

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JUSTIN KENDALL,	FILED	
Claimant,	JUN 03 2019	
vs.	WORKERS COMPENSATION	File No. 5068393
IOWA STATE FAIRGROUNDS,	:	ALTERNATE MEDICAL
STATE OF IOWA,	:	CARE DECISION
Self-Insured,	:	
Employer,	:	
Defendant.	:	

This case 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. The undersigned has been delegated final agency action in this decision. Iowa Code section 17A.15(1); Order of Delegation, February 15, 2015. Any appeal of the decision will be to the Iowa District Court.

Claimant appeared and with his attorney, James Ballard. Defendant appeared through its attorney, Amanda Rutherford.

The alternate medical care claim came on for hearing on May 31, 2019 at 9:15 a.m. The proceedings were digitally recorded. The recording constitutes the official record of this proceeding. However, it should be noted, the recording volume is of poor quality. It is very difficult to hear the recording of the proceedings. The volume is very low.

At the commencement of the proceedings, claimant offered Exhibits 1 and 2. Defendant offered Exhibits A through D. All proffered exhibits were admitted as evidence in the hearing.

Claimant testified on his own behalf. Ms. Sarah Buchholz, claims adjuster for Sedgwick, third party administrator, testified on behalf of the State of Iowa.

Both attorneys were given opportunities to provide opening statements. The opening statements were detailed and fully outlined the positions of the respective parties. Defendant filed a pre-hearing brief on May 30, 2019.

Claimant filed his original notice and petition for alternate medical care on May 20, 2019. At paragraph 5 of the petition, claimant stated:

5. Claimant is dissatisfied with the care provided and has communicated that dissatisfaction to employer. Reason for dissatisfaction and relief sought: Dr. Karam, authorized treating physician, has stated Claimant may be discharged from the skilled care facility if proper accommodations are made at Claimant's home. An in-home safety assessment was completed on April 9, 2019. Defendants have refused to provide the recommended accommodations.

Defendant filed its answer on May 30, 2019. Defendant stated in its answer to paragraphs 4 and 5:

2. Deny paragraphs 4 and 5. Defendants state that they have provided care that is reasonably suited to treat Claimant's alleged work-related injuries without undue inconvenience to Claimant. Claimant is currently undergoing treatment with Dr. Karam at the University of Iowa. On April 26, 2019, Dr. Karam signed a letter drafted by Claimant's counsel asking for his opinion on whether Mr. Kendall can be discharged from the skilled nursing facility where he was [*sic*] been recuperating. In response to this letter, Dr. Karam simply writes "Yes." The last sentence of the letter drafted by Claimant's counsel states "I think the better question is can Mr. Kendall be discharged home from the skilled care facility if the proper accommodations are made for his home?" Claimant's counsel then attached a list of general requirements needed for a safe return home drafted by Mr. Kendall's physical therapist. This list includes items such as adding a cement driveway to Claimant's home, changing all the doorways in his home to 36 inches, adding a walk-in shower to the main level bathroom, building new decks off both the front and the back of his house, levelling [*sic*] out the floor throughout his entire home and putting down uniform flooring throughout, and creating a walkout entrance from the lower level of his home. Dr. Karam's response to Claimant's counsel did not mention the extensive list of permanent home modifications requested by the Claimant on the attached page.

On May 24, 2019, Defendants were finally able to meet with Dr. Karam to get clarification on his response to the letter from Claimant's counsel. In that meeting Dr. Karam indicated that he had not agreed to all of the home modifications listed in the Home Assessment Claimant's counsel had attached. He only agreed that Mr. Kendall could be discharged from the skilled nursing facility. (Ex. A)

Dr. Karam does not believe Mr. Kendall is at MMI. (Ex. B) He indicated Mr. Kendall will not be at MMI for another 6-12 months. (Ex. B)

Dr. Karam believes Mr. Kendall will only need another wheelchair for the next 6-12 months and temporary ADA accommodations to his living environment would only be necessary for that time period. (*Id.*) Dr. Karam indicated an ADA compliant apartment would be a reasonable way to provide Mr. Kendall an ADA compliant environment while Mr. Kendall recuperates. (*Id.*) On May 29, 2019, Defendants wrote to Claimant's counsel indicating they would provide Mr. Kendall an ADA complaint [sic] apartment in accordance with Dr. Karam's opinion. (Ex. C) On May 30, 2019, Claimant's counsel wrote back indicating that was not acceptable to Mr. Kendall. (*Id.*)

Defendants have provided care that is reasonably suited to treat his alleged work injuries. Claimant is still undergoing treatment with Dr. Karam. He is not at MMI and it is unknown at this time what permanent home modifications will be necessary because of his alleged work injury. This action is unwarranted and premature.

