injury to her right lower extremity. (See Petition; Answer). At the hearing, claimant did not provide any testimony about how her injury occurred. (Hearing Testimony). However, treatment notes in the hearing record state that two 80-pound packages fell at work, pinning her right leg against a roller. (Ex. 2, p. 6). FedEx accepted the injury and directed her to Work Well Clinic for medical care. (Id.). Work Well recommended physical therapy. (Id.). Claimant was unable to tolerate the physical therapy. (Id.). An MRI was ordered. (Id.). It apparently showed Achilles tendonitis, but no evidence of a tear or rupture. (Id.). Neither the MRI, nor any of Work Well's treatment records are in evidence for this proceeding.

On February 3, 2023, claimant's counsel wrote to defendants. (Ex. 1, p. 1). At the bottom of this letter, claimant's counsel stated "I am including a referral to podiatry in my notice of service. Ms. Lehman has not been advised on whether or not this appointment will be made, despite it being requested more than one week ago by Work Well."¹ (Id.). The referenced referral from Work Well is not attached.

On February 10, 2023, defendants' counsel wrote to claimant's counsel asking if an appointment with Dr. Wenger, an orthopedic specialist in foot and ankles would be acceptable to the claimant. (Ex. 1, p. 2). Apparently, defendants were having trouble finding a podiatrist in claimant's area. (Id.). Defendants then made an appointment for claimant to be evaluated by Chelsie Snyder, D.P.M. on February 21, 2023, at Foot & Ankle Specialists of Iowa. (Ex. 1, p. 2; Ex. 2, p. 6). Foot & Ankle Specialists is in Marion, Iowa. (Ex. 1, p. 2).

On the day before the appointment, February 20, 2023, claimant's counsel sent several emails to defendants' counsel. (Ex. 1, pp. 2-3). The first of these emails states that claimant had been to two different emergency rooms over the weekend and was diagnosed with a probable tear in her calf. (Id. at 3). Claimant's counsel indicated Work Well, Foot & Ankle Specialists, and St. Luke's were refusing to treat her for the purported calf problem. (Id.). He informed defendants that she would not be at work

¹ The rest of this letter deals with several treatment recommendations that were apparently made by Jamie Reiter, ARNP, at Work Well Clinic. (See Ex., 1, p. 1). Except for the Lidocaine patches, claimant's evidence does not address these recommendations, thus it is unclear whether they were ever provided by defendants. At the hearing, claimant testified that she wanted Lidocaine patches, but it was not one of the items requested on her alternate medical care petition, nor was it verbally requested during the hearing argument. (See Petition; Hearing Testimony). Given this, the undersigned will make no findings on this issue.

due to the pain in her calf and hands and requested authorization for someone to evaluate her calf issue. (Id.). Claimant's counsel sent another email approximately an hour later requesting a doctor to treat her leg. (Id. at 2).

At the hearing, claimant testified she went to two separate emergency rooms (ERs)—Mercy and St. Luke's. (Hearing Testimony). The treatment records from Mercy are not in the record. However, claimant testified she went to the Mercy ER on February 18, 2023, where she was given hydrocodone and crutches. (Hearing Testimony). The treatment record from the St. Luke's ER is dated February 19, 2023. (Ex. 4, p. 9). Under the heading "Subjective," it states as follows:

This is a 30-year old female that presents with posterior leg pain. She states the injury started back in December when she got a crush injury at work. She is followed by work well. Yesterday morning she was walking through the house with her boot on as prescribed and she felt a snapping sensation in the back of her calf. She did go to Mercy freestanding emergency room yesterday and was diagnosed with a partial gastrocnemius tear. She was provided with crutches. She states they told her "They did [sic] have the right imaging to fully diagnose." They recommend she follow up with work well. She is here today in hopes to get an actual diagnosis as she is still having pain. She was discharged with Lortab.

(Id.). The provider at St. Luke's, Jill Reese, PA, diagnosed claimant with right calf pain and recommended she follow-up with Work Well. (Id. at 10).² In one of claimant's counsel's emails to defendants, he states "Work Well is refusing to see her since they referred her on." (Ex. 1, p. 3).

On February 21, 2023, claimant was seen as scheduled by Dr. Snyder at Foot & Ankle Specialists of Iowa. (Ex. 2, p. 6). Dr. Snyder diagnosed her with Achilles Tendinitis, right leg, and pain in the right foot. (Id. at 7). She recommended stretching, icing, and anti-inflammatory medication. (Id.). The bottom of her treatment record states "She requests a referral to ortho for an evaluation of the right calf as that is where the majority of her pain is. A referral will be placed to ortho for evaluation and treatment." (Id.).

At some point following receipt of Dr. Snyder's treatment note, defendants contacted the University of Iowa Work Injury Recovery Center (UI Recovery Center) requesting an appointment with John Femino, M.D., to evaluate claimant's calf pain. (See Ex. A). On March 1, 2023, Fred Fevold from the UI Recovery Center emailed defendants to say that Dr. Femino declined to accept claimant as a patient. (Id.). That same day, defendant's counsel emailed back asking if any other doctor at the UI Recovery Center would be willing to see the claimant. (Id.). The next day, March 2,

² The treatment note from Foot & Ankle Specialists reiterates that no imaging was done at either ERs. (Ex. 2, p. 6).

2023, Mr. Fevold emailed defendants back stating “Dr. Hogue also declines. We are out of options here.” (Id.).

