

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MELISSA CHRISTIANS,

Claimant,

vs.

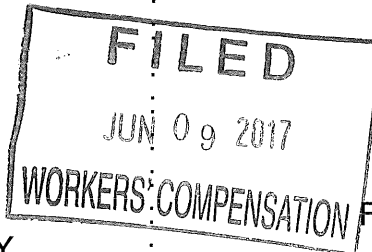
MERCY HOSPITAL IOWA CITY,

Employer,

and

NATIONAL UNION FIRE INSURANCE
COMPANY,

Insurance Carrier,
Defendants.



File No. 5034688

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 procedures of rule 876 IAC 4.48, the "alternate medical care" rule, are invoked by claimant, Melissa Christians.

This alternate medical care claim came on for hearing on June 8, 2017. The proceedings were recorded digitally and constitute the official record of the hearing. By an order filed by the workers' compensation commissioner, this decision is designated final agency action. Any appeal would be a petition for judicial review under Iowa Code section 17A.19.

The record in this case consists of claimant's Exhibits 1-3, defendant's Exhibit A-B, and the testimony of claimant.

ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of the following:

1. An order enjoining defendants from sending peer reviews, like that found in Exhibit 3, to Steindler Clinic;
2. An order requiring defendants to make timely payment of all claims; and

3. An order requiring defendants to authorize all future treatments with Dr. Dery.

FINDINGS OF FACTS

Defendants admit liability for an injury occurring on February 7, 2010 to claimant's low back.

A prior Arbitration decision indicates claimant had her first back surgery performed in June of 2010, and a second was performed in August of 2010. Claimant underwent implantation of a spinal cord stimulator (SCS) in April of 2013. Claimant had a L5-S1 fusion in June of 2014. The petition in this matter concerns ongoing care for symptoms claimant has regarding her back injury.

Records from 2010, 2014 and 2015 indicate defendant insurer has had peer reviews performed regarding various recommended treatments concerning claimant's back symptoms. Those peer reviews did not support suggested treatment. Those peer reviews and treatments reviewed are not at issue in this petition. (Exhibit 3, pages 1-5)

Claimant is receiving authorized care from Frederick Dery, M.D.

In a May 23, 2017 e-mail, claimant's counsel indicates he will file a petition for alternate medical care the next day if defendants do not stop allegedly interfering with Dr. Dery's care and if they fail to pay Dr. Dery's bill. Defendant's counsel notes, in a response, that one day is not much time to resolve this matter. (Ex. B, p. 7)

In another May 23, 2017 e-mail, claimant's counsel alleges that use of a peer review regarding requested medical care was "...not legal under Iowa work comp law..." (Ex. B, p. 6)

In a May 24, 2017 e-mail, defendant's counsel indicates use of peer review is not illegal. Defendants' counsel notes that despite a peer review finding facet point injections not needed, defendant insurer approved facet point injections. Defendants' counsel was not aware of any unpaid medical bills, and asked claimant's counsel to forward any unpaid medical bills to his attention for resolution. (Ex. B, p. 5)

In a May 24, 2017 e-mail, claimant's counsel alleges the peer reviews are being used to slow or deny care for claimant. (Ex. B, p 4)

In a May 24, 2017 e-mail defendant's counsel reiterates that if claimant knows of any unpaid medical bills, to forward those bills for resolution. (Ex. B, p4)

A patient ledger from Steindler Clinic, dated May 24, 2017, appears to show outstanding balances for dates of service of April 13, 2017 and May 2, 2017. (Ex. 2, p. 2) A handwritten note at the bottom of the patient ledger indicates:

Due to balance once she has been placed at PRN. In order for her to return to Steindler Orthopedic under AIG, AIG **Would** need to sign a payment agreement letter or she will be referred to another doctor outside of Steindler.

Leah Thompson

(Ex. 2, p. 2)

In a May 26, 2017 e-mail defendants' counsel noted he reviewed the May 24, 2017 ledger found in Exhibit 2. Defendants counsel asked why claimant's counsel refused to send information regarding unpaid bills to him, as requested. (Ex. B, p. 3)

In a May 26, 2017 e-mail claimant's counsel alleged use of peer review information was being sent from defendant insurer to Steindler in order to delay care for claimant. (Ex. 1)

Claimant testified she believes defendant insurer has caused her care to be delayed in the past, on numerous occasions, because of late payment of bills and because of delayed authorization of treatment.

Claimant testified she spoke with Leah Thompson with Steindler Clinic. Claimant believes Ms. Thompson is in charge of payment of Steindler regarding workers' compensation matters. Claimant testified Ms. Thompson told her that if delays continue, regarding authorization of treatment or payment of bills, Dr. Dery may decline to treat her in the future. Claimant testified it is her understanding Dr. Dery may also require defendant insurer to sign a payment agreement, if future delays in payment occur, if she is to continue treatment with Dr. Dery.

Claimant testified that while either circumstance may occur, it is her understanding Dr. Dery is still willing to treat her absent a payment agreement.

