BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED
AUG 07 2015
WORKERS' COMPENSATION

DANIEL SCARPINO, Claimant, vs. UNITY POINT HEALTH-DES MOINES, Employer, and CREATIVE RISK SOLUTIONS, Insurance Carrier, Defendants.	File No. 5053407 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, Daniel Scarpino. Claimant appeared personally and through his attorney, Philip Miller. Defendants appeared through their attorney, Jennifer Clendenin. Austin Smith was also present for the employer.

The alternate medical care claim came on for hearing on August 5, 2015. 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 claimant's exhibit 1 through 9 and defendant's exhibits A through G, in addition to the sworn testimony of the claimant and case manager, Lori Reddish, RN, CCM. All exhibits were received into evidence. Prior to hearing, claimant filed a motion in limine and motion to strike. Prehearing discovery motions are not allowed in expedited alternate medical care claims. Claimant's motion was treated as an objection to that exhibit at hearing. The objection was overruled and defendant exhibit C was received.

During the course of the expedited hearing, claimant's counsel sought a "mistrial" for various reasons, including an allegation of prejudice by the undersigned. This type of motion is inappropriate in an expedited alternate care proceeding. It was denied.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care. Claimant alleges defendants failed to offer prompt treatment and otherwise interfered with the medical treatment. As a consequence, he seeks an order authorizing evaluation with Thomas Hansen, M.D., and reevaluation with the treating physician, Chris Nelson, M.D. In addition, the claimant seeks an order removing employer's authority to direct medical treatment.

FINDINGS OF FACT

The undersigned having considered all the evidence in the record finds:

Daniel Scarpino suffered an injury to his right hip and groin which arose out of and in the course of his employment on March 7, 2013. The employer has provided substantial treatment for that injury since it occurred, including physical therapy, injections, evaluation, diagnostic testing and surgery. His primary treating physician at this time is Chris Nelson, M.D., an orthopedic surgeon who performed surgery early in 2014. Dr. Nelson completed his treatment of Daniel in November 2014, and referred Daniel to Todd Troll, M.D., for follow up care. (Claimant Exhibit 1)

After attempting some further treatment, including some physical therapy, Dr. Troll referred Daniel to Thomas Hansen, M.D., and Becky Blair, for medication management. On January 13, 2015, Dr. Troll documented the following:

> I do not have anything else to offer pt. I encouraged him to progress with the exercise program given him by PT. I will refer him to Dr. Hansen to see if he has anything else to offer pt. Injections have not given him lasting relief. Med management with Becky Blair may be the best option. He is at MMI. I will continue his current restrictions but I cannot place any permanent restrictions on him due to the invalid FCE. Follow up with me after Dr. Hansen/Becky Blair.

(Cl. Ex. 2)

The employer has a third-party administrator for work injury claims, Creative Risk Solutions. Creative Risk Solutions retained a nurse case manager, Lori Reddish, RN, CCM. The employer, third-party administrator, and nurse case manager did not arrange an appointment with Dr. Hansen and instead, ultimately set up an appointment with Christian Ledet, M.D. Dr. Ledet, like Dr. Hansen, specializes in pain management. There is no evidence in the record as to why the employer refused to authorize Dr.

Hansen. Lori Reddish testified that she did not make authorization decisions. She was instructed specifically to not allow Dr. Hansen to treat. (Cl. Ex. 4) For his part, Daniel was not initially aware that Dr. Hansen had been recommended. He simply went where he was told to go. Daniel apparently learned about the referral to Dr. Hansen sometime after he retained counsel in approximately March 2015.

Over the next several months, Daniel repeatedly complained to Ms. Reddish about the ongoing symptoms in his hip and thigh. The chronic pain caused difficulty sleeping and working. Daniel testified, although he was only working four-hour days, he was missing work regularly because of the pain, causing him to drain his paid time off. He repeatedly asked who he should see to be excused from work due to pain. Ms. Reddish told him to see Dr. Troll. When Daniel attempted that, Dr. Troll told him he had nothing to offer and could not see him for that purpose. Daniel finally retained counsel to help him get the care he needs in approximately March 2015, because he was exasperated. Daniel's goal is to get back to full-time work and manageable symptoms.