On March 6, 2023, claimant filed her petition for alternate medical care, requesting an “immediate referral and authorization of a leg specialist in Cedar Rapids or Iowa City per Foot and Ankle Specialist and St. Luke’s ER.”³ (See Petition). On March 15, 2023, defendants sent claimant’s counsel a letter stating that James Pape, M.D., at Physicians’ Clinic of Iowa (PCI) had agreed to see claimant for her calf complaints. (Ex. B). Dr. Pape’s office is located in Cedar Rapids, Iowa. (Id.). Defendants’ letter stated that Dr. Pape’s office would not provide an actual appointment date until it received pre-payment for the evaluation. (Id.). The letter indicated the check for the evaluation had already been issued, but it would take a couple days for Dr. Pape’s office to receive it. (Id.). Defendants indicated they would update claimant when a date had been provided. (Id.).

On the date of the hearing, defendants had not yet received an appointment date from Dr. Pape’s office. (Hearing Testimony). Claimant testified that she plans to attend the appointment with Dr. Pape for her calf complaints. (Id.). However, during the hearing, her attorney also verbally requested that while the parties wait for the appointment date with Dr. Pape, defendants should be ordered to provide immediate care with Work Well or a similar provider for claimant’s leg complaints. (Id.). Claimant’s counsel had no information on if there is a provider similar to Work Well in the area willing to see claimant for her calf complaints or how far out they are scheduling appointments. (Id.). This request was not contained in claimant’s alternate care petition.

CONCLUSIONS OF LAW

Under Iowa law, an employer who has accepted compensability for a workplace injury has a right to control the care provided to the injured employee. Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 769 (Iowa 2016). The relevant statute provides as follows:

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.

³ From the hearing record, it appears that Foot & Ankle Specialists of Iowa is an authorized provider. There is no evidence that the St. Luke’s ER is an authorized provider.

Iowa Code § 85.27(4).

Defendants' "obligation under the statute is confined to *reasonable* care for the diagnosis and treatment of work-related injuries." Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995) (emphasis in original). In other words, the "obligation under the statute turns on the question of reasonable necessity, not desirability." Id. 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. See Iowa Code § 85.27(4). 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, 528 N.W.2d at 124.

An employee's desire for a different "reasonable" treatment plan does not make the employer-authorized care unreasonable. See Long, 528 at 124. A finding that the treatment requested by the claimant is reasonable does not result in an implicit finding that the authorized treatment is unreasonable. Id. The employee must prove the care being offered by the employer is unreasonable to treat the work injury, not that another treatment plan is reasonable. Id.; See also Lynch v. Bursell, 870 N.W.2d 274 (Table) (Iowa Ct. App. 2015). Determining whether care is reasonable under the statute is a question of fact. Long, 528 N.W.2d at 123.

In her petition, claimant requested referral and authorization of a leg specialist in Cedar Rapids or Iowa City per the recommendation of Dr. Snyder at Foot & Ankle Specialists. (See Petition). Dr. Snyder made her referral on February 21, 2023. According to the evidence in the record, after receiving Dr. Snyder's referral, defendants attempted to make claimant an appointment with several specialists at the UI Recovery Center in Iowa City. They declined to accept her as a patient. Defendants then asked Dr. Pape to evaluate claimant's calf complaints. Neither Dr. Pape's scheduling procedures, nor UI's refusal to treat claimant were caused by the fault or negligence of defendants. Given this record, claimant has not met her burden to prove that the care offered by defendants is unreasonable.

Claimant makes two other requests in this alternate medical care proceeding: 1) that the agency instruct defendants that they must cease denying care ordered by authorized treaters, and 2) an immediate appointment at Work Well Clinic or a similar provider to address her right calf pain and potential need for restrictions. Both of these requests appear to run afoul of the agency's notice requirements. Claimant's request to be seen immediately at Work Well or a similar clinic is not even on her alternate care petition, thus it is not properly before the agency in this proceeding. See, e.g., 876 IAC 4.6. Additionally, Iowa Code section 85.27(4) requires an employee to notify defendants of his or her dissatisfaction with care before applying to the agency for alternate medical care. According to the statute, this requirement is intended to give the parties an opportunity to reach an understanding on future care for the employee,

before asking the agency to intervene. There is no evidence claimant requested a remedial appointment with Work Well or a similar clinic prior to making the verbal request at hearing, let alone that she expressed dissatisfaction with defendants' response. Claimant's request for an immediate appointment at Work Well or a similar clinic is denied.

The undersigned finds claimant's request for a blanket instruction that defendants must cease denying care ordered by authorized providers equally problematic. While past agency decisions do state an employer's failure to follow the recommendations of an authorized treating physician is commonly a failure to provide reasonable care, see Boggs v. Cargill, Inc., File No. 1050396 (Alt. Care, January 31, 1994), every controversy brought before this agency is fact specific. The undersigned cannot predetermine defendants' liability before claimant has even established necessary facts. To do so would violate defendants' right to notice under the statute. Given this, claimant's request for a blanket instruction that defendants must cease denying care ordered by authorized providers is denied. If claimant feels defendants have denied a specific treatment recommended by an authorized provider, she can re-file her petition for alternate medical care under Iowa Code section 85.27, requesting the agency order that specific treatment.

Given the record as detailed above, claimant has not met her burden to prove the care offered by defendants is unreasonable. Claimant's petition for alternate care is denied.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's petition for alternate care is DENIED at this time.

Signed and filed this 20th day of March, 2023.

A handwritten signature in black ink, reading "Amanda Rutherford". The signature is fluid and cursive, with the first name "Amanda" being larger and more prominent than the last name "Rutherford".

AMANDA R. RUTHERFORD
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Casey Steadman (via WCES)

Danielle Farha (via WCES)