BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ALEX LEEWRIGHT, Claimant, vs. ARCHITECTURAL ARTS, INC., Employer, and ACUITY, A MUTUAL INSURANCE COMPANY, Insurance Carrier, Defendants.	FILED FEB 19 2018 WORKERS COMPENSATION	File No. 5059406 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, Alex Leewright. Claimant appeared personally and through his attorney, Corey Walker. Defendants appeared through their attorney, Stephanie Marett.

The alternate medical care claim came on for hearing on February 19, 2018. 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 record consists of Claimant's Exhibits 1-4, which include a total of 10 pages. Defendants also introduced 10 pages of exhibits, labeled as Defendants' Exhibits A-C. All exhibits were received without objection.

Neither party elected to call a witness to testify. However, counsel both made cogent and succinct factual and legal arguments on behalf of their clients. Counsel's candor, preparation, and arguments were appreciated and helpful.

Claimant noted that defendants have authorized a psychologist and that claimant is withdrawing a request for this issue based upon defendants' offer.

ISSUE

The only issue in dispute in this proceeding is whether claimant is entitled to an order for alternate medical care. Claimant seeks alternate care for three items:

1. Physical therapy pursuant to a recommendation from David P. Robison, D.O.
2. Evaluation through the physical therapist for a power lounger and/or an adjustable hospital bed pursuant to a recommendation of Dr. Robison.
3. Evaluation with a psychiatrist for medication management pursuant to a recommendation of Dr. Robison.

FINDINGS OF FACT

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

Claimant, Alex Leewright, sustained a low back injury that arose out of and in the course of his employment with Architectural Arts, Inc. on April 30, 2015. Defendants authorized and provided care for the low back injury, including treatment with a neurosurgeon, Wade K. Jensen, M.D. Dr. Jensen provided surgical intervention for claimant's low back and ultimately installed a spinal cord stimulator after surgery failed to resolve claimant's symptoms.

Dr. Jensen released claimant and declared him to be at maximum medical improvement on August 30, 2017. However, upon releasing claimant, Dr. Jensen stated that claimant could "[f]ollow up on an as-needed basis. If there are questions, concerns, or problems at any point in the future, I am happy to see him." (Claimant's Exhibit 4, page 10) Claimant is obviously experiencing ongoing symptoms and difficulties, as demonstrated by the recommendation for physical therapy by Dr. Robison. (Claimant's Ex. 1)

Claimant contends that Dr. Robison is an authorized medical provider and his recommendations should be followed. Defendants contend that Dr. Robison was authorized only to treat claimant's psychological injuries, as will be discussed below. Instead, defendants offer to return claimant to Dr. Jensen for further evaluation and consideration of his ongoing low back condition.

I find that the defendants' offer to have claimant return to Dr. Jensen is reasonable. Dr. Jensen is a specialist. Dr. Robison is a family physician. Dr. Jensen left open the possibility for future evaluation and treatment if claimant experienced any difficulties. It has been seven months since Dr. Jensen released claimant. Given the ongoing symptoms, I find defendants offer reasonable care through Dr. Jensen for the low back condition.

Although he did not argue it specifically at the time of hearing, claimant's brief argues that Dr. Jensen practices too far from claimant's residence and it is unreasonable, or unduly inconvenient, to make claimant travel 120 miles one-way to attend the evaluation with Dr. Jensen. This record contains no evidence that there is a duly qualified specialist closer to claimant's residence. Other than the distance, there is no explanation why this is unduly inconvenient for claimant. Given that claimant has traveled for treatment through Dr. Jensen for a significant period of time, and submitted to surgical procedures through Dr. Jensen, I find that the offered care for claimant's low back through Dr. Jensen is reasonable. Dr. Jensen may agree with the recommendation for physical therapy through a local therapist for chronic pain, but he may have other alternate treatment options that would be equally beneficial or potentially superior to the recommendations of Dr. Robison.

As a result of the low back injury on April 30, 2015, Mr. Leewright developed a mental health injury. Defendants accepted and authorized treatment and evaluations for claimant's mental health. Defendants continue to offer follow-up evaluation and treatment through a previously authorized psychologist. Claimant has accepted that offer.

However, claimant seeks authorization of an evaluation for a power lounger and/or an adjustable hospital bed. Defendants contend that the recommendations for these items are from Dr. Robison, a family physician, whom defendants only authorized to provide psychotropic medication management. At hearing, defendants conceded that Dr. Robison is authorized for the mental health treatment aspects, particularly medication management of claimant's mental health condition.

Dr. Robison notes that claimant has not been able to sleep in a bed for over two years. (Ex. 1, p. 1) He also notes that claimant complains of lack of sleep. (Ex. 1, p. 1) Dr. Robison recommends an evaluation with a local physical therapist "for a power lounge chair or an adjustable hospital bed." (Ex. 1, p. 3) Certainly, an inability to sleep can and apparently is having psychological effects on claimant.

