

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TRACI LILLIE,
Claimant,

vs.

HY-LINE INTERNATIONAL,
Employer,

and

UNITED STATES FIRE INS. CO.,
Insurance Carrier,
Defendants.

File No. 21002502.06

ALTERNATE MEDICAL CARE
DECISION

Headnote: 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, Traci Lillie. Claimant appeared personally and through her attorney, Christopher Spaulding. Defendants appeared through their attorney, Kent Smith.

The alternate medical care claim came on for hearing on January 23, 2023. 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 evidentiary record consists of Claimant's Exhibit 1 and 2, and Defendants' Exhibits A-D, and claimant's testimony during the telephonic hearing. During the course of the hearing defendants accepted liability for the February 10, 2021, work injury and for the neck condition for which claimant is seeking treatment.

ISSUE

The issue for resolution is whether the claimant is entitled to alternate medical care.

FINDINGS OF FACT

Claimant, Traci Lillie, was involved in a work-related accident wherein she sustained injuries including her neck. On December 19, 2022, the authorized treating physician, Kurt A. Smith, D.O., ordered physical therapy. On December 21, 2022, claimant sent a letter to defendants via email requesting to have the physical therapy authorized. On January 4, 2023, claimant sent a follow-up email requesting authorization of the prescribed physical therapy. (Testimony; Cl. Ex. 1 and 2) Defendants responded via email on January 4, 2023 and stated, "Let me double check the approval has been communicated. Due to the holidays, I'm not sure if it was communicated or not. I don't have any doubt that it will be authorized." (Cl. Ex. 2) Claimant sent another email on January 9, 2023, again requesting authorization of the physical therapy recommended by the authorized treating physician. (Testimony; Cl. Ex. 1 and 2) The record is void of any type of response from defendants.

Claimant filed her petition for alternate medical care on January 10, 2023. On January 11, 2023, this agency sent notice to the parties that this matter would proceed to hearing on Monday, January 23, 2023 at 8:30 a.m. (Agency File) On Friday, January 20, 2023, at 2:50 p.m. defendants sent an email to claimant which states in pertinent part, "[m]y client has confirmed that they will authorize and is reaching out to the provider to authorize now. . . . I would assume this will resolve the necessity of the alternate medical care hearing." (Def. Ex. B) On Friday at 3:43 p.m. Absolute Performance Therapy advised Kindra Hamlin that the physical therapy order from the doctor asked for dry needling. However, Absolute does not have any therapists who perform dry needling. (Def. Ex. A) On Sunday, January 22, 2023, defendants sent a letter via email to claimant advising that Absolute had declined the referral because they do not provide dry needling. The letter states, "[d]efendants have authorized the requested physical therapy and will make referral requests to new providers such as Select Physical Therapy and/or Athletico Physical Therapy for the requested physical therapy services." (Def. Ex. D)

It should be noted that this is the third alternate care petition that claimant has filed. Claimant filed an alternate care petition on April 8, 2021. The matter was set for hearing on April 21, 2021. On April 20, 2021, the petition was dismissed without prejudice because defendants authorized claimant to return to physical therapy. (Agency File No. 21002502.02) Claimant filed a second petition for alternate medical care on September 16, 2022. That matter was set for hearing on September 28, 2022. On September 27, 2022, claimant dismissed the petition without prejudice because defendants authorized Dr. Schmitz. (Agency File No. 21002502.05)

At today's telephone hearing Ms. Lillie testified that following the authorized surgery on her neck the authorized treater recommended physical therapy. However, she had to wait 6 weeks for that therapy to be authorized. Ms. Lillie testified that her treating surgeon was unhappy about the delay in her therapy. (Testimony)

In the present case, Dr. Smith ordered physical therapy on December 19, 2022. Ms. Lillie is scheduled to return to see Dr. Smith on Monday, January 30, 2023. While

defendants did authorize physical therapy on the afternoon of the business day before the alternate care hearing, no therapy has been scheduled or provided to the claimant. Defendants have stated several specific providers they are currently working to contact to schedule the authorized therapy for the claimant. At this time, I find that claimant has not demonstrated that the care offered by defendants is unreasonable. That being said, defendants need to work diligently to get Ms. Lillie into physical therapy as quickly as possible.

REASONING AND CONCLUSIONS OF LAW

Under Iowa law, the employer is required to provide care to an injured employee and is permitted to choose the care. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

[T]he 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.

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. 5.904(3)(e); 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 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 16, 1975).

Based on the above findings of fact, I conclude that at this time claimant has failed to demonstrate the authorized care is unreasonable. However, I also conclude defendants are obligated to promptly provide the treatment. Defendants are ordered to diligently work to get claimant into the recommended physical therapy as quickly as possible. Defendants are cautioned that failing to promptly authorize and provide care could result in defendants losing their right to select care.

ORDER

THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care is denied. However, defendants are ordered to promptly provide the physical therapy recommended by the authorized treating physician.

Signed and filed this 23rd day of January, 2023.

A handwritten signature in black ink, appearing to read 'Erin Q. Pals', is written over a horizontal line.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Christopher Spaulding (via WCES)

Kent Smith (via WCES)