

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RICHARD ROSS,

Claimant,

vs.

OLD DOMINION FREIGHT
LINE, INC.,

Employer,

and

INDEMNITY INSURANCE CO. OF N.A.,

Insurance Carrier,
Defendants.

File No. 5068577.02

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

STATEMENT OF THE CASE

On June 18, 2020, claimant filed a petition for alternate medical care pursuant to Iowa Code 85.27(4) and 876 Iowa Administrative Code 4.48. The defendants filed an answer on June 29, 2020.

The undersigned presided over the hearing held via telephone and recorded digitally on June 30, 2020. That recording constitutes the official record of the proceeding under 876 Iowa Administrative Code 4.48(12). Claimant participated through his attorney, Christopher Spaulding. The defendants participated via their attorney, Steven Spencer. The record consists of:

- Claimant's Exhibits, numbered 1, comprised of ten pages of documents attached to the petition for alternate medical care.
- Defendants' Exhibits, numbered A1 through C6, comprised of six pages of documents, were sent to the parties ahead of the hearing, and submitted electronically at the direction of the undersigned.
- Testimony at hearing by nurse case manager Jennifer Jensen.
- Testimony at hearing by the claimant's wife, Linda Ross.

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, this decision constitutes final agency action, and there is no appeal to the commissioner. Judicial review in a District Court pursuant to Iowa Code 17A is the avenue for an appeal.

ISSUE

The issue under consideration is whether claimant is entitled to alternate care under Iowa Code 85.27(4) in the form of:

1. Payment of past mileage due to the claimant in obtaining authorized care;
2. Payment of past nursing care provided by Linda Ross;
3. Payment of two outstanding medical bills; and,
4. Mental health care treatment.

FINDINGS OF FACT

Claimant, Richard Ross, sustained numerous injuries as the result of a work incident on April 25, 2019, which arose out of and in the course of his employment with Old Dominion Freight Line, Inc. Defendants have accepted liability for the claim via their answer. The main injuries noted during this proceeding were a wound to the rear of the left calf, and mental health issues. (Testimony).

Mr. Ross's wife testified that she applied for, and was granted FMLA in May of 2019. (Testimony and Exhibit 1). She attended all of Mr. Ross's medical appointments after the work incident, and continues to do so. (Testimony). Ms. Ross also continues to care for Mr. Ross by changing his wound dressing at least once per day. (Testimony). Since the previous alternate medical care hearing, Ms. Ross, previously employed by Kwik Star, has been let go from her job. (Testimony). Ms. Ross noted that Mr. Ross's medical appointments continue for his leg. (Testimony). Finally, Ms. Ross testified that Mr. Ross's mental health continues to decline and includes increasing forgetfulness. (Testimony).

Jennifer Jensen, a nurse case manager, retained by the insurer, also testified. She has been involved with Mr. Ross's care since April or May of 2019. (Testimony). She confirmed that Mr. Ross is still actively treating for the wound on the back of his left calf, but that his other treatment, including pain medication management, has transitioned to Mr. Ross's primary care physician, Dr. Sutcliffe. (Testimony). Dr. Sutcliffe is not an authorized treating physician at this time, according to defense counsel. Ms. Jensen noted that at a recent appointment, she was handed a card by the claimant or his wife which included a "memory provider" suggested by Dr. Sutcliffe. (Testimony). Ms. Jensen made the insurance adjuster aware of the referral on the day before the hearing, but there is no authorization for care with this provider at this time. (Testimony). Ms. Jensen has briefly discussed some of Mr. Ross's forgetfulness with Ms. Ross, but the issue has not gone beyond discussion.

The claimant provided exhibits consisting of mileage logs, billing, a receipt for out-of-pocket payment(s), and a request for payment of outstanding mileage and out-of-pocket payment(s). The defendants provided exhibits including an independent medical examination conducted by Philip L. Ascheman, Ph.D. (Exhibit C6).

Prior to the hearing, the defendants made an oral motion to dismiss. The defendants argued that an alternate care hearing pursuant to Iowa Code 85.27(4) is not the proper avenue to pursue payments for mileage, outstanding medical bills, or nursing care provided by Ms. Ross. The defendants further argued that no notice of dissatisfaction of care was given to them pursuant to Iowa Code 85.27(4). The claimant disagreed and requested that the undersigned issue an opinion wherein the undersigned orders that this agency is not the proper venue for these concerns, rather the district court is the proper venue. The undersigned denied the motion to dismiss because the undersigned wanted to explore the alleged issues related to the mental health treatment sought by the claimant.