Defendants offer no care with respect to claimant's sleep issues. Although defendants offer physical care through Dr. Jensen, lack of sleep is both a physical issue as well as a mental health issue. Dr. Robison is noticing the effects of lack of sleep on claimant's mental health and recommending evaluation for medical equipment that may assist claimant in obtaining better, more restful sleep. This is likely a combination of a physical and mental health recommendation. However, being authorized to provide mental health treatment, I find that Dr. Robison's recommendation is reasonable and that no alternative is being offered by defendants on this issue.

Finally, claimant seeks an order authorizing evaluation and treatment through a psychiatrist. Defendants contend this was not requested by claimant prior to filing of the petition for alternate medical care. In other words, defendants contend that claimant did not give proper notice of his dissatisfaction on this issue.

Claimant's Exhibit 2, page 4 is claimant's formal written notice of dissatisfaction. In that letter, claimant's counsel notes claimant's requests. Among the demands, claimant asserts that Dr. Robison is recommending "potential medication changes." (Ex. 2, p. 4) Claimant's counsel included a copy of Dr. Robison's medical note recommending evaluation by a psychiatrist with this letter. In Defendants' Exhibit A, page 1, defense counsel reaffirms that "Dr. Robison is authorized to prescribe your client's mental health medications."

Review of Dr. Robison's recommendations demonstrates that claimant has genetic abnormalities that affect his metabolism and the effectiveness of certain medications. This condition makes prescribing medications that manage claimant's physical and mental health conditions more difficult. (Ex. 1, pp. 1, 4) Given this condition, Dr. Robison opined, "I feel he needs to see a psychiatrist." (Ex. 1, p. 3) Dr. Robison specifically notes that his current treatment with benzodiazepine can cause adverse long-term problems. (Ex. 1, p. 3) Dr. Robison specifically notes, "I need some help with further psych eval [*sic*] and testing to see what he needs for medications since he has a problem with metabolism due to the gene site testing." (Ex. 1, p. 3)

It is apparent from Dr. Robison's note that he feels specialized evaluation with a psychiatrist is necessary. Dr. Robison notes the complexity of claimant's mental health situation, the genetic issues, and specifically states that he needs help and recommends evaluation with a psychiatrist.

While I understand defendants' argument that claimant did not specifically request referral to or authorization of a psychiatrist, when Dr. Robison's medical record is read in context, it is apparent from claimant's request for medication changes pursuant to Dr. Robison's recommendations that claimant requires a psychiatrist. Dr. Robison is the authorized medical provider for mental health prescriptions and he specifically states that he needs help in the form of a psychiatrist to continue to manage claimant's mental health prescriptions.

Defendants are not offering a psychiatric evaluation. Instead, they offer evaluation with a psychologist and suggest that the psychologist can offer recommendations to Dr. Robison on medication management. Psychologists are generally not licensed to prescribe medications. While they may have experience with patients, medications, and may make recommendations for medication changes, a psychiatrist is the medical specialist who prescribes psychotropic medications.

Dr. Robison is clearly looking for help in managing claimant's mental health medications. The appropriate specialist for mental health medication management is a psychiatrist. Defendants are not offering evaluation or treatment through a psychiatrist and are not honoring the recommendation and referral of Dr. Robison in this respect. Defendants are not offering reasonable care and claimant's request for a psychiatric evaluation is reasonable and appropriate under the circumstances presented.

Dr. Robison did not name a specific psychiatrist to provide care. He indicated that a psychiatrist must service the Spencer Hospital, but Dr. Robison was not certain if

that psychiatrist would provide outpatient services for claimant. While I find evaluation by a psychiatrist is reasonable, necessary, and appropriate medical care in this situation, I find that Dr. Robison did not make a specific referral to a psychiatrist ready and willing to provide 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. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 16, 1975).

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); Bell Bros. Heating v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); 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. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). 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 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).

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).

In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997), the supreme court held that "when evidence is presented to the commissioner that the employer-authorized medical care has not been effective and that such care is 'inferior or less extensive' than other available care requested by the employee, . . . the commissioner is justified by section 85.27 to order the alternate care."

Three separate requests must be considered. Claimant seeks an order authorizing a local physical therapist for treatment of his chronic pain. Defendants contend that the recommending physician, Dr. Robison, is not an authorized medical provider for claimant's low back injuries. Instead, defendants offer to return claimant to Dr. Jensen, the authorized back surgeon that has treated claimant.

I found that the defendants' offer of care through Dr. Jensen was reasonable. Dr. Jensen is particularly aware of and knowledgeable about the condition of claimant's spine and his spinal cord stimulator. Dr. Jensen may concur with the recommendation for physical therapy. He may have other alternative treatment options that may be superior or more beneficial for claimant's low back condition. Having found that the defendants' offer of treatment through Dr. Jensen is reasonable, I conclude that claimant's request for physical therapy is not legally compelled at this time. Instead, claimant should be returned to Dr. Jensen for evaluation to obtain his recommendations, which may or may not include the physical therapy requested.

