BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CRYSTAL SQUIRES, Claimant, vs. WALMART ASSOCIATES, INC., Employer, and AIU INSURANCE COMPANY, Insurance Carrier, Defendants.	File No. 22701134.02 ALTERNATE MEDICAL CARE DECISION Headnote: 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, Crystal Squires. Claimant appeared through her attorney, James Hoffman. Defendants appeared through their attorney, Lindsey Mills. Claimant's petition was filed on March 22, 2023. Defendants filed an answer on March 30, 2023. Defendants do not dispute liability for the condition on which the claim for alternate care is based.

The alternate medical care claim came on for hearing on April 3, 2023. 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 consists of Defendants' Exhibits A and B, and claimant's sworn testimony. Defendants also filed a short brief prior to the hearing.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of an order authorizing care with a different orthopedic physician or pain management physician.

FINDINGS OF FACT

Claimant sustained a work-related injury to her right knee on March 25, 2022. Defendants accepted the claim and have been providing medical care. David Levinsohn, M.D., is the authorized treating physician. (See Defendants' Exhibit B) Claimant has been participating in physical therapy, although it appears she failed to attend several appointments. (Def. Ex. A)

Claimant most recently saw Dr. Levinsohn on March 20, 2023. At that time, he noted that claimant had been doing well until a few weeks prior, when she felt a pop in her knee during physical therapy. (Def. Ex. B) She reported some grinding and swelling in the knee, although the swelling had since calmed down. The record indicated she did not have to use crutches, there was no locking or giving out, and no night pain. On examination, Dr. Levinsohn recorded that alignment of the knee was within normal limits with no significant swelling. He noted no tenderness to palpation and no apprehension or abnormal motion when moving the patella. He noted slight tenderness at the patella tendon junction. Under diagnosis, he wrote that it had been almost a year since claimant sustained a distal patella contusion/nondisplaced fracture, and she had been doing progressively well but had a recent setback during therapy. He indicated he thought the incident at therapy was a breakdown of scar tissue. He recommended claimant continue with a home exercise program, and did not need to see claimant again on a routine basis. However, he stated if claimant was not feeling back to where she was in three months, she should return for further follow up.

Claimant testified that she does have trouble sleeping due to the knee, and she feels it is getting worse. She said at her last visit with Dr. Levinsohn he did not look at her knee or the notes from physical therapy. She testified that the physical therapist told her she needed surgery and her knee was not better. She testified that she did recently call Dr. Levinsohn's office to request a follow-up appointment, and is waiting to hear back.

Defendants argue in their brief that claimant's petition is based on her subjective perception of Dr. Levinsohn's demeanor at her March 20, 2023 appointment. However, the medical note contradicts her statement that he did not examine her knee or consider her current complaints. Additionally, defendants argue that claimant did not offer any medical evidence to support that other orthopedic care is needed for her right knee, or that additional physical therapy is reasonable and necessary. Likewise, there is no evidence that Dr. Levinsohn's recommendation for a home exercise program is unreasonable, or that pain management is needed.

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).

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.

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he or 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. See Iowa Code § 85.27(4). Thus, 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, 528 N.W.2d at 124.

Ultimately, determining whether care is reasonable under the statute is a question of fact. Long, 528 N.W.2d at 123. In this case, claimant has not made any showing that the care defendants are providing was not offered promptly, was not reasonably suited to treat the injury, or was unduly inconvenient. Dr. Levinsohn is board certified in orthopedic surgery. His record indicates that he considered claimant's recent setback, and believes it was a breakdown of scar tissue. There is nothing to suggest his recommendation that claimant continue with a home exercise program is unreasonable. Further, he noted she was to follow up as needed, and she is currently waiting to hear back from his office regarding another appointment. Claimant has not met her burden to prove the authorized care is unreasonable. As such, claimant is not entitled to alternate care at this time.

THEREFORE, IT IS ORDERED:

Claimant's petition for alternate medical care is denied.

Signed and filed this _____3rd____ day of April, 2023.

JESSICA L. CLEEREMAN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

James Hoffman (via WCES)

Lindsey Mills (via WCES)