

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

REBECCA HARMS,

Claimant,

vs.

LIVING CENTER WEST,

Employer,

and

IOWA LONG TERM CARE RISK
MANAGEMENT,Insurance Carrier,
Defendants.

File No. 19002670.02

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE: 2701

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, Rebecca Harms.

This alternate medical care claim came on for hearing on October 30, 2019. 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 1-4, and Defendants' Exhibits A-G.

ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of authorization of care with James Pape, M.D.

FINDINGS OF FACT

Defendants accept liability for an injury occurring on May 9, 2019.

Claimant has a history of lower back pain. The record indicates claimant treated for lumbar back pain twice in 2015. (Exhibits A and B) Claimant was given a lumbar

support brace in 2017 to wear at work. Claimant was working in 2017 without restrictions. (Ex. C) Claimant was assessed as having long-standing low back pain in 2018. (Ex. D)

On September 23, 2019, Nate Brady, M.D. assessed claimant as having low back pain aggravated by lifting. He recommended claimant be referred to an orthopedist, preferably Dr. Pape. (Ex. 1)

In an October 7, 2019 letter to defendants' counsel, claimant's counsel requested claimant be authorized to treat with Dr. Pape as per Dr. Brady's recommendation. (Ex. 2)

On October 14, 2019, claimant's counsel again wrote to defendants' counsel, requesting defendants authorize claimant to treat with Dr. Pape as per Dr. Brady's recommendation. (Ex. 3)

In an October 17, 2019 letter, defense counsel indicated claimant was scheduled for an independent medical evaluation (IME) with David Fields, M.D. The letter indicates that depending on the outcome of the IME, defendants would determine if they would send claimant to Dr. Pape or some other provider. (Ex. 4)

In an October 23, 2019 email, defendants' counsel indicated defendants wanted to send claimant for an independent medical evaluation (IME) to determine causation of claimant's most recent back problems. Defendants indicated they were not refusing to send claimant to Dr. Pape. (Ex. F)

In an October 24, 2019 note, Dr. Brady indicated he was asked if claimant needed to be seen in his clinic before her IME with Dr. Fields. He indicated he would be willing to serve as a treating physician if the IME examiner believed claimant needed more active treatment. (Ex. G)

CONCLUSION 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 R. App. P. 6.14(6).

Iowa Code section 85.27 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.

Reasonable care includes care necessary to diagnose the condition and defendants are not entitled to interfere with the medical judgment of its own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening Decision June 17, 1986). 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. Assman v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988).

When a designated physician refers a patient to another physician, that physician acts as the defendant employer's agent. Permission for the referral from defendant is not necessary. Kittrell v. Allen Memorial Hospital, Thirty-fourth Biennial Report of the Industrial Commissioner, 164 (Arb. November 1, 1979) (aff'd by industrial commissioner). See also Limoges v. Meier Auto Salvage, Iowa Industrial Commissioner Reports 207 (1981).

The record indicates Dr. Brady is authorized to treat claimant. On September 23, 2019, Dr. Brady referred claimant for further treatment to an orthopedic specialist, preferably Dr. Pape. Dr. Pape treated claimant on prior occasions. (Ex. D) Dr. Brady has not rescinded that referral to Dr. Pape. Defendants' refusal to authorize claimant's treatment, under these facts, is unreasonable. The law supports that defendants can send claimant to an IME with Dr. Fields. However, defendants do not have the authority to condition claimant's referral to Dr. Pape on the outcome of the IME with Dr. Fields, given the facts in this case.

Given this record, claimant has carried her burden of proof her petition should be granted. Defendants shall refer claimant to Dr. Pape.

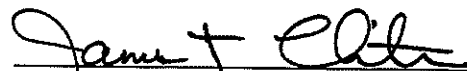
ORDER

THEREFORE, it is ordered:

That claimant's petition for alternate medical care is granted.

Defendants are to furnish claimant with treatment with Dr. Pape.

Signed and filed this 30th day of October, 2019.


JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

John Cutler (via WCES)

Nate Willems (via WCES)