Claimant testified she wants to continue to treat with Dr. Dery. She testifies the treatment she receives from Dr. Dery allows her to continue to work. She testified that her ability to continue to work is very important to her.

Claimant testified that on June 2, 2017 she received injections from Dr. Dery for her low back symptoms.

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.14(6).

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

For purposes of this section, the 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.

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. 14(f)(5); 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). In Pirelli-Armstrong Tire Co., 562 N.W.2d at 433, the court approvingly quoted Bowles v. Los Lunas Schools, 109 N.M. 100, 781 P.2d 1178 (App. 1989):

[T]he words "reasonable" and "adequate" appear to describe the same standard.

[The New Mexico rule] requires the employer to provide a certain standard of care and excuses the employer from any obligation to provide other services only if that standard is met. We construe the terms

"reasonable" and "adequate" as describing care that is both appropriate to the injury and sufficient to bring the worker to maximum recovery.

The commissioner is justified in ordering alternate care when employer-authorized care has not been effective and evidence shows that such care is "inferior or less extensive" care than other available care requested by the employee. Long, 528 N.W.2d at 124; Pirelli-Armstrong Tire Co., 562 N.W.2d at 437

A decision in an alternate medical care proceeding operates prospectively only, not retroactively. The claimant's application for alternate care should be dismissed without prejudice when the claimant seeks payment for medical care that had been provided prior to the time the alternate medical care petition was filed. Moline v. Nordstrom, File No. 1273226 (December 21, 2000); Donisi v. Norrell, File No. 1276161 (August 8, 2000); Mobayed v. AMS Services, Inc., File No. 1168048 (May 20, 1997); and Massie v. Madison Avenue Dairy Queen, File No. 1055168 (November 3, 1995).

Claimant seeks three remedies in this case. First, claimant's counsel has requested defendant insurer be enjoined from sending further peer reviews, as those found in Exhibit 3, to Steindler Clinic, and specifically, Dr. Dery. An alternate medical care proceeding is not designed to prevent communications between an insurer and a provider. I have no authority, under the workers compensation provisions of Chapters 85, 85A, 85B, 86 or 87, that would allow for an order enjoining communication, as shown in Exhibit 3, between the insurer and the provider. Claimant's petition is denied as to this ground.

Second, claimant's counsel requests an order from this agency requiring defendant employer make future payments to Steindler Clinic timely.

In this matter, claimant is not dissatisfied with the care she receives from Dr. Dery. In fact, claimant wants to continue to treat with Dr. Dery. Claimant is concerned that if defendant insurer delays payment of claims in the future, she will not be able to treat with Dr. Dery in the future. In brief, claimant is seeking an order regarding payment of future claims. The record indicates claimant recently received an injection with Dr. Dery on June 2, 2017. Given where this case stands now, an alternate medical care petition is not the appropriate proceeding to remedy future alleged delayed payments. Perrott v. Iowa Heartland Credit Union, File No 5056609 (Alternate Care May 26, 2016) Claimant's request for this ground is denied.

Third, claimant's counsel requests this agency order defendant insurer to timely authorize future treatment from Dr. Dery. The record indicates Dr. Dery gave claimant an injection for her low back symptoms on June 2, 2017. Claimant testified she has a follow-up appointment with Dr. Dery within the next month or two. There is no evidence in the record that a request for authorization for this follow-up appointment has been forwarded to the insurer, and has been denied or delayed. When a request for a follow-up appointment has been made, defendant insurer is requested to timely authorize this follow-up.

This agency lacks the authority to order defendants to timely authorize all future treatment requested by Dr. Dery.

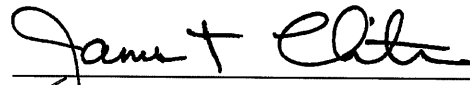
Claimant is a person to be admired. She has had three back surgeries. She has had a SCS implanted. Despite all this, claimant wants to continue to work. Her testimony is she wants to continue to receive treatment with Dr. Dery in order for her to continue to work. And, her testimony is that her treatment has been delayed in the past because of issues with authorization and payment by the insurer. However, for the reasons detailed above, I cannot grant the remedies requested by her attorney.

Defendants are respectfully requested to help claimant receive treatment with Dr. Dery so she can continue to work. The record indicates defendants' counsel requested, more than once, that claimant's counsel send documentation of unpaid medical bills regarding Steindler Clinic so defendant insurer could address those issues. (Ex. B, pp 2-4) This information was not given to defense counsel until after an alternate medical care petition was filed. Claimant's counsel is respectfully requested to supply defense counsel with documentation of unpaid bills with Steindler Clinic to attempt to resolve future issues before filing a petition for alternate medical care.

ORDER

Claimant's petition is denied, in part, and granted, in part. Once received, defendants shall authorize a follow-up exam with Dr. Dery, as detailed above. All other requested remedies are denied.

Signed and filed this 9th day of June, 2017.



JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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