BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BONNETTA SMITH,

Claimant,

vs.

LAKESIDE CASINO AFFINITY GAMING,

Employer,

and

ZURICH AMERICAN INSURANCE,

Insurance Carrier,
Defendants.

File No. 5049705

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, Bonnetta Smith. Claimant appeared personally and through her attorney, Tom Palmer. Defendants appeared through their attorney, Jason Wiltfang.

The alternate medical care claim came on for hearing on June 1, 2016. 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 the sworn testimony of Bonnetta Smith, claimant's exhibits 1 through 5; and defendants' exhibits A through C.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care. She seeks an Order allowing her to seek treatment from a physician of her choice in the event that defendants fail to promptly secure a physician for her.

FINDINGS OF FACT

Bonnetta Smith has been receiving treatment for an accepted work injury by Daniel C. Miller, D.O. He has treated her for chronic pain by prescribing her Butrans Transdermal patches for her ongoing, day-to-day pain and tramadol for breakthrough pain. Dr. Miller ended the doctor-patient relationship with Ms. Smith by letter on March 1, 2016. He alleged that she violated the chronic pain management agreement. He learned through the Physician Monitoring Program that she had been receiving tramadol through her family physician, James Bice, D.O., in violation of their agreement. (Cl. Ex. 2)

Ms. Smith testified at hearing that she was aware that she was not supposed to receive the tramadol through Dr. Bice and filled the prescription accidentally. In fact, Ms. Smith receives numerous prescriptions through Dr. Bice and I believe her explanation is perfectly plausible. (Cl. Ex. 3, p. 2) She returned all of the pills to Dr. Bice after she realized the error. (Cl. Ex. 3, p. 1) Dr. Miller did not testify in the alternate care proceeding and it does not appear that he gave he provided her much opportunity to explain the error.

Since Dr. Miller provided notice in early March, the defendants have made efforts to secure a new physician. Based upon the representations of defense counsel, the defendants have made a good faith effort to secure a new physician, however, some physicians are reluctant or unwilling to see claimant. (Def. Ex. C) There is not a great deal of detail provided about this, however, defense counsel certainly seemed sincere. The defendants apparently convinced Dr. Miller to write a prescription for another month while the new physician search continued.

Ms. Smith believes that if she goes off the patch, she could experience serious withdrawal symptoms. This is supported to some degree by the medication guide she received by the pharmacy. (Cl. Ex. 1) At the very least, Ms. Smith reasonably believes that being cut off of this medication "cold turkey" may result in an emergency situation.

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 (2013).

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).

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).

The defendants have provided reasonable care through March 1, 2016. Their physician ended treatment with the claimant due to a violation of an agreement between the claimant and her physician. The claimant acknowledges the violation and argues it was an honest mistake. In any event, the treatment has ended by the physician's choice. The defendants rightly acknowledge that they must locate a substitute physician.

I have no doubt that it is somewhat difficult to find a physician willing to take on a new patient on short notice under these circumstances, however, it has been three months now since Dr. Miller ended the treatment relationship. Claimant calculates that she has enough medicine until June 10, 2016, at which point she believes her situation will become an emergency.

I find that the defendants should not lose their authority to control the medical care in these circumstances. In the event that the defendants are unable to secure a physician to provide treatment for the claimant by June 8, 2016, the defendants shall be temporarily responsible for reasonable care selected by the claimant after that date until they name an authorized physician who actually evaluates her. The care shall be limited to reasonable, interim pain management care to prevent an emergency. If the delay in locating a physician continues and becomes unreasonable, claimant may re-file the petition to seek a permanent change of care.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is GRANTED in part. The defendants do not lose their authority to control the medical care; however, if a new physician is not assigned by June 8, 2016, defendants shall authorize care as set forth above.

Signed and filed this 2nd day of June, 2016.

JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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