BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KAYLA STEWART,

Claimant,

vs.

COMFORT KEEPERS,

Employer,

and

NATIONAL UNION FIRE INS. CO.,

Insurance Carrier,
Defendants.

File No. 5063838

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 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, Kayla Stewart.

This alternate medical care claim came on for hearing on July 25, 2018. 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 1-2, and Defendants' Exhibits A through C.

ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of physical therapy recommended by James Sykes, D.O.

FINDINGS OF FACT

Defendants accept liability for a work-related injury occurring on February 22, 2018.

A utilization review (UR) report suggests claimant was evaluated by Dr. Sykes on May 1, 2018, with complaints of back pain radiating into the thigh. (Exhibit B)

Dr. Sykes is a medical provider authorized by defendants to treat claimant.

A June 24, 2018 email from defense counsel indicates defendants would authorize two physical therapy sessions. The note indicates defendants wanted to perform UR before any further physical therapy would be authorized. (Ex. C)

A June 25, 2018 UR report from CompPartners recommended denying physical therapy consisting of aquatic therapy three times a week for six weeks. (Ex. B)

A June 25, 2018 UR report from Health Direct, Inc., opined that clinical findings did not support the medical necessity of the physical therapy recommended by Dr. Sykes. (Ex. A)

In a June 28, 2018 letter, claimant's counsel requested that physical therapy prescribed by Dr. Sykes be authorized. (Ex. 2)

On a prescription note dated July 3, 2018, Dr. Sykes prescribed, what appears to read, physical therapy for claimant twice a week for four weeks. (Ex. 1)

In a professional statement defendants' counsel indicated defendants would authorize two physical therapy sessions, but would only authorize further physical therapy subsequent to utilization review.

In a professional statement, claimant's counsel requested the physical therapy prescribed by Dr. Sykes be authorized.

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established ordinarily has the burden of proving that issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.14(6)(e).

Iowa Code section 85.27(4) 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.

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); 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., 562 N.W.2d at 433, 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 their own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening Decision June 17, 1986).

Defendants contend claimant was not evaluated by Dr. Sykes on July 3, 2018. Defendants also contend that because the letter requesting alternate medical care is dated prior to the prescription in this case, that somehow proper communication or notice has not been made by claimant under Iowa Code section 85.27(4).

There is no record in evidence as to the last time Dr. Sykes last saw claimant. It matters little if Dr. Sykes prescribed physical therapy for claimant after he last evaluated

claimant. It is apparent claimant's counsel has made numerous requests for the care recommended by Dr. Sykes in the July 3, 2018 prescription. Based on these facts, defendants' arguments why alternate medical care should not be granted are unpersuasive.

Defendants are interfering with the treatment recommendations of Dr. Sykes, the authorized treating physician. Defendants were entitled to select Dr. Sykes as a treating physician. They are not entitled to interfere with his medical judgment. See Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988); Pote v. Mickow Corp., File No. 694639 (Review-Reopening Decision June 17, 1986).

Claimant's petition for alternate medical care is granted. Defendants shall provide the physical therapy recommended by Dr. Sykes.

ORDER

Claimant's petition for alternate medical care is granted. Defendants shall provide the physical therapy prescribed by Dr. Sykes.

Signed and filed this 25th day of July, 2018.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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