

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

GRISELDA PEREZ-AVINA,

Claimant,

vs.

BRENNEMAN PORK INC.,

Employer,

and

FARM BUREAU PROPERTY &
CASUALTY INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File Nos. 5050212.02
5050213.02

ALTERNATE MEDICAL
CARE DECISION

Head Note No.: 2701

On February 2, 2021, the claimant, Griselda Perez-Avina, filed two applications for alternate care (“Applications for Alternate Care”) alleging the defendants, Brenneman Pork, Inc. (“Brenneman Pork”) and Farm Bureau Financial Services (“Farm Bureau”) had refused to continue to authorize and pay for her treatment with Curtis Frier, D.O., who was ordered to be the authorized treating provider in August 2014, and requesting that the defendants be ordered to continue to authorize and pay for her care with Dr. Frier and not with a new physician. On February 11, 2021, Brenneman Pork and Farm Bureau filed an answer admitting liability and denying liability citing to an earlier arbitration decision involving the parties.

A hearing on the Applications for Alternate Care was held on Friday, February 12, 2021, at 10:30 a.m. Attorney Andrew Bribriesco represented Perez-Avina. Perez-Avina appeared and testified. Spanish interpreter Alejandra provided Spanish interpretation services during the hearing. Attorney James Russell represented Brenneman Pork and Farm Bureau. Heather Lutterman appeared and testified on behalf of Brenneman Pork and Farm Bureau. Exhibits 1 through 4 and A through G were admitted into the record. The proceeding was recorded digitally by iPhone, and the digital recording is the official record of the proceeding.

The undersigned has been delegated with the authority to issue final agency action in this matter. Appeal of this decision, if any, is to the district court pursuant to Iowa Code section 17A.19.

FINDINGS OF FACT

Perez-Avina sustained work injuries while working for Brenneman Pork on February 26, 2014, and April 16, 2014. An arbitration hearing was held before Deputy Workers' Compensation Commissioner Heather Palmer on December 19, 2017. Perez-Avina alleged she sustained permanent injuries to her bilateral upper extremities and right leg, and sequelae complex regional pain syndrome, depression, and anxiety caused by the work injury. Brenneman Pork and Farm Bureau averred Perez-Avina sustained a temporary, but not a permanent disability, and if she sustained a permanent disability, she only sustained a scheduled member disability to her right hand.

On April 10, 2018, I issued an arbitration decision, finding Perez-Avina had established the work injuries caused Perez-Avina to develop permanent chronic pain to her bilateral upper extremities, depression, and anxiety. I concluded Perez-Avina failed to establish the work injuries caused her to develop complex regional pain syndrome or an injury to her right leg. I awarded Perez-Avina permanent total disability benefits in addition to other relief. Brenneman Pork and Farm Bureau appealed the arbitration decision. On December 13, 2019, Workers' Compensation Commissioner Joseph Cortese, II, affirmed the decision. The Commissioner's decision became final agency action.

In August 2014, Brenneman Pork and Farm Bureau agreed to authorize care with Dr. Frier. (Ex. 1) Since that time, Perez-Avina has treated with Dr. Frier. (Perez-Avina Testimony) Dr. Frier treats Perez-Avina's bilateral upper extremity condition, anxiety, and depression. (Perez-Avina Testimony) Dr. Frier is a family medicine practitioner in Washington, Iowa, where Perez-Avina lives with her family. (Perez-Avina Testimony) Dr. Frier treats Perez-Avina for personal conditions unrelated to her work injuries. Perez-Avina also receives medical treatment from pain specialist, Maruti Kari, M.D., and she has a pain pump. (Perez-Avina Testimony) Perez-Avina receives telephone counseling services from Maria Buendia. (Perez-Avina Testimony) Perez-Avina's medical history is complicated as noted in the arbitration decision.

Farm Bureau contracts with myMatrixx. myMatrixx employs a pharmacist who reviewed Perez-Avina's medications. (Exs. A, B, 3) The pharmacist recommended changes to the medications Dr. Frier had prescribed to Perez-Avina and requested he submit paperwork to myMatrixx starting on August 19, 2020. (Ex. B, p. 2) myMatrixx contacted Dr. Frier's office on August 21, 2020 and an individual in his office stated she had placed the facsimile on Dr. Frier's desk, but he was out of the office. (Ex. B, p. 2)

myMatrixx contacted Dr. Frier's office on August 25, 2020, and August 31, 2020, to inquire when he would be submitting his case report. (Ex. B, p. 2) On August 31, 2020, an employee in the office responded, it may take him a week or two to respond. (Ex. B, p. 2) myMatrixx did not receive the report and attempted communication or communicated with Dr. Frier's office on September 10, 2020, September 14, 2020, September 16, 2020, September 17, 2020, September 22, 2020, and September 24,

2020. (Ex. B, p. 2) The last note provided at hearing from September 24, 2020, indicates the report had not been received. (Ex. B, p. 2)

