BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LORRIE ARMOUR,

Claimant,

vs.

ARNOLD MOTOR SUPPLY,

Employer,

and

EMC INSURANCE COMPANIES,

Insurance Carrier,
Defendants.

File No. 5064423

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, Lorrie Armour. Claimant appeared, with her attorney, Channing Dutton. Defendants appeared through their attorney, Jeff Margolin.

The petition for alternate medical care came on for a telephonic hearing on July 13, 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 contains claimant's exhibits A through F, and defendants' exhibits 1 through 4. Claimant and Amy Dunbar, the adjuster from EMC insurance company provided testimony.

ISSUE

Whether the medical treatment provided by defendants to claimant is unreasonable. Specifically, claimant seeks an order compelling defendants to authorize ongoing care with chiropractor, Cynthia VanSickler, D.C. until a substitute plan of care is authorized.

FINDINGS OF FACT

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

Claimant's injury occurred on June 20, 2017. Claimant was driving a vehicle for work when a deer jumped into the driver's side window. (Ex. D, Testimony) Claimant stated that she was knocked unconscious and woke up in her vehicle, which had come to rest in a ditch. (Ex. D; Testimony)

Claimant received medical treatment for her injuries, which included being treated at Unity Corporate Health Services by Dr. Ngyuen. She was diagnosed with: a concussion with loss of consciousness of 30 minutes or less; a cervical sprain; post-traumatic headaches, not intractable; and, pain in her throat. (Ex. C)

On August 23, 2017, claimant was referred to Dr. Gonzalez and then to Dr. Hoffman for evaluation and treatment of her throat pain. (Ex. C; Testimony) On the same date, Dr. Ngyuen released claimant with no additional treatment plan concerning her neck and headaches. (Id.)

Claimant continued to have neck pain and headaches and thereafter sought treatment on her own with Cynthia VanSickler, D.C., beginning on September 21, 2017. (Ex. B; Testimony) Claimant testified that she had some relief from her headaches with chiropractic care and inquired with the claims adjuster, Amy Dunbar or EMC Insurance, whether the chiropractic care could be covered by workers' compensation insurance. Ms. Dunbar agreed and authorized 12 chiropractic visits with Dr. VanSickler.

After the 12 chiropractic visits were completed in November, 2017, Ms. Dunbar declined to authorize any further chiropractic care on the basis that the treatment was not "resolving" claimant's symptoms and she continued to have ongoing headaches and the treatment was therefore not beneficial. (Testimony)

When the chiropractic visits were no longer authorized, claimant continued to obtain treatment at her own expense with Dr. VanSickler. At the time of the hearing, she testified that she was still receiving treatment every other week. Claimant stated that the care is helpful in relieving her pain and allows her to continue to do her job.

Ms. Dunbar does not hold a medical degree and acknowledged that chronic pain can result in long periods of medical care.

Dr. VanSickler stated in a letter dated April 19, 2018, that over the first few months of chiropractic care that claimant "made good progress," with a reduction of pain of "over 50% and frequency and severity of headaches decreasing." (Ex. B) This is consistent with claimant's testimony that the chiropractic care was helpful and relieved some of her symptoms. Although Ms. Dunbar testified that the employer reported that claimant continues to miss work on occasion due to reported headaches.

It is defendant's position that chiropractic treatment is not the best avenue of care for claimant at this time and defendant has authorized a return visit to Dr. Ngyuen, which claimant will attend on Tuesday July 17, 2018. Defendants indicated that they intend to authorize whatever diagnostic tests or treatment is recommended by Dr. Ngyuen. There is no medical opinion in the record indicating that chiropractic care is inappropriate or ineffective in claimant's case. Claimant testified that it has been helpful.

Claimant seeks an order compelling defendant to provide for care with Dr. VanSickler until a substitute plan of care is in place. Because claimant will see Dr. Ngyuen on Tuesday, July 17, 2018, which is two business days from the date of the hearing, the value of such an order seems questionable, particularly given claimant's rate of chiropractic treatment of one visit every other week. However, until the appointment with Dr. Ngyuen occurs, claimant is effectively left without an authorized treatment plan when all parties seem to agree that claimant complains of ongoing symptoms that presently intermittently affect her ability to perform her job.

Defendants do not argue that claimant's symptoms are not related to her work injury.

Claimant also seeks reimbursement of medical expenses she has incurred by virtue of her continued chiropractic care after the 12 authorized visits were completed.

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. 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. v. Reynolds, 562 N.W.2d 433 (Iowa 1997), 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.

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).

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In order to carry his burden of proof, the injured worked must show that "the care being offered by the employer was unreasonable, had not been effective, or was inferior or less extensive." Lynch Livestock, Inc. v. Bursell, 870 N.W.2d 271, at 3 (Iowa Ct. App. 2015) Concluding that the care being sought is reasonable is not enough. Id.

In the present case, although the period of time between the date of the hearing and the appointment with Dr. Ngyuen is very short indeed; and, it is anticipated that the appointment with Dr. Ngyuen will result in a substitute medical care plan, at the time of the hearing claimant did not have an authorized plan of care in place. Therefore, there was no authorized care to address her ongoing complaints and symptoms related to her work injury.

Therefore, I conclude that claimant has proven her claim for alternate medical care of treatment with Cynthia VanSickler, D.C., until a substitute medical care plan is in place, which will likely occur at the time of claimant's appointment with Dr. Ngyuen on Tuesday, July 17, 2018. Defendants are ordered to authorize and pay for any

appointment that claimant may have with Dr. VanSickler from the date of this order until the substitute medical care plan is in place.

A claimant's application for alternate medical care should be dismissed when a claimant seeks payment for medical care that has already been provided prior to the time the alternate medical care petition is filed. Moline v. Nordstrom, File No. 1273226 (Alt Care, December 21, 2000); Mobayed v. AMS Services, Inc., File No. 1168048 (Alt. Care, May 20, 1997). A claimant is not entitled to a penalty under Iowa Code section 86.13 for late payment of medical benefits. Klein v. Furnas Elec. Co., 384 N.W.2d 370 (Iowa 1986).

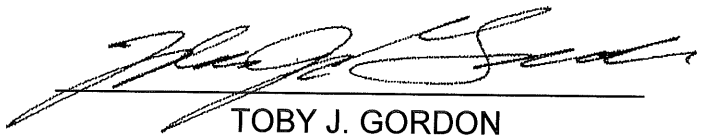
Concerning claimant's request for reimbursement of previously incurred medical expenses an application for alternate care is not the appropriate method for seeking such reimbursement and exceeds the undersigned's authority in this matter and should therefore be denied.

ORDER

THEREFORE IT IS ORDERED:

Defendants shall immediately authorize and timely pay for ongoing chiropractic care with Cynthia VanSickler, D.C., until a substitute medical care plan is in place concerning claimant's neck and headache symptoms related to her work injury.

Signed and filed this 16th day of July, 2018.



TOBY J. GORDON
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