

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ELISHA STOKES,

Claimant,

vs.

CARROLL SUPPLY,

Employer,

and

TRAVELERS INSURANCE,

Insurance Carrier,
Defendants.

FILED
JUN 20 2019
WORKERS' COMPENSATION

File No. 5066790

RULING ON APPLICATION
FOR ALTERNATE CARE

HEAD NOTE NO: 2701

STATEMENT OF THE CASE

On June 6, 2019, Elisha Stokes, the claimant, filed an application for alternate care under Iowa Code section 85.27 and Rule 876 IAC 4.48. The defendants, employer Carroll Supply and insurance carrier Travelers Insurance, filed an answer in response.

The undersigned presided over an alternate care hearing that was held by telephone and recorded on June 19, 2019. That recording constitutes the official record of the proceeding. See 876 IAC § 4.48(12). Stokes participated personally and through attorney Laura Pattermann. Carroll participated through attorney Kevin Rutan. The record consists of:

- Testimony at hearing by Stokes and Justin Nichols;
- Claimant's Exhibits 1 through 10; and
- Defendants' Exhibits A through F.

ISSUE

The issue under consideration is whether Stokes is entitled to alternate care under Iowa Code section 85.27 in the form of anti-depressant prescription medication and pain management care.

FINDINGS OF FACT

On April 14, 2018, Stokes had his right hand crushed in a hydraulic press for about 20 minutes. Paramedics took Stokes to the University of Nebraska Medical Center. He underwent surgery on his hand.

After the anesthesia wore off, Stokes was in excruciating pain. Stokes was in pain that felt like his hand was constantly being smashed. It felt like stabbing needles. The pain caused Stokes to sweat. It was irritating and aggravating to him.

Stokes sought and received a second opinion at Ortho Nebraska with Dr. Bruggeman (first name not given). Dr. Bruggeman diagnosed Stokes with regional pain syndrome (RPS).

PAIN MANAGEMENT

The defendants chose Madhuri Are, M.D. of Nebraska Medicine, Pain Medicine at Village Pointe, to provide pain management care in June 2018. Dr. Are tried medication to treat Stokes's RPS. Stokes was instructed to contact Dr. Are's office if the medications did not help.

When a medication did not work, Stokes called the office and told them. Office staff would then schedule an appointment two or three weeks in the future. This left Stokes without effective pain management for the two-to-three-week window between the phone call and appointment. Dr. Are's office did not have an alternative pain management plan for care during this time.

In July and again in August of 2018, a member of Dr. Are's staff prescribed Stokes narcotics (opioids) to treat his pain. Stokes testified that the narcotics worked to treat his pain.

Dr. Bruggeman had recommended surgery to remove scar tissue from Stokes's hand. At a follow-up appointment, Dr. Bruggeman informed Stokes that he would not perform the surgery because of Stokes's pain. Dr. Bruggeman stated that another surgery on Stokes's hand, with his pain level, would be detrimental.

Stokes later had an appointment with Dr. Are. Stokes told Dr. Are that Dr. Bruggeman told him that he needed better pain management. Dr. Are informed Stokes that she could not do anything more for him.

Stokes asked Dr. Are why she could not prescribe him narcotics. Dr. Are informed Stokes that the office did not prescribe narcotics like that. Stokes did not understand this statement because a member of Dr. Are's office staff had previously prescribed him narcotics that alleviated his pain. According to Stokes, Dr. Are did not respond when he asked her why a member of her staff wrote him a prescription for narcotics that summer if it was not the clinic's practice.

Dr. Are made a note later in time that appears to reference the discussion Stokes described in his testimony. The note followed her appointment with Stokes on February 11, 2019. It asserts that Stokes sought a prescription for opioids at that appointment. Dr. Are states:

This was discussed in great detail with him during his last visit that our clinic does not prescribe opioids for long term use for chronic nonmalignant pain. At the last visit, I informed him that we offer interventional pain management along with adjuvant therapy for chronic pain and not opioids.

(C. Ex. 2)

Stokes denies seeking opioids specifically. He states that he simply wanted help managing his pain.