Claimant's second request is an evaluation with a local physical therapist for purposes of determining whether claimant needs a power lounge chair or an adjustable hospital bed. I noted Dr. Robison's statements and found that claimant has not slept in a bed for over two years. I noted that the lack of sleep affected claimant's mental health. Dr. Robison is an authorized medical provider for claimant's mental health. Therefore, while the recommendations for a power lounge chair and/or adjustable hospital bed may benefit claimant's physical conditions, they also have a potential effect on claimant's mental health through improvement of sleep.

Defendants conceded that Dr. Robison is an authorized provider for mental health treatment. However, they do not want to follow his recommendations that may improve claimant's mental health condition. Claimant's request is reasonable and necessary under the circumstances presented. Defendants have failed to authorize the recommendations of an authorized mental health provider seeking to improve claimant's sleep and mental health. Having found defendants' refusal to authorize this recommended medical care is unreasonable, I conclude that claimant's request for an evaluation with a local physical therapist for purposes of determining whether claimant requires a power lounge chair and/or an adjustable hospital bed should be granted.

Finally, claimant seeks an order authorizing evaluation and treatment through a psychiatrist for management, or at least recommendations, pertaining to his mental health medications. Defendants denied this request and offered evaluation through a psychologist, whom they believe could provide recommendations to Dr. Robison for medication changes and management.

While the undersigned appreciates that defendants have authorized a psychologist to re-evaluate claimant, psychologists are generally not medical providers authorized or qualified to prescribe mental health medications without obtaining additional training and collaborating with a licensed physician. Iowa Code Chapter 154. There is no evidence in this record to demonstrate that the psychologist to whom

defendants seek to send claimant meets the additional requirements of Iowa Code Chapter 154 to prescribe medication for claimant.

Psychiatrists are specialists in the management and prescription of mental health medications. Having found that Dr. Robison specifically noted he needed help with prescribing mental health medications for claimant, having found that claimant has genetic abnormalities that make prescribing mental health medications complicated, and having found that Dr. Robison specifically recommended evaluation by a psychiatrist, I found that the request for evaluation and treatment with a psychiatrist is both reasonable and necessary under the circumstances presented in this case. Having found that defendants' offer of treatment through a psychologist is not reasonable or appropriate, I conclude that claimant's request should be granted.

However, defendants raised one additional issue that could affect the award of alternate medical care on this issue. Specifically, defendants contend that claimant did not give notice of dissatisfaction of this issue, and specifically request evaluation by a psychiatrist, before filing the petition for alternate medical care.

Indeed, an injured worker is required to give notice of dissatisfaction before filing a petition for alternate medical care. Iowa Code section 85.27(4). Ideally, the Iowa workers' compensation system is intended to be a self-effectuating system. Ideally, parties discuss disputed issues and resolve the disputes amicably with solutions that are at least satisfactory to all parties.

Review of the evidence in this case demonstrates that claimant did not specifically request that a psychiatrist be authorized prior to filing the petition for alternate medical care. In this sense, defendants' argument is somewhat justified. They were not specifically notified of a request for a psychiatrist by claimant.

On the other hand, claimant did specifically request treatment related to "potential medication changes." (Ex. 2, p. 4) This demand, when read in context with the medical record from Dr. Robison referenced and apparently enclosed with counsel's letter, makes it apparent that Dr. Robison was recommending evaluation by a psychiatrist. Having found that Dr. Robison was specifically noting that he needed help with the medication management, I conclude that proper notice of the need for a psychiatrist was given in this situation. Therefore, I conclude that the request for an order authorizing a psychiatrist should be granted.

Having found that Dr. Robison did not make a specific referral to a named psychiatrist that was ready and willing to evaluate and provide claimant treatment, I conclude that defendants may still identify, select, and authorize a psychiatrist of their own choosing provided they do so timely. Therefore, I conclude that an order should be structured to permit defendants an opportunity to identify and authorize a psychiatrist of their choosing, if done so within a specified time.

ORDER

THEREFORE, IT IS ORDERED:

The claimant's petition for alternate medical care is denied in part and granted in part.

Claimant's request for an order authorizing physical therapy is denied pending re-evaluation by Dr. Jensen and receipt of his recommendations for further care.

Claimant's request for evaluation by a local physical therapist for purposes of determining whether claimant requires the purpose of a power lounge chair and/or an adjustable hospital bed is sustained.

Within fourteen (14) days of the entry of this order, defendants shall schedule an evaluation with a physical therapist in Spencer, Iowa to perform an evaluation and make recommendations as to the reasonableness and necessity of a power lounge chair and/or adjustable hospital bed for claimant to potentially improve his sleep.

Within fourteen (14) days of the entry of this order, defendants shall identify and schedule an evaluation with a psychiatrist within a reasonable travel distance from claimant's residence to provide psychiatric evaluation and either to assume medication management for claimant or provide Dr. Robison recommendations for further medication management of claimant's mental health conditions.

If defendants fail to identify and authorize a physical therapist or psychiatrist within the timeframe noted above, claimant shall have the right to select his own physical therapist or psychiatrist and proceed with treatment at defendants' expense.

Signed and filed this 19th day of February, 2018.

WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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