On October 7, 2020, the defendants' counsel sent a letter to Dr. Frier noting myMatrixx, the pharmacy overseeing Perez-Avina's medications, had recommended several changes to the prescriptions he had prescribed and had requested he submit a report multiple times in the past two months and he had not responded. (Ex. C, p. 3) Defendants' attorney noted the pharmacist had recommended discontinuing morphine sulfate by gradual reduction, reducing Baclofen to 30 tablets monthly, reducing the daily dose of Duloxetine to 60 milligrams, discontinuing Lorazepam, discontinuing Movantik and replacing with Senna-S, and discontinuing Odansetron and replacing with promethazine. (Ex. C, p. 3) The letter notified Dr. Frier the defendants would no longer authorize refills of the medications the report recommended be discontinued. The recommendations were from a pharmacist. The records refer to a Kimberly Harper who is a clinical coordinator for myMatrixx. No information was provided during the hearing concerning Harper's qualifications or experience. There is no evidence a medical doctor recommended the changes.

On October 7, 2020, the defendants' counsel also sent a letter to Perez-Avina's attorney regarding the situation and stating "my client intends to exercise their right to direct medical care and no longer authorize continued use of the medications which the report recommended be discontinued," noting "we are concerned with the prospects of Dr. Frier continuing to serve as Ms. Perez' authorized physician," and stating the defendants "are in the process of looking for a provider in Ms. Perez' general area who would be willing to overtake her treatment in replace of Dr. Frier." (Ex. D, p. 6) Defendants' counsel also stated the defendants were concerned about being "asked to provide care unrelated to care they were ordered to provide as part of the Arbitration Decision and subsequent Appeal Decision. Most notably, we continue to have medication requests sent to us which are either wholly unrelated or directly related to Ms. Perez' ongoing lower extremity condition." (Ex. D, p. 6)

Brenneman Pork and Farm Bureau scheduled an appointment for Perez-Avina with Rick Garrels, M.D., with UnityPoint Occupational Health on November 19, 2020, at 11:00 a.m., for treatment. (Ex. E) The communication noted Dr. Garrels has twenty plus years of experience and has a history of treating patients with chronic complaints. (Ex. E, p. 7)

Dr. Frier sent a letter to Perez-Avina's counsel and a separate letter to the defendants' counsel on January 13, 2021, stating he wanted to continue treating Perez-Avina, noting she has complex regional pain syndrome, which has resulted in bilateral upper extremity pain, extending to her lower body and ankle, and noting Perez-Avina had recently improved with respect to her self-care. (Exs, 2, 3) In the letter to the defendants' counsel, Dr. Frier noted he had completed the clinical and safety evaluation form from myMatrixx, enclosed the form, and summarized the changes he was making to the medications he had prescribed to Perez-Avina. (Ex. 3)

During Perez-Avina's most recent appointment on November 18, 2020, Dr. Frier's treatment record documents Perez-Avina has made some progress with her self-care, noting she is able to crawl on her hands in a fist on the back of her knuckles to go to the bathroom, she is able to lift herself up to the toilet and wipe her frontside, but not her backside, she can dress herself, but it make take an hour and a half, she can shower by herself, which takes approximately one to two hours, and she can crawl onto the mattress she sleeps on, which is located on the floor. (Ex. 4)

Brenneman Pork and Farm Bureau wish to transfer Perez-Avina's care to Dr. Garrels. Perez-Avina has objected to the transfer and filed the instant Applications.

Perez-Avina's husband currently takes her to her appointment with Dr. Frier. (Perez-Avina Testimony) Dr. Frier's office is located three minutes from Perez-Avina's home. (Perez-Avina Testimony) Dr. Garrel's office in Bettendorf is approximately ninety minutes from her home, although he has agreed to meet with her after the first appointment in Muscatine. (Lutterman Testimony)

Dr. Frier treats Perez-Avina's bilateral upper extremities, anxiety, and depression. (Perez-Avina Testimony) He is also her primary care provider. (Perez-Avina Testimony) Perez-Avina views her primary care as related to her work injuries. (Perez-Avina Testimony) Perez-Avina testified she has confidence in Dr. Frier because he knows a lot about her condition. (Perez-Avina Testimony) Perez-Avina agreed she would be willing to see Dr. Frier separately for her personal and work-related conditions. (Perez-Avina Testimony)

Lutterman works for Farm Bureau and she has been the claim adjuster for Perez-Avina's cases since January 2017 and manages her care and benefits. (Lutterman Testimony)

Lutterman testified Perez-Avina has submitted bills from Dr. Frier that are for personal issues unrelated to her work injuries. (Lutterman Testimony) Lutterman provided information concerning bills from October 2018 for constipation and January 2019 for vaccines, which Farm Bureau refused to pay. (Lutterman Testimony) Lutterman relayed she had not spoken with anyone from Dr. Frier's office regarding the unpaid bills. (Lutterman Testimony)