Stokes testified that Dr. Are offered to make him an appointment at Midwest Pain Clinic. Claimant's Exhibit 2 contains a progress note from Farrah Nowlin, RN, dated October 4, 2018. It states that Stokes "requested physical referral to Midwest Pain Clinic be mailed out to him; since he was not able to stay for his appointment to obtain the physical referral page at the time of the appointment." (C. Ex. 2)

Claimant's Exhibit 1 is a picture of Dr. Are's referral to Midwest Pain Clinic. Titled "AMB REFERRAL TO PAIN CLINIC" and dated September 17, 2018. The Comments state:

Referral to Mid West Pain Clinic

Patient wants to see another MD, wants to explore more options

Reason for Referral: Specialty Services Required

Priority: Routine

Electronically Authorized By Madhuri Are, MD

(C. Ex. 1)

Stokes's attorney requested on his behalf that the defendants authorize treatment with Midwest Pain Clinic after Dr. Are's referral. (C. Ex. 3) Kathy Fischer of Travelers wrote to Stokes's attorney in response on November 30, 2018. (C. Ex. 3) She denied the request because Stokes was under the care of Dr. Are for pain management. (C. Ex. 3)

Claimant's Exhibit 2 contains documentation of a conversation on December 3, 2018, between Nowlin and a Travelers employee named "Kris" on the Midwest Pain

Clinic referral. The bottom part of the note is a message from Sharon Sanchez Lopez, which states:

Kris with [T]ravelers is calling and wanting to know if we referred [Stokes] to Midwest [P]ain or just gave him the name of a clinic that prescribes. They are wanting something in writing saying that we did or did not refer him. Please call Kris at above number.

(C. Ex. 2)

The Progress Note also states that Nowlin spoke with Kris and informed Kris "that Dr. Are did refer the patient to another pain clinic" and that Kris "will either need to call medical records or call [Stokes] as a physical copy of the referral was provided to [Stokes]." (C. Ex. 2) The note concludes by stating, "Kris verbalized understanding." (C. Ex. 2)

On December 20, 2019, Stokes's attorney wrote defense counsel a letter, requesting authorization for Stokes to treat at Midwest Pain Clinic, as referred by Dr. Are. (C. Ex. 3) Through counsel on January 21, 2019, the defendants denied Stokes's request that he be authorized to receive care from Midwest Pain Clinic. (D. Ex. E) The defendants contend in the email that "Stokes wants referred to this alternative pain clinic to seek opioids (namely, Percocet), despite the fact that opioids are contraindicated." (D. Ex. E)

Instead of honoring Dr. Are's referral, defense counsel contacted Dr. Are's clinic. (D. Ex. E) He confirmed that Dr. Are is willing to continue treating Stokes. (D. Ex. E) With respect to Stokes's request that the defendants honor Dr. Are's referral, defense counsel states that the "request for a referral to Midwest Pain Management is denied." (D. Ex. E) Defense counsel then instructed Stokes's attorney to have him schedule an appointment with Dr. Are for any pain management care needed. (D. Ex. E)

On or about February 6, 2019, Stokes made his third request for the defendants to authorize care with Midwest Pain Clinic under Dr. Are's referral. (D. Ex. F) The defendants rejected the request through counsel that same day. (D. Ex. F) As before, the defendants took the position that only Dr. Are was authorized to provide care to Stokes for pain management. (D. Ex. F) Defense counsel states, "I infer from this 65 day lapse in contact with the authorized pain specialist that Mr. Stokes' pain is improving, which conforms with Dr. Bruggeman's 1-17-19 report stating that Mr. Stokes 'may see improvement in his neuropathic pain over time.'" (D. Ex. F)

Stokes took out a personal loan in part to pay for care. He went to Midwest Pain Clinic on his own and established care with Richard Bose, M.D. The defendants provided transportation to at least some of Stokes's appointments at Midwest Pain Clinic despite not authorizing care by the provider.