CONCLUSIONS OF LAW

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

For purposes of this section, the employer is obligated 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.

Iowa Code 85.27(4). See Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997). An application for alternate care shall concern only the issue of alternate care. 876 IAC 4.48(5).

“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)). “In enacting the right-to-choose provision in section 85.27(4), our legislature sought to balance the interests of injured employees against the competing interests of their employers.” Ramirez, 878 N.W.2d at 770-71 (citing Bell Bros., 779 N.W.2d at 202, 207; IBP, Inc. v. Harker, 633 N.W.2d 322, 326-27 (Iowa 2001)).

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 cannot reach an agreement on alternate care, “the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order the 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., 562 N.W.2d at 436. 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; Pirelli-Armstrong Tire Co., 562 N.W.2d at 436. 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.

Mr. Ross’s petition requests that the agency order the defendants to reimburse him for mileage and out-of-pocket expenses incurred when obtaining authorized care under Iowa Code 85.27. Mr. Ross also requests that the agency order the defendants to reimburse Ms. Ross for nursing care that she provided to Mr. Ross. Finally, Mr. Ross requests that the agency order the defendants to authorize care with a mental health provider.

Payment of Mileage and Out of Pocket Costs Incurred by Ross / Reimbursement to Ms. Ross for Nursing Care

Applications for alternate care operate prospectively and not retroactively. See e.g. Ross v. Old Dominion, File No. 5068577.01 (Alt. Care, Aug. 28, 2019); Arnzen v. Tyson Foods, Inc., File No. 5062268 (Alt. Care, Nov. 7, 2018) (citing Moline v. Nordstrom, File No. 1273226 (Alt. Care Dec. 21, 2000)); Donisi v. Norrell Serv., File No. 1276161 (Alt. Care Aug. 8, 2000); Mobaved v. AMS. Serv., Inc., File No. 1168048 (Alt. Care Dism. May 20, 1997).

The plain language of Iowa Code 85.27(4) indicates that an application for alternate care and the resulting proceedings pertain to the employer’s obligation to furnish reasonable services and supplies to treat an injured employee. The statute continues to use language indicating that 85.27(4) and alternate care proceedings pertain to medical care or supplies for an injured employee, including “. . . treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee.” Id. The commissioner is allowed, upon application and proof, to allow for “other care.” Id. Additionally, the Iowa Administrative Code makes it clear that applications for alternate care concern only the issue of alternate care. 876 IAC 4.48(5). Transportation and out-of-pocket expenses related to authorized, causally-related medical treatment, do not fall under alternate care proceedings pursuant to Iowa Code 85.27(4).

An alternate medical care proceeding pursuant to Iowa Code 85.27(4) is not the appropriate proceeding through which the claimant may seek reimbursement for past costs incurred in obtaining authorized care under Iowa Code 85.27.

Mental Health Care

Mr. Ross requests an order for alternate care requiring the defendants authorize certain mental health treatment. Mr. Ross's request is based entirely on a card that he (or his wife) gave to Ms. Jensen at one of Mr. Ross's recent medical appointments. The provider recommended by Dr. Sutcliffe is not specified. Dr. Sutcliffe's records were not offered as evidence. Dr. Sutcliffe is not an authorized treating provider.


Pursuant to Iowa Code 85.27(4), "[i]f 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" In this case, Mr. Ross did not communicate the dissatisfaction with care to the employer. Ms. Ross claimed that she discussed concerns about Mr. Ross's memory with the nurse case manager; however, Ms. Jensen notes that Ms. Ross simply mentioned memory and forgetfulness concerns. There was no discussion of displeasure or dissatisfaction with care. Even if there was, it would require Ms. Jensen to relay this information to, at the very least, the insurance adjuster to impute this as dissatisfaction being communicated to the employer.

Considering the lack of evidence in the record regarding the requested alternate care, I find that the claimant has failed to meet his burden of proof.

IT IS THEREFORE ORDERED:

1. Claimant's petition for alternate medical care is denied.

Signed and filed this 1st day of July, 2020.


ANDREW M. PHILLIPS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Christopher Spaulding (via WCES)

Stephen William Spencer (via WCES)