BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

HAYLEY CALL, Claimant, vs. ALLSTEEL, INC., Employer, Self-Insured, Defendant.	File No. 19002011.02 ALTERNATE MEDICAL CARE DECISION Headnote: 2701

STATEMENT OF THE CASE

On September 2, 2021, the claimant filed a petition for alternate medical care pursuant to Iowa Code 85.27(4) and 876 Iowa Administrative Code 4.48. The defendant did not file an answer; however, during the hearing, the defendant verbally confirmed that they accepted liability for the right ankle injury related to the July 16, 2019, work incident.

The undersigned presided over the hearing held via telephone and recorded digitally on September 15, 2021. That recording constitutes the official record of the proceeding pursuant to 876 Iowa Administrative Code 4.48(12). Claimant participated personally, and through her attorney, Niko Pothitakis. The defendant participated through their attorney, Ed Rose. The evidentiary record consists of testimony from the claimant. The parties were offered the opportunity to submit exhibits at the outset of the hearing, but declined to do so.

On February 16, 2015, the Iowa Workers' Compensation Commissioner issued an order delegating authority to deputy workers' compensation commissioners, such as the undersigned, to issue final agency decisions on applications for alternate care. Consequently, this decision constitutes final agency action, and there is no appeal to the commissioner. Judicial review in a district court pursuant to Iowa Code Chapter 17A is the avenue for an appeal.

ISSUE

The issue under consideration is whether claimant is entitled to an order for alternate medical care via referral to a pain management doctor.

FINDINGS OF FACT

Claimant, Hayley Call, alleges that she sustained an injury to her right ankle on July 16, 2019, while working for defendant Allsteel. The defendant accepted liability for

the right ankle injury at the outset of the hearing. As a result of her ankle injury, Ms. Call has had two surgeries to her right ankle. She treated with Dr. Morris at ORA for these surgeries. Dr. Morris was unwilling to continue to prescribe pain medications. Ms. Call also treated with Dr. Naomi Chelli, an occupational medicine provider with Concentra. The defendant returned Ms. Call to Dr. Chelli for additional care.

Ms. Call's most recent appointment with Dr. Chelli was July 16, 2021. During that appointment, Dr. Chelli refilled the claimant's pain medication, and recommended that she see a pain management doctor. Dr. Chelli was uncomfortable continuing to prescribe narcotic medications. As of the date of the hearing, Ms. Call testified that she had no more pain medication, and was experiencing pain. The defendant indicated that they have been trying to get an appointment with a particular pain management physician; however, to date, they have been unsuccessful. The defendant also indicated that if they continue encountering difficulties in obtaining an appointment for Ms. Call with the first pain management physician, they are prepared to refer Ms. Call to another pain management physician. The defendant reiterated that they will authorize a referral to a pain management physician; however, they are having difficulty scheduling an appointment with the chosen physician.

CONCLUSIONS OF LAW

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

> For purposes of this section, the employer is obligated 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.

Iowa Code 85.27(4). See Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

"Iowa Code section 85.27(4) affords an employer who does not contest the compensability of a workplace injury a qualified statutory right to control the medical care provided to an injured employee." Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 769 (Iowa 2016) (citing R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 195, 197 (Iowa 2003)). "In enacting the right-to-choose provision in section 85.27(4), our legislature sought to balance the interests of injured employees against the competing interests of their employers." Ramirez, 878 N.W.2d at 770-71 (citing Bell Bros., 779 N.W.2d at 202, 207; IBP, Inc. v. Harker, 633 N.W.2d 322, 326-27 (Iowa 2001)).

The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Iowa Code 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening, October 16, 1975). 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).

By challenging the employer's choice of treatment - and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See e.g. Iowa R. App. P. 6.904(3)(e); Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). An injured employee dissatisfied with the employer-furnished care (or lack thereof) may share the employee's discontent with the employer and if the parties cannot reach an agreement on alternate care, "the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order the care." Id. "Determining what care is reasonable under the statute is a question of fact." Long, 528 N.W.2d at 123; Pirelli-Armtrong Tire Co., 562 N.W.2d at 436. As the party seeking relief in the form of alternate care, the employee bears the burden of proving that the authorized care is unreasonable. Id. at 124; Gwinn, 779 N.W.2d at 209; Pirelli-Armstrong Tire Co., 562 N.W.2d at 436. Because "the employer's obligation under the statute turns on the question of reasonable necessity, not desirability," an injured employee's dissatisfaction with employer-provided care, standing alone, is not enough to find such care unreasonable. Id.

In this matter, a treating physician, Dr. Chelli, referred the claimant to a pain management physician. The claimant is requesting a referral for pain management. The defendant has agreed to authorize care with a pain management physician, but has had difficulty obtaining an appointment over the last two months. The claimant is not requesting to see a specific pain management provider.

The defendant appears to be making a good faith effort to obtain an appointment with a pain management provider; however, it has now been two months since Dr. Chelli referred Ms. Call to a pain management provider. No appointment has been scheduled. This is not reasonable.

The claimant's petition for alternate care is granted. The defendant has already agreed to authorize pain management treatment. Within fifteen (15) days of the date of this order, the defendant shall schedule an appointment with a pain management provider of the defendant's choosing. The appointment need not occur within fifteen (15) days of the date of this order, but shall occur no less than thirty (30) days from the date of this order.

IT IS THEREFORE ORDERED:

1. The claimant's petition for alternate care is granted.

2. Within fifteen (15) days of the date of this order, the defendant shall schedule an appointment with a pain management provider of the defendant's choosing.

3. The appointment shall occur no less than thirty (30) days from the date of this order.

Signed and filed this 15th day of September, 2021.

ANDREW M. PHILLIPS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Nicholas Pothitakis (via WCES)

Edward Rose (via WCES)