Stokes's attorney sent Dr. Bose a check-box letter dated April 17, 2019. (C. Ex. 4) It asks, "After your visit with Mr. Stokes, is it your opinion that he currently requires ongoing pain care as a result of his work-related injury of 04/14/2018 at Carroll Supply?" (C. Ex. 4) Dr. Bose checked the box indicating "Yes" and commented, "Currently initiating treatment regimens." (C. Ex. 4) He signed the response and dated it May 1, 2019. (C. Ex. 4)

Dr. Bose prescribed amitriptyline to treat Stokes's pain. Stokes finds it effective. Claimant's Exhibit 5 is a medical record from an appointment with Dr. Bose, which followed an attempt at increasing Stokes's dosage of amitriptyline. The record notes next to "Insurance:" that Stokes is "self pay." (C. Ex. 5) It details how Stokes "tried the increase in amitriptyline," but he backed off down to ten milligrams because the increase made him drowsy. (C. Ex. 5) Stokes informed Dr. Bose "the amitriptyline is helping a lot." (C. Ex. 5)

Despite Dr. Are's written referral to Midwest Pain Clinic, the defendants continued to authorize care only with Dr. Are. (D. Ex. C) Stokes's attorney again requested that the defendants authorize treatment with Midwest Pain Clinic in correspondence dated May 17, 2019. (D. Ex. C) The defendants again denied the request on the grounds that Dr. Are is the only authorized provider of pain management care. (D. Ex. C) Defense counsel cautioned Stokes's attorney that Stokes was not to seek care from unauthorized care. (D. Ex. C)

Stokes continues to treat with Dr. Bose. Stokes gets a ride to appointments. The care is effective at managing the pain in his hand.

CARE FOR POST-TRAUMATIC STRESS DISORDER AND DEPRESSION

Prior to the date of the injury, Stokes suffered from depression and substance abuse.

Dr. Bruggeman recommended that Stokes receive care for mental health issues he was experiencing as a result of his crushed hand. The defendants sent Stokes to Robert G. Arias, Ph.D. Dr. Arias evaluated Stokes on October 11, 2018, in Omaha, Nebraska. Dr. Arias opined that Stokes "does not present as indicated for mental health treatment at this time." (C. Ex. 7)

On November 14, 2018, Terry A. Davis, M.D., a forensic psychiatrist, evaluated Stokes at his office in Omaha, Nebraska. (C. Ex. 8.) Dr. Davis concluded:

Stokes does need some psychiatric and psychotherapeutic treatment for his Major Depressive Disorder and PTSD as a result of the 4-14-18 accident. Recommended treatment would include seeing a psychiatrist for medication management and treatment with antidepressant medication such as an SSRI or SNRI antidepressant. Those medications are

indicated for the treatment of both depression and anxiety/PTSD. They may be efficacious in the treatment of chronic pain as well.

(C. Ex. 8.)

Dr. Davis also recommended a tentative schedule for treatment, subject to how his symptoms responded and the judgment of the treating psychiatrist, that included:

- 1) Initial psychiatric evaluation;
- 2) Then, medication checks approximately every two weeks for the first month;
- 3) Then, monthly medication checks for the next two months; and
- 4) After that, further medication checks monthly or as needed until his condition adequately stabilized.

(C. Ex. 8.)

Further, Dr. Davis recommended that Stokes “begin a relatively brief course of psychotherapy with a doctorate or master’s level psychologist or therapist.” (C. Ex. 8.) Dr. Davis opined that “[t]he most efficacious form of psychotherapy for depression and PTSD is generally considered to be cognitive-behavioral therapy (CBT).” (C. Ex. 8.) Dr. Davis felt that a “reasonable schedule” for CBT “would be weekly, 1-hour sessions for approximately 3 months, with the exact duration . . . dependent on his response to treatment.” (C. Ex. 8)

The defendants did not authorize the care recommended by Dr. Davis. Instead, the defendants sought the medical records relating to Stokes’s past mental-health and substance-abuse treatment. The defendants provided the medical records to Dr. Davis and sought a supplemental opinion.

