

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SONIA NABER,

Claimant,

VS.

BROADLAWNS MEDICAL CENTER,

Employer,
Self-Insured,
Defendant.

File No. 20013587.03

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. By filing an original notice and petition for alternate medical care, claimant, Sonia Naber, invoked the expedited procedure of rule 876 IAC 4.48.

The alternate medical care claim came on for telephonic hearing on December 8, 2021. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Claimant appeared personally and through her attorney, Corey Walker. Defendants appeared through their attorney, Jane Lorentzen.

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. Any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code section 17A.

The evidentiary record consists of claimant's exhibits 1 through 4 (attached to original notice and petition) and defendants' exhibits A through C. Ms. Naber testified on her own behalf. No other witnesses testified at the hearing.

ISSUE

The issue presented for resolution is whether the claimant is entitled to an alternate medical care order requiring defendants to authorize treatment of her left ankle with a specialist at the University of Hospitals and Clinics.

FINDINGS OF FACT

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

Sonia Naber, claimant, sustained an admitted injury to her left ankle on January 24, 2020. The employer, Broadlawns Medical Center, admits the injury and authorized medical care for claimant. Specifically, the employer authorized one of its own podiatrists, Mica Murdoch, DPM.

Claimant submitted to medical care through Dr. Murdoch for more than a year and a half. Dr. Murdoch performed two surgical procedures on claimant's left ankle, involving placement of metal hardware in each surgery. Unfortunately, claimant continues to experience symptoms she describes as "terrible." Claimant continues to utilize a walking boot and remains off work as a result of this injury. She testified she has been in a walking boot or a cast since this injury occurred in January 2020.

Dr. Murdoch now recommends an ankle replacement surgery for claimant's condition. (Claimant's Exhibit 1, page 2) On September 8, 2021, claimant sent a message to Dr. Murdoch, asking whether he would consider a referral for claimant to the University of Iowa. (Claimant's Ex. 2-3) A direct response to this inquiry is not identified from Dr. Murdoch. However, on September 9, 2021, Dr. Murdoch instructed his staff to make the referral for claimant to go to the University of Iowa. (Claimant's Ex. 2) On September 10, 2021, Dr. Murdoch's certified medical assistant recorded that all records were sent to the University of Iowa to be reviewed by its workers' compensation department. (Claimant's Ex. 2) No information is in evidence to determine whether the University of Iowa accepted claimant as a patient or scheduled an appointment. However, no appointment has been authorized or apparently occurred at the University of Iowa Hospitals and Clinics to date.

Instead, defendants redirected claimant's care to another podiatrist in the Des Moines area, closer to claimant's home. Specifically, defendants selected and authorized Eric Barp, DPM. Claimant attended an evaluation with Dr. Barp on November 9, 2021. (Defendants' Ex. A)

Dr. Barp's November 9, 2021 medical note indicates that he evaluated claimant's left foot and ankle. He made specific findings and notations about issues related to a potential CRPS diagnosis. Ultimately, Dr. Barp disagreed with the recommendations of Dr. Murdoch. Instead, Dr. Barp opines that claimant should have the implanted hardware in her left ankle removed to reduce symptoms. Dr. Barp opines that claimant likely requires no permanent work restrictions and should be able to return to work after the hardware is removed. (Defendants' Ex. B)

Claimant testified that her appointment with Dr. Barp lasted ten minutes. She described the evaluation as "horrible" and testified that Dr. Barp did not allow her to ask any questions. Claimant testified that Dr. Barp did not explain the potential risks or benefits of his proposed surgery and would change the subject if she asked questions.

Ms. Naber acknowledges that Dr. Barp touched her left foot. However, she denied that Dr. Barp checked the temperature of her left foot, that he performed any range of motion measurements of the left ankle, and denies that Dr. Barp examined her

right leg, foot or ankle at all. Ms. Naber further denies that Dr. Barp discussed her diabetes or smoking habit during his visit.

Dr. Barp's medical record documents certain findings relative to a CRPS diagnosis, or lack thereof. (Defendants' Ex. B) However, Ms. Naber testified that Dr. Barp told her he has no experience or expertise with CRPS or spinal cord stimulators. Claimant testified she is not confident and is very concerned about allowing Dr. Barp to perform surgery on her left ankle. She will not agree to return to Dr. Barp or allow him to perform surgery on her ankle.

