

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SCOTT WAYBILL,

Claimant,

vs.

CITY OF CEDAR RAPIDS,

Employer,
Self-Insured,
Defendant.

File No. 22700553.02

ALTERNATE MEDICAL CARE
DECISION

Headnote: 2701

STATEMENT OF THE CASE

On September 29, 2022, 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 filed an answer admitting liability for injuries related to claimant's hip.

The undersigned presided over the hearing held via telephone and recorded digitally on October 11, 2022. That recording constitutes the official record of the proceeding pursuant to 876 Iowa Administrative Code 4.48(12). Claimant participated personally and through his attorney, Nick Cooling. The defendant participated through their attorney, Aaron Oliver.

Prior to the hearing, the defendant submitted ten pages of exhibits labeled A-B. The claimant submitted seven pages of exhibits labeled 1-3. The evidentiary record consists of Defendant's Exhibits A-B, Claimant's Exhibits 1-3, and testimony from the claimant. All of the exhibits were admitted and received into evidence without objection.

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.

Prior to the hearing, the defendant filed a motion to dismiss based upon an alleged failure of the claimant to express or communicate any dissatisfaction of care to the defendant. 876 Iowa Administrative Code 4.48(10) provides that any motion, except for those pertaining to the type of hearing in an alternate care matter, is to be considered at the time of the hearing. The defendant contends that I am required to dismiss the claimant's petition if 876 Iowa Administrative Code 4.48(4) is not followed. The defendant provides citation to several alternate care decisions to support their

contention. The defendant asserts that these prior decisions are controlling law. It should be noted that these are not rulings of the Commissioner, a District Court, or an Appellate Court. The decisions themselves are not binding on me.

The claimant resisted the motion to dismiss. He contends that he indicated to both a treating doctor and a nurse case manager that he wanted to proceed with a left hip surgery. Subsequent to his appointment in August of 2022 with a treating doctor, Mr. Waybill contends that he spoke to the nurse case manager on more than one occasion regarding a delay in scheduling and authorizing the surgery. Mr. Waybill argued that he was told by the nurse case manager that the defendant was considering other evaluations for the left hip. Mr. Waybill contends that he expressed dissatisfaction with this delay in care to the nurse case manager. The claimant further argues that on September 27, 2022, his counsel threatened to file a motion to compel production of medical records. The claimant further argues that his expression of dissatisfaction to the nurse case manager is sufficient pursuant to 876 Iowa Administrative Code 4.48(4).

There is a question here as to whether or not the claimant provided adequate notice of dissatisfaction of care. Specifically, the claimant represents that he expressed a dissatisfaction of care to a nurse case manager as an agent of the defendant. The claimant testified at the hearing that he told his supervisor, Joy Huber, that he was dissatisfied with his care. The claimant could not recount specific dates or times at which he spoke to his supervisor.

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.

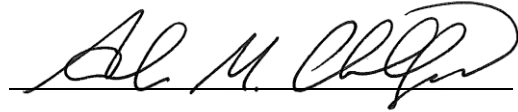
Iowa Code 85.27(4). See Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

876 Iowa Administrative Code 4.48(4) requires an employee to communicate the basis of any dissatisfaction with care to the employer prior to filing the alternate medical care petition. There is not adequate evidence that the claimant did this. Therefore, dismissal of the petition without prejudice is appropriate.

IT IS THEREFORE ORDERED:

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

Signed and filed this 12th day of October, 2022.

A handwritten signature in black ink, appearing to read "Al M. Phillips", is written over a horizontal line.

ANDREW M. PHILLIPS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Nick Cooling (via WCES)

Aaron Oliver (via WCES)