In May 2019, about five months after the defendants received the report from Dr. Davis that found Stokes suffered from PTSD and one episode of Major Depressive Disorder relating to his crushed hand and recommending therapy and medication, Stokes had what he described in testimony as a mental breakdown. Stokes was one week away from getting married. He felt ignored and that no one cared what would happen to him. Stokes told his fiancée that he wanted to kill himself. The pain, confusion, and loss of sleep were too much.

Stokes checked himself into Lasting Hope, a mental health facility in order to keep himself safe. Stokes did not want to check into Lasting Hope, but he knew it would help him. Stokes wants to live a normal life.

After checking into Lasting Hope, Stokes was able to receive care through Lutheran Services with Ryan McCann. Counseling and anti-depressants helped. He is able to sleep again.

Dr. Davis issued his supplemental opinion on May 16, 2019. (D. Ex. D) The additional medical records did not change Dr. Davis's assessment from January. After receipt of Dr. Davis's May 16, 2019 report, the defendants authorized Stokes to undergo CBT with Dr. Arias, in Lincoln, Nebraska, which is about 60 miles from Stokes's residence in Omaha, Nebraska.

Stokes testified that his appointment with Dr. Arias was on the same day as a previously scheduled appointment with Ryan McCann. Stokes spent about 10 minutes with Dr. Arias. According to Stokes, Dr. Arias told him that Plan A would be maintaining care with his current therapist and that Plan B would be therapy with Dr. Arias. In a letter dated June 12, 2019, Dr. Arias recounts this conversation. (D. Ex. B) He states:

Stokes indicated he was currently undergoing psychotherapy with an unnamed individual. He endorsed gaining significant benefit from this treatment thus far. I indicated to him that I am happy to treat him in psychotherapy if this is what is indicated or dictated to him, although I am also happy to defer to him continuing with his current provider ultimately as well, if this is what is dictated or desired by all involved who would be contributing to this decision. Notably, it is not acceptable to see two therapists concurrently.

(D. Ex. B)

Dr. Arias gave him a questionnaire or test and asked him to complete it in the waiting room. Stokes was going to be late for his appointment with McCann, so he told the receptionist that he had to go to another appointment and left after giving her the questionnaire, which he did not complete. Dr. Arias opines in his letter that it is not possible that Stokes could have misunderstood whether or not he needed to complete the questionnaire. (D. Ex. B) He also stated that Stokes's failure to complete the questionnaire caused him concern because such patients typically experience worse treatment outcomes than those who complete questionnaires. (D. Ex. B)

Stokes is not continuing care with Dr. Arias. Travelers has arranged care with CHI/Alegent psychiatry clinic. (D. Ex. A) Stokes has agreed to the change in care and signed a release. Stokes's appointment with CHI/Alegent is on June 26, 2019. (D. Ex. A)

Stokes's prescription for Paxil runs out on June 19, 2019, and he is concerned about his ability to get the prescription filled due to the transfer of care from Lutheran Services to CHI/Alegent. Stokes is concerned that if he goes off his anti-depressant medication, he might wind up in Lasting Hope again due to mental issues.

CONCLUSIONS OF LAW

"Iowa Code section 85.27(4) affords an employer who does not contest the compensability of a workplace injury a qualified statutory right to control the medical

care provided to an injured employee.” *Ramirez-Trujillo v. Quality Egg, L.L.C.*, 878 N.W.2d 759, 769 (Iowa 2016) (citing *R.R. Donnelly & Sons v. Barnett*, 670 N.W.2d 190, 195, 197 (Iowa 2003)). Under the law, the employer must “furnish reasonable medical services and supplies *and* reasonable and necessary appliances to treat an injured employee.” *Stone Container Corp. v. Castle*, 657 N.W.2d 485, 490 (Iowa 2003) (emphasis in original). Such employer-provided care “must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee.” Iowa Code § 85.27(4).