Instead, claimant seeks authorization for an evaluation and treatment with a specialist at the University of Iowa. She has done some research on-line and identified a Dr. Femino as a potential expert to provide her treatment at the University of Iowa Hospitals and Clinics. She testified that Dr. Femino is an orthopaedic surgeon.

Ms. Naber also testified that Dr. Femino has experience with CRPS and spinal cord stimulators. She testified she identified that information off the University of Iowa Hospitals and Clinics website, though she was unable to locate the same information during the hearing when asked to describe its location on that website during cross-examination. The undersigned has no independent knowledge of Dr. Femino's credentials. Undoubtedly, however, there are qualified physicians that could treat claimant's left ankle condition and that will have knowledge and experience treating patients with CRPS and/or spinal cord stimulators. I have no doubt that a qualified physician or podiatrist could be located at the University of Iowa Hospitals and Clinics, if that facility accepted claimant for care.

I find that the defendants offered reasonable care when they offered care through Dr. Murdoch. He appears to be a podiatrist, qualified to treat claimant's injury. Defendants similarly offered reasonable care when they authorized a pain specialist at Broadlawns to treat what was diagnosed as CRPS and required a spinal cord stimulator.

I similarly find that defendants offered reasonable care when they offered Dr. Barp for treatment. Dr. Barp's curriculum vitae is in evidence. (Defendant's Ex. C) Dr. Barp is a qualified podiatrist and a reasonable selection for this type of injury. Dr. Barp offers a reasonable explanation and medical course of treatment. Indeed, he offers a less invasive and likely less risky procedure than an ankle replacement. I perceive nothing about Dr. Barp's evaluation notes or his recommendations that suggest the care he offered was not reasonable.

Yet, claimant's perception of what transpired at the evaluation by Dr. Barp and what Dr. Barp documented occurred are vastly different. Claimant describes Dr. Barp's medical record from his evaluation as a "lie." I will not reach a finding in this case that Dr. Barp's medical record was inaccurate or a "lie." Typically, I assume and accept medical records as accurate and the doctor's best attempt to document what transpired

during an evaluation. Claimant's perception of what transpired may be different, however.

For instance, at hearing, claimant testified that Dr. Barp did not check the temperature of her left foot and ankle. Yet, she acknowledges that Dr. Barp touched her foot. While unbeknownst to her, Dr. Barp likely was evaluating her foot for CRPS symptoms, including the temperature, texture, and color of her foot, when he evaluated her. While Dr. Barp may not have mentioned these items during the evaluation and claimant may perceive that he did not evaluate those items, it is entirely possible that he was evaluating those conditions when he evaluated and touched claimant's left foot and ankle, as well as the various other things that a podiatrist may be considering and evaluating when seeing a patient. Accordingly, I find that the offer of care through Dr. Barp was a reasonable offer of care by defendants.

Nevertheless, I also find that claimant is fully and completely distrustful of Dr. Barp after his evaluation. Claimant was taken aback by Dr. Barp's discussion of releasing her to return to work without restrictions. Claimant has been dealing with this injury for nearly two years and has remained in a boot or cast that entire time. She is distrustful of this new podiatrist that suggests she should be able to return to work without restrictions. Claimant testified she could not return to work in her current condition.

Whether claimant's distrust of Dr. Barp may be entirely out of an irrational fear caused by a long but unsuccessful recovery or the result of a completely rational fear, makes little difference. Claimant is distrustful of Dr. Barp. This distrust is not likely to be overcome if claimant returns or is ordered to return to Dr. Barp. In fact, she refuses to be seen by him again and this ultimately results in an irreparable breakdown of the doctor-patient relationship that renders it unreasonable to require claimant to continue treatment with Dr. Barp.

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 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). 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 she 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).

This case poses two well-accepted principles against each other. First, it is well accepted that 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 1975). In this case, the employer accepted liability for the injury and is entitled to choose the medical provider. Iowa Code section 85.27.

On the other hand, 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). Claimant makes a convincing argument that, in this case, the physician selected (Dr. Murdoch) is also an employee of the employer. Claimant contends that Dr. Murdoch's referral to the University of Iowa Hospitals and Clinics is automatic and that defendant must authorize that care.