Lutterman testified Dr. Frier has treated Perez-Avina for complex regional pain syndrome and for her leg, which are conditions which were not deemed to be related to the work injuries. (Lutterman Testimony) Lutterman has not spoken with Dr. Frier about his billing or asked him to separate his treatment of Perez-Avina's work-related conditions from her personal conditions. (Lutterman Testimony)

Lutterman reported Dr. Frier failed to respond to inquiries from myMatrixx and he was treating conditions that were not deemed to be compensable at hearing, and Farm Bureau decided to look for another provider for Perez-Avina. (Lutterman Testimony) She testified myMatrixx contacted Dr. Kari in September 2020 and Dr. Kari responded

within a week. (Lutterman Testimony) A copy of that communication was not produced at hearing. Defendants produced a statement from Dr. Kari dated December 9, 2020, sent to myMatrixx on December 3, 2020, which documents Perez-Avina is not taking morphine anymore. (Ex. G)

Lutterman testified she selected Dr. Garrels to treat Perez-Avina's bilateral upper extremity condition, anxiety, and depression because he is an occupational medicine physician in the area with twenty years of experience who is willing to treat Perez-Avina, given she has a pain pump. (Lutterman Testimony) Lutterman had contacted a physician closer to Perez-Avina's home, but that physician would not work with a patient with a pain pump. (Lutterman Testimony) Lutterman relayed Dr. Garrels is board-certified in occupational medicine. (Lutterman Testimony) Lutterman testified she does not know if Dr. Garrels has actually treated a patient with anxiety or depression.

CONCLUSIONS OF LAW

Under Iowa Code section 85.27, an employer is required to furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under Iowa Code chapters 85 and 85A. The employer has the right to choose the provider of care, except when the employer has denied liability for the injury. Id.

"The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." Id. § 85.27(4). If the employee is dissatisfied with the care, the employee should communicate the basis for the dissatisfaction to the employer. Id. If the employer and employee cannot agree on alternate care, the commissioner "may, upon application and reasonable proofs of necessity therefore, allow and order other care." Id.

The employee bears the burden of proving the care authorized by the employer is unreasonable. R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 196 (Iowa 2003). "The employer's obligation under the statute turns on the question of reasonable necessity, not desirability." Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995). The care authorized by the employer is unreasonable if it is ineffective, inferior, or less extensive than the care requested by the employee. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997). The determination of whether care is reasonable is a question of fact. Long, 528 N.W.2d at 123.

Perez-Avina avers the care the defendants are proposing with Dr. Garrels is ineffective, inferior, or less extensive than the ongoing care she requests with Dr. Frier because she has treated with Dr. Frier since 2014, Dr. Frier has experience treating her mental health conditions, and Dr. Garrels does not have experience treating patients with mental health conditions. Defendants reject her assertion and allege Dr. Garrels is qualified to provide the care Perez-Avina needs.

There was no evidence presented at hearing Dr. Garrels has ever provided treatment to a patient with anxiety, depression, or any other mental health condition. Dr. Garrels did not testify at hearing; he did not submit an affidavit documenting he has ever treated a patient with anxiety, depression, or any other mental health condition.

In the case of Wilson v. Hillcrest Family Servs., File No. 5037882, 2015 WL 13306976 (Iowa Workers' Comp. Comm'r Feb. 5, 2015), pursuant to an order from the Workers' Compensation Commissioner, the presiding deputy was delegated authority to issue final agency action. In the case the defendants scheduled an appointment for the claimant's mental health conditions with Dr. Garrels. The deputy noted during the hearing "[t]he Association conceded. . . that Dr. Garrels is an occupational medicine physician with no mental health expertise." The deputy commissioner granted the claimant's request for alternate care, finding the care offered was not reasonably suited to treat the claimant's medical conditions, and allowing the claimant to seek medical treatment of the claimant's own choosing. In reviewing the Iowa Workers' Compensation published opinions on Westlaw, I was unable to find any opinion where Dr. Garrels was providing treatment for a person with anxiety, depression, or any other mental health condition.

Dr. Frier has been providing care to Perez-Avina for her chronic pain, anxiety, and depression since 2014. He has experience treating Perez-Avina's anxiety and depression. His most recent medical record notes Perez-Avina's ability to perform activities of daily living recently improved. To the contrary, there was no evidence presented at hearing Dr. Garrels has any experience treating persons with anxiety, depression, or any other mental health condition. While the defendants take issue with Dr. Frier's treatment of Perez-Avina's personal health conditions, the evidence reveals the treatment offered by the defendants with Dr. Garrels is ineffective, inferior, and less extensive than the care requested by Perez-Avina with Dr. Frier. The Applications for Alternate Care are granted.

ORDER

Perez-Avina's Applications for Alternate Medical Care are granted. Defendants are responsible for all treatment provided by Dr. Frier for her bilateral upper extremity condition, anxiety, and depression, caused by the work-injury as ordered in the April 10, 2018 arbitration decision, which was affirmed on appeal. Defendants are not responsible for conditions unrelated to the work injury.

Signed and filed this 15th day of February, 2021.



HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Andrew Bribiesco (via WCES)

James Russell (via WCES)