Justin Kendall, claimant, testified. He is single and 39 years old. Claimant normally resides in the Colfax, Iowa area. He lives in his own home in a rural setting. He has a minor child, a dog and a bird. The road to his home is not well maintained by admission of his own attorney. The home has a split entry. The laundry appliances are downstairs in the basement area. There is no walkpath to the house. Claimant testified he has no one to help him in his home. The closest person who could assist him at home is approximately 30 minutes away.

Since his work injury on July 23, 2018, claimant has undergone 7 surgeries on his right leg. He must undergo 1 more surgery which has yet to be scheduled. The authorized treating physician is Matthew D. Karam, M.D., at the University of Iowa Hospitals and Clinics. Dr. Karam has indicated once the eighth surgery has occurred, claimant will not reach maximum medical improvement for 6 to 12 months following that surgery. At the time of the alternate medical care hearing, claimant was wheelchair bound. However, Dr. Karam opined claimant will only need a wheelchair for the next 6 to 12 months. (Exhibit B)

Since his work injury, claimant has been unable to reside in his home. He stayed at the University of Iowa Hospitals and Clinics. Then he was transferred to the rehabilitation facility at Iowa Methodist Hospital. Next, claimant was transferred to Manor Care. There he developed an infection that affected his bone. A leg amputation was considered. However, Dr. Karam was able to fight the infection without amputating claimant's leg. Finally, claimant was transferred to Altoona Nursing and Rehabilitation Center where he resides to date.

In January of 2019, claimant requested Dr. Karam to release claimant home. In Exhibit 1, page 1, Dr. Karam answered, "yes" to claimant's question, "[c]an Mr. Kendall

be discharged from the skilled care facility if proper accommodations are made at his home?"

Defendant initiated a home assessment in February of 2019. Kinetic Edge was contracted to perform the assessment. However, due to the amount of snow on the ground, the therapist from Kinetic Edge could not even reach claimant's home in the country.

A second home assessment was initiated on April 9, 2019. The evaluators were Michelle Morgan, MPT, and Brandy Walker, MAOTR/L. They both work at the Altoona Manor. Their report was issued on April 26, 2019. (Ex. 2, pages 2-5) Under "Requirements needed for a safe return home," the therapists recommended:

Requirements needed for a safe return home:

- Cement drive way from house with a ramp off of the deck at front of the house.
- Cement sidewalk at minimum of 4 ft width with grade up to door of back of house to enter back door.
- Cement sidewalk at minimum of 4 ft wide from house to garage and drive way to garage
- Fix gate from drive way to yard
- Stackable washer dryer unit on main level
- 36 inch door throughout house
- [T]all toilets – 19 inch
- Walk-in shower in main level bedroom bath
- Horizontal grab bar inside shower and vertical grab bar outside of shower on wall.
- Hand-held shower Hose on adjustable height pole mount
- Bath bench or built-in bench at 19 inches
- Recliner lift chair for bariatric size
- Couch with firm seat height of 19 inches
- Handrail on South wall of steps going up to kitchen and down into basement

- New Deck, Rails and Steps with bilateral hand rails in front and back of house.
- New level flooring on steps inside the house
- Level flooring throughout house without transitions in floor height
- Recommend for safety walkout entrance from lower level out the back of the house under back deck due to Patient will not be able to exit out of an egress window.
- Stationary, recumbent bike for patient to maintain ROM exercises in the home
- Outside assistance with lawn care and snow removal

(Ex. 2, p. 2)

Ms. Buchholz made several attempts to contact Dr. Karam. She was finally able to hold a telephone conference call with the physician on May 24, 2019. Dr. Karam admitted he had not taken an in depth look at the suggested home modifications. Ms. Buchholz forwarded the April 26, 2019 report to Dr. Karam for his perusal. The physician answered the following questions posed to him:

1. Please list the items from the 4/9/19 Home Assessment that you believe to be medically necessary and reasonable as *temporary* modifications, for Mr. Kendall to return home.

Response: Mr. Kendall will need temporary ADA modifications to his home environment.

2. Do you believe the home modifications that you listed above are temporary?

Yes.

3. How long do you anticipate the need for each temporary modification you have listed above?

I would anticipate approximately 8-12 months of need.

4. Do you agree that Mr. Kendall will only need a wheelchair for the next 6-12 months?

Yes[.]

5. Do you believe providing Mr. Kendall with an ADA compliant apartment for the next 6 months would be a reasonable way to provide the items necessary while Mr. Kendall continues to recuperate?

The next 6-12 months will provide an appropriate window if the living arrangement was ADA compliant.

(Ex. B)

Ms. Buchholz also testified she had been searching for temporary housing for claimant that was ADA compliant. Ms. Buchholz listed two apartment complexes in Altoona. One was Altoona Park Apartments. The claims adjuster promised she would forward more information about the apartments to claimant's counsel.

Mr. Buchholz testified defendant is not opposed to claimant returning home. Defendant is opposed to the extent of modifications to the home, given claimant has not reached maximum medical improvement (MMI). It is unknown whether claimant will need any modifications, once he has reached MMI.

