

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MICHAEL DESPENAS,

Claimant,

vs.

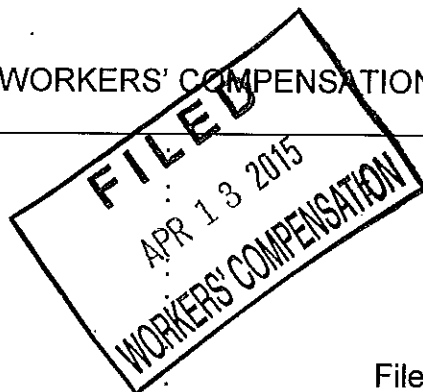
PRAIRIE MEADOWS RACETRACK
AND CASINO,

Employer,

and

EMC RISK SERVICES, LLC,

Insurance Carrier,
Defendants.



File No. 5051872

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. The expedited procedure of rule 876 IAC 4.48 is invoked by claimant, Michael Despenas.

The alternate medical care claim came on for hearing on April 7, 2015. The proceedings were digitally recorded which 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 claimant's exhibit 1, pages 1-10 and defendants' exhibits A-D. Defendants' twelve pages were received over claimant's objections. Claimant testified on his behalf.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care.

FINDINGS OF FACT

The undersigned having considered all of the testimony and evidence in the record finds:

Claimant filed a petition for alternate medical care on March 26, 2015. In addition the claimant asserted injury to his neck, back, head, urinary, and body as a whole. The requested care was treatment recommended by the authorized treating physician.

Defendants filed an answer on April 6, 2015 denying responsibility for any urinary issues but accepting responsibility for the neck, back, and head. Prior to the hearing the parties came to an agreement the claimant would be seen by a pain management specialist designated by the defendants.

The hearing proceeded solely on the issue of whether claimant was entitled to a neurological consult other than from defendant-selected physician, Steven Adelman, D.O.

The claimant has asserted that there is a breakdown in the physician-patient relationship between himself and Dr. Adelman. According to claimant's testimony, claimant went into Dr. Adelman's examination room at 7:45 a.m. and left at 8:04 a.m. Per the claimant, Dr. Adelman spent approximately seven to eight minutes in total examining the claimant. Claimant characterized Dr. Adelman as cold and flat and seemingly disinterested. Claimant was discharged with no further treatment recommendations other than to continue with the current regimen of medication.

The medical records reveal that Dr. Adelman diagnosed claimant with suffering from posttraumatic headache and tension-type headache that are aggravated by his concurrent cervical strain but that no further imaging of claimant's brain is required. (Exhibit 1, page 7) Dr. Adelman believed claimant could return to work four hours a day for three days a week with increases as tolerated. (Ex.1 p. 7) Claimant was invited to return if the need arose.

Upon cross examination, claimant agreed with Dr. Adelman's account of how the incident occurred and appeared not to have any issue with the report or diagnosis— simply with the lack of medication prescribed and Dr. Adelman's cold and dismissive demeanor.

Claimant reported the incident to his treating doctor, Todd Troll, M.D., who then signed a letter written by claimant's lawyer indicating that in light of claimant's views toward Dr. Adelman, another examination by a different neurologist was reasonable. Claimant asserts this as a treatment recommendation, but this conclusion was not independently reached by Dr. Troll. It appears to be an opinion formed after claimant approached Dr. Troll with his subjective complaints pertaining to Dr. Adelman. To call it a treatment recommendation is a stretch.

Claimant is suffering headaches, and he wants narcotic pain medication which was previously prescribed by Dr. Troll, also a neurologist. Dr. Troll had a prescription agreement with claimant in which Dr. Troll would be the only medical provider to issue narcotic medications. Claimant, however, received a second narcotic prescription from a dentist and Dr. Troll terminated any prescriptions. Claimant was then referred to Becky Blair, ARNP, for pain management.

Claimant's CT of the brain is normal, and the MRI of his spine is normal, but he continues to have serious headaches.

Defendants argue that they are entitled to direct care and that claimant should be required to return to Dr. Adelman at least once more. Claimant maintains that requiring him to return to Dr. Adelman is "ridiculous."

CONCLUSIONS OF LAW

Having admitted the head, neck and back injuries, the employer is required to furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance and hospital services and supplies for that injury. 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); 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. v. Reynolds, 562 N.W.2d 433 (Iowa 1997), 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.

The commissioner is justified in ordering alternate care when employer-authorized care has not been effective and evidence shows that such care is "inferior or

less extensive" than other available care requested by the employee. Long, 528 N.W.2d at 124; Pirelli-Armstrong Tire Co., 562 N.W.2d at 437.

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).

Alternate care includes alternate physicians 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, File No. 1020245 (September 3, 1992) (aff'd Dist Ct June 21, 1993).

In this case, claimant asserts that he is entitled to an evaluation by a different neurologist other than Dr. Adelman because of a treatment recommendation by Dr. Troll and because of a breakdown in the patient/physician relationship with Dr. Adelman.

The interference with the treatment recommendation claim is not tenable in this case. Dr. Troll gave no treatment recommendation. He provided an opinion upon the request of the claimant, written by the claimant's lawyer, and based solely on the claimant's own assessment of the clinical visit with Dr. Adelman. The claimant did not carry his burden that there was any interference with treatment recommendations of a treating medical provider.

As to the issue of the breakdown of patient/physician relationship with Dr. Adelman, claimant testified with concrete details about the lack of time spent with him during the examination. It is noted that the claimant's credibility was suspect. In the past, particularly with Dr. Troll, claimant had not been fully honest about his alcohol intake. (Ex. B) At hearing, claimant could not remember whether he saw a nurse or whether any history was taken by a nurse. He did remember the exact time of his arrival and departure and that Dr. Adelman described claimant as an everyday smoker when claimant maintains he is nicotine free.

Despite those problems, claimant was forthright when asked about his recent abuse of alcohol and admitted freely that he was seeking a medical provider who would prescribe narcotic medication. Further, the care Dr. Adelman provided was essentially no care--a continuation of previously provided medications and no diagnostic testing. He did not recommend physical therapy or any other remedies to assuage claimant's headaches.

In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997), the Supreme Court held that "when evidence is presented to the commissioner that the employer-authorized medical care has not been effective and that such care is 'inferior or less extensive' than other available care requested by the employee, . . . the commissioner is justified by section 85.27 to order the alternate care."

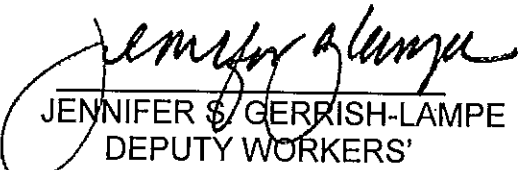
Based on claimant's testimony regarding his discomfort and lack of confidence with Dr. Adelman and the fact that Dr. Adelman is providing no alternate forms of therapy, medication, and/or treatment plans, claimant's petition for alternate medical care is granted. He is entitled to see a different neurologist other than Dr. Adelman.

However, it is still the defendants' right to choose the neurologist.

ORDER

THEREFORE IT IS ORDERED, claimant's petition for medical care is granted. He is entitled to a second opinion from a neurologist other than Dr. Adelman. The selection of that neurologist remains with the defendants.

Signed and filed this 13th day of April, 2015.


JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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