An injured employee dissatisfied with the employer-furnished care (or lack thereof) may share the employee’s discontent with the employer and if the parties can’t reach an agreement on alternate care, “the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.” *Id.* “Determining what care is reasonable under the statute is a question of fact.” *Long v. Roberts Dairy Co.*, 528 N.W.2d 122, 123 (Iowa 1995); *Pirelli-Armstrong Tire Co. v. Reynolds*, 562 N.W.2d 433, 436 (Iowa 1997). As the party seeking relief in the form of alternate care, the employee bears the burden of proving that the authorized care is unreasonable. *Id.* at 124; *Gwinn*, 779 N.W.2d at 209; *Reynolds*, 562 N.W.2d at 436; *Long*, 528 N.W.2d at 124. Because “the employer’s obligation under the statute turns on the question of reasonable necessity, not desirability,” an injured employee’s dissatisfaction with employer-provided care, standing alone, is not enough to find such care unreasonable. *Id.*

CARE FOR PAIN MANAGEMENT

When a designated physician refers a patient to another physician, that physician acts as the defendant employer’s agent. Permission for the referral from defendant is not necessary. *Kittrell v. Allen Memorial Hospital*, 34th Biennial Report of the Industrial Commissioner, 164 (Arb. November 1, 1979) (aff’d by industrial commissioner); see also *Limoges v. Meier Auto Salvage*, Iowa Industrial Commissioner Reports 207 (1981).

The weight of the evidence establishes that Dr. Are referred Stokes to Midwest Pain Clinic on September 17, 2018. As the authorized provider of pain management care for Stokes, Dr. Are was acting as the defendants’ agent. Permission for the referral from the defendants was not necessary.

Nonetheless, the defendants refused to honor the referral of their authorized agent Dr. Are. Instead, they interfered with it for the stated reason that Stokes wanted care at Midwest Pain Clinic because he was seeking opioids. This position is undermined by the fact that Stokes obtained care at Midwest Pain Clinic himself and did not receive a prescription for opioids.

The defendants’ refusal to recognize the September 17, 2018, referral by their agent Dr. Are is unreasonable interference with care under Iowa Code section 85.27(4). The alternate care with Dr. Bose at Midwest Pain Clinic is therefore authorized.

CARE FOR PTSD AND DEPRESSION

Iowa Code section 85.27(4) requires that employer-controlled care must be "offered promptly." Care must also be effective under the law. See *Pirelli-Armstrong Tire Co. v. Reynolds*, 562 N.W.2d 433, 437 (Iowa 1997). Care that is not offered promptly is unreasonable, as is care that is ineffective. Thus, it is appropriate to order alternate care when employer-controlled care is not offered promptly or is ineffective.

The parties have agreed on CHI/Alegent as a provider of care for Stokes's mental health issues. Stokes has established an effective treatment regimen for his mental health needs with Lutheran Services that includes prescription medications. Under the facts of this case, failure to maintain those prescriptions is a failure to provide prompt and effective care. The defendants shall take appropriate steps to ensure that Stokes is able to maintain his prescriptions through the transition of care for his PTSD and depression to CHI/Alegent.

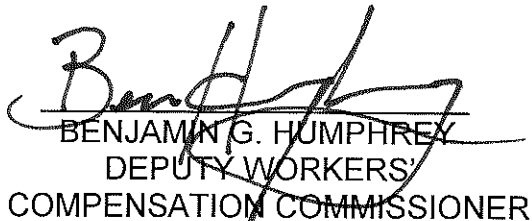
ORDER

It is therefore ordered:

- 1) Stokes's application for alternate care is **granted**.
- 2) Stokes is authorized to undergo care for pain management from Midwest Pain Clinic with Dr. Bose.
- 3) Stokes is authorized to maintain his anti-depressant medication regimen, as developed with the providers through Lutheran Services. The defendants shall take appropriate steps to ensure that this happens.

On February 16, 2015, the Iowa workers' compensation commissioner issued an order delegating authority to deputy workers' compensation commissioners, such as the undersigned, to issue final agency decisions on applications for alternate care. Consequently, there is no appeal of this decision to the commissioner, only judicial review in a district court under the Iowa Administrative Procedure Act, Iowa Code chapter 17A.

Signed and filed this 20th day of June, 2019.


BENJAMIN G. HUMPHREY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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