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-Reopening October 1975).

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).

The employee bears the burden to establish what care is reasonable and it is a question of fact. Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995). The determination will be based on what is reasonably necessary. Long, at 124.

An employer's right to select the provider of medical treatment to an injured worker does not include the right to determine how an injured worker should be diagnosed, evaluated, treated, or other matters of professional medical 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 Dec. January 31, 1994).

Under Iowa law, the employer has the right to choose medical care. See Iowa Code § 85.27; Holbert v. Townsend Engineering Co., Thirty-Second Biennial Report of the Industrial Commissioner, 78 (Review-Reopening 1975). This includes determining how to provide an ADA compliant environment for a temporary condition. Id. In exercising this statutory right to direct care, the employer may consider cost and any other pertinent factors. Long, 528 N.W.2d at 124; Johnson v. Graham Manufacturing, 2015 WL 13306884, File No. 5036516 (Alternate Med Care Decision, Au. 14, 2015). The Defendants have offered Claimant an ADA compliant apartment for 6-12 months while he continues to heal. (Ex. C). This option is reasonable. It addresses Claimant's temporary need for an ADA complaint [sic] environment until he reaches MMI. Dr. Karam, the authorized treating physician, has no objections with Claimant moving to an ADA compliant apartment for 6-12 months. (Ex. B). In contrast, Dr. Karam has not signed off on each of the expensive modifications requested by the Claimant. (Ex. A); Haack v. Von Hoffman Graphics, File No. 1268172 (Appeal Decision, July 31, 2002) (stating "A failure to pursue a course of treatment that is not recommended by the authorized provider is neither an abandonment of care nor it is necessarily a failure to provide care reasonably suited to treat the injury.").

Claimant carries the burden of proof in this alternate care proceeding. Long, 528 N.W.2d at 122. He must prove that Defendants have denied him reasonable medical services. John Kuba v. Mediacom, 2008 WL 256778, File No. 5023110 (Alternate Med Care Decision, Jan. 23, 2008). This includes providing proof that the extensive home modifications he seeks are the only reasonable way to provide him with an ADA compliant environment in which to recuperate. See id. See also Johnson, 2015 WL 13306884, File No. 5036516 (stating the employee's desire for a different "reasonable" treatment plan does not make the employer-authorized care unreasonable.); Long, 528 N.W.2d at 124 (concluding the employee did not satisfy his burden to prove the employer-authorized care was unreasonable where the treating physician recommended several treatment options, the employer selected one of those options but the employee requested care under one of the other options).

(Defendant's Brief in Support of Dismissal of Claimant's Application for Alternate Medical Care, p. 2)

This deputy workers' compensation commissioner fully understands why claimant wants to return to his own home after nearly one year. However, claimant is still in a healing period and he faces one more surgery which has yet to be scheduled. He is undergoing physical therapy and is currently wheelchair bound. It is anticipated he will not reach MMI for 6 to 12 months after his eighth surgery. No one is able to predict what, if any, permanent modifications will be needed for him to return to live in

rural Colfax in his own home. Dr. Karam is unwilling to make those recommendations. He opines claimant will not need to use a wheelchair after all of the medical treatment has concluded.

Claimant testified he has no one to assist him in his home who lives closer than 30 minutes from his residence. Claimant did not even request home health services. He is actively participating in physical therapy in Altoona. Dr. Karam, the authorized treating physician, opined an ADA compliant apartment for the next 6 months would be a reasonable way to provide the items necessary while claimant continues to recuperate. (Ex. B) If claimant resided in an ADA compliant apartment, he would have access to other individuals to assist him in times of need, or in emergency situations. Claimant would be geographically near his physical therapy clinic. He could even find an apartment where he could have his bird and dog live with him in the apartment. The animals would be a source of comfort to him until he could return home.

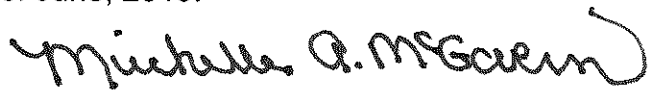
Therefore, it is the determination of the undersigned; defendant is supplying reasonable and necessary medical treatment to claimant in the form of an ADA compliant apartment. However, defendant shall take claimant to view each and every ADA compliant apartment that is available. Claimant and not defendant shall have the final word as to which apartment claimant selects. Defendant shall not force claimant to accept a substandard ADA compliant apartment because it is inexpensive or undesirable. Defendant shall make every effort possible to find an apartment that will accept claimant's bird and dog.

ORDER

THEREFORE, IT IS ORDERED:

Defendant shall secure an ADA compliant apartment for claimant within the parameters stated in the body of this decision.

Signed and filed this 3rd day of June, 2019.



MICHELLE A. MCGOVERN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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