This situation is slightly different from the typical referral, however. In this instance, claimant initiated the request for a referral. Claimant not only requested a second opinion, or transfer of care, but she asked for the specific referral to the University of Iowa Hospitals and Clinics. Claimant did not express dissatisfaction with Dr. Murdoch and ask for a transfer of care by the defendant. Instead, claimant bypassed the employer and made the request for a specific referral to Dr. Murdoch.

The physician asked no questions, offered no specific names, but instructed his staff to honor the patient's request. This is different from the physician exercising his independent judgment and recommending a referral to assist with his diagnosis or treatment of the patient. Nothing in Dr. Murdoch's August 3, 2021 office note suggests he was not prepared to continue treating claimant or that he was independently considering a referral to another specialist. (Claimants' Ex. A) In fact, in that August 3, 2021 office note, Dr. Murdoch recommended an ankle replacement and noted claimant "is eager to move forward with that." (Claimant's Ex. A) In this instance, Dr. Murdoch appeared ready to continue on his course of care and, instead, was simply honoring a request from a patient when he offered the referral, rather than independently determining that a referral specifically to the University of Iowa Hospitals and Clinics was necessary. (Claimant's Ex. A)

Second opinions are a common request of patients in the medical arena. In fact, this alternate medical care process is designed and has been developed before this agency because patients often wish for a second opinion or a different physician to provide care. Yet, to allow a claimant to initiate the process and to do so without the input of the employer, who has accepted care, would essentially abrogate the employer's right to select the authorized medical provider. Any disgruntled patient could suggest a change of care to a provider he or she desired and a physician would likely be willing to make the referral to avoid angering a disgruntled patient. Yet, this seems like a convenient (though not legally sound) way for a claimant to simply assume control of the medical care without the input of the employer or this agency to determine whether the employer's offer of care is reasonable. I do not believe the law is intended to be hard and fast that a referral (even if agreed to by the authorized physician) is necessarily binding on the employer. Instead, the law as developed intends to prevent the employer from interfering with the independent judgment of the authorized provider. Claimant seeks to turn that on its head and permit claimant to interfere with the independent judgment while an employer may not. I do not perceive claimant's position or urged application to be legally accurate.

In this factual scenario, I conclude that the employer continues to retain the right to select the authorized medical provider. Claimant's attempt to interfere with and steer the independent judgment of the physician is not sufficient to cause an automatic authorization of the medical provider requested by the claimant.

That being said, I also found that there was an irreparable breakdown in the doctor-patient relationship between Dr. Barp and Ms. Naber. Alternate care can be awarded, including a transfer to a new physician, when there is a breakdown in a physician/patient relationship. Seibert v. State of Iowa, File No. 938579 (September 14, 1994); Nueone v. John Morrell & Co., File No. 1022976 (January 27, 1994); Williams v. High Rise Const., File No. 1025415 (February 24, 1993); Wallech v. FDL Foods, Inc., File No. 1020245 (September 3, 1992) (aff'd Dist Ct June 21, 1993).

In this case, I conclude there is a sufficient breakdown of the physician-patient relationship that it is unrealistic to expect claimant to treat with Dr. Barp and also improve. She is distrustful of Dr. Barp and that breakdown renders further care with Dr. Barp to be unreasonable. Instead, defendant should identify another qualified podiatrist or physician to provide care for claimant's left ankle. Several qualified specialists are located between the Des Moines metro and Iowa City. Therefore, defendant can select the University of Iowa Hospitals and Clinics as the authorized medical provider, or a different qualified provider closer than the University of Iowa Hospitals and Clinics.

ORDER

THEREFORE, IT IS ORDERED:

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

Defendant remains obligated to provide claimant reasonable and appropriate medical care for her January 24, 2020 left ankle injury.

Within fourteen (14) days of the entry of this decision, defendant shall identify a qualified medical provider for claimant's left ankle injury.

Said provider shall be someone other than Dr. Murdoch and/or Dr. Barp and shall be located closer to claimant's residence than the University of Iowa Hospitals and Clinics.

If defendant cannot or does not identify and authorize such a provider to provide care within the allotted timeframe, care shall be transferred to the University of Iowa Hospitals and Clinics and it shall be the authorized medical provider, provided a physician or podiatrist at that facility will accept claimant's care.

Signed and filed this 9th day of December, 2021.

A handwritten signature in cursive script, reading "William H. Grell", is written over a horizontal line.

WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Corey Walker (via WCES)

Jane Lorentzen (via WCES)