Dr. Ledet, however, did provide treatment. He performed further diagnostic tests and evaluation. The employer also arranged three separate evaluations with various specialists. Daniel saw Steven Aviles, M.D., an orthopedist. (Def. Ex. F) He also saw Lynn Nelson, M.D., whose report is not in evidence. Currently an appointment is set with John Kuhnlein, D.O. (Def. Ex. A) Furthermore, a return appointment has recently been arranged with Dr. Chris Nelson for August 18, 2015. (Def. Ex. C) Dr. Nelson recommended this appointment. (Cl. Ex. 8) It appears all of these appointments were arranged after Daniel retained counsel and began complaining about his medical care.

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).

Claimant's counsel argued strenuously that the employer and its agents have delayed and otherwise interfered with Daniel's medical care. In particular, counsel argues that the employer ignored the primary authorized treating doctor's opinion to refer Daniel to Dr. Hansen and Becky Blair. Secondarily, he argues that a return appointment should have been set with Dr. Nelson earlier than it was.

The employer argued that it has offered a substantial amount of treatment to date and all of the care offered has been reasonable.

After considering all of the evidence in the record, I find that the claimant is entitled to a portion of the alternate medical care requested. A return appointment with Dr. Chris Nelson has already been arranged. The claimant is entitled to this return exam. It would be unreasonable to deny this evaluation based upon Dr. Nelson's opinion. (Cl. Ex. 8) As of the date of hearing, the employer is not denying this, although it does not appear the evaluation was authorized until after the alternate medical care petition was authorized. In any event, this evaluation, which is already scheduled, is ordered herein.

With regard to the claimant's primary argument, I find that it is now moot and stale. I do find it is unreasonable for an employer, or its third-party administrator or case manager, to summarily and without explanation refuse to authorize a specific referral by the authorized treating physician. In this case, Dr. Nelson specifically recommended Dr. Hansen and his office to evaluate the claimant for his work injury. I presume that Dr. Nelson had a medical reason for naming a specific physician to see Daniel. Dr. Nelson appeared to be making a specific medical judgment by naming a specific physician. The evidence in this case is that the employer or its third-party administrator did not like that recommendation although there is no reason specified in this record. There is no valid medical reason in this record to deny the referral.

The problem is, the referral was made in January 2015. Daniel was not even aware of it. He was instead referred, by the employer, to Dr. Ledet. Daniel saw Dr. Ledet and there was nothing about the treatment he provided which was unreasonable.

He actually performed diagnostic testing and reasonable evaluation. There is not even an allegation in this record that the treatment he performed was substandard, inadequate or otherwise lacking in any way. He is the same type of physician as Dr. Hansen. In this case, I find that Daniel's alternate medical care claim to force a referral to Dr. Hansen was ripe in January 2015, before he acquiesced to the treatment provided by Dr. Ledet, which was, by all accounts, reasonable.

Moreover, Dr. Nelson will see Daniel again in a little over a week. If he again refers the claimant to Dr. Hansen, the referral should be honored at such time.

For all of the reasons set forth above, I further find and conclude that the claimant has not proven an abandonment of care or interference to such an extent which would allow me to completely strip the employer of its authority to direct medical treatment at this time.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is GRANTED IN PART and DENIED in part as set forth above.

Signed and filed this 7th day of August, 2015.

JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Philip F. Miller
Attorney at Law
808 Ashworth Road
West Des Moines, IA 50265
philmillerlawoffice@mchsi.com

Jennifer A. Clendenin
Attorney at Law
100 Court Ave. Ste. 600
Des Moines, IA 50309-2200
jclendenin@ahlerslaw.com

JLW/kjw