

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JAMES KNIEF,
Claimant,

FILED

MAR 28 2016

vs.

WORKERS COMPENSATION

BECK BROTHERS FARM,
Employer,

File Nos. 5052884; 5052885

ALTERNATE MEDICAL

and

CARE DECISION

FARM BUREAU PROPERTY &
CASUALTY INSURANCE COMPANY,

Insurance Carrier,
Defendants.

HEAD NOTE NO: 2701

STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapters 17A and 85. The expedited procedure of rule 876 IAC 4.48, the "alternate medical care" rule, is requested by claimant, James Knief.

Claimant filed a petition on March 16, 2016. He requested the opportunity to direct his own medical treatment based on defendants' alleged abandonment of medical care. At the time of telephonic hearing, defendants admitted the occurrence of work injuries on March 21, 2014 and June 16, 2014, as well as liability for the conditions sought to be treated by this proceeding.

The alternative medical care claim came on for hearing on March 28, 2016. The proceedings were recorded digitally, and constitute the official record of the hearing. By an order filed February 16, 2015 by the workers' compensation commissioner, this decision is designated final agency action. Any appeal would be by petition for judicial review under Iowa Code section 17A.19.

The record in this matter consists of claimant's exhibits 1 through 4 and the testimony of claimant. Defendants did not offer written or testimonial evidence.

ISSUE

The issue presented for resolution is whether claimant is entitled to alternate medical care in the form of the ability to direct his own medical treatment.

FINDINGS OF FACT

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

Claimant suffered an admitted work related injury on March 21, 2014. On this date, claimant suffered a right knee injury. Subsequently, on June 16, 2014, claimant was involved in a stipulated work related motor vehicle accident. On this date, claimant sustained injuries to his neck, left arm and shoulder, back, and right knee.

On December 30, 2015, claimant filed an alternate medical care petition seeking treatment of his neck injury. On January 11, 2016, defendants faxed claimant's medical records to Dr. Manely¹ for review. Documentation reveals defendants were to call the following day regarding scheduling of an appointment for claimant. (Exhibit 3, page 3) Defendants' counsel then advised claimant's counsel an appointment with Mr. Manely had been authorized and counsel would advise as to the date and time of the appointment, once it had been arranged. (Ex. 3, p. 3) On January 13, 2016, claimant filed a dismissal of the pending alternate care petition based upon defendants' authorization of care of claimant's neck.

On February 7, 2016, claimant's counsel contacted defendants inquiring as to the status of the appointment with Mr. Manely. A representative from defendant-insurance carrier indicated she would follow up and advise claimant once she received word regarding scheduling. (Ex. 3, p. 1) On February 12, 2016, defendants provided claimant's attorney with a list of several available appointment times with Mr. Manely. (Ex. 4)

Claimant presented for evaluation with William Manely, PA-C, on February 22, 2016. Mr. Manely noted claimant had been referred by defendant-insurance carrier for a "second opinion evaluation" only. He further noted he was not authorized to provide treatment to claimant. (Ex. 1, p. 1) Following evaluation, Mr. Manely opined claimant's neck, left arm, and back complaints were related to the reported work injury of June 16, 2014. He recommended a referral to an orthopedic specialist and a physiatrist. (Ex. 1, pp. 3-4)

On February 26, 2016, claimant's counsel contacted defendants' counsel and represented Mr. Manely had recommended an MRI and asked counsel to look into authorization. (Ex. 2, p. 3)

¹ While the parties consistently refer to "Dr. Manely," Mr. Manely is a physician's assistant with Unity Point Health. See Exhibit 1, page 4.

On March 7, 2016, claimant's counsel again contacted defendants' counsel. On this occasion, claimant's counsel represented Mr. Manely informed claimant he had not been authorized to provide care, but recommended an MRI. Claimant's counsel expressed the need to potentially file an alternate care petition regarding the recommended care. (Ex. 2, p. 2)

Later that same date, defendants' counsel responded to claimant's counsel and advised he had just received Mr. Manely's report. Defendants' counsel noted Mr. Manely had not recommended an MRI, but had referred claimant for orthopedic evaluation. Counsel indicated defendants would authorize that referral and had begun inquiring as to physicians who would agree to see claimant based on Mr. Manely's referral. (Ex. 2, p. 2)

Upon receipt of Mr. Manely's report on March 7, 2016, claimant's counsel responded to defendants' counsel. Claimant's counsel indicated it appeared Mr. Manely had recommended referrals to a physiatrist and orthopedic specialist. Assuming both referrals were authorized, claimant's counsel indicated there would be no need for an alternate care petition. (Ex. 2, p. 1)

On March 16, 2016, claimant filed the instant alternate care petition, seeking control over his own medical care due to defendants' alleged abandonment of care with respect to his neck, left arm and shoulder, and back conditions.

During telephonic hearing, defendants denied abandoning claimant's care. Defendants' counsel represented defendants' intent was to arrange for Mr. Manely to treat claimant's conditions. Counsel acknowledged Mr. Manely's report indicated he was not authorized to provide treatment; counsel attributed this discrepancy to a miscommunication between defendants and Mr. Manely's office. Defendants' counsel further represented upon receipt of Mr. Manely's report, defendant-insurance carrier contacted the University of Iowa Hospitals & Clinics (UIHC) with respect to arranging evaluations by a physiatrist and an orthopedic specialist. Counsel represented UIHC recommended claimant see Joseph Chen, M.D., an orthopedic physiatrist. Counsel represented evaluation with Dr. Chen has been authorized, but conceded an appointment had not yet been scheduled.

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 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).

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 1975).

“Determining what care is reasonable under the statute is a question of fact.” Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995).

Defendants admit claimant sustained work related injuries on March 21, 2014 and June 16, 2014; defendants further admit responsibility for the neck, left arm and shoulder, and back complaints at the heart of this alternate care proceeding. The essence of claimant's argument is that claimant has been forced to file two alternate care petitions in order to secure treatment of these conditions. Claimant filed the first petition in December 2015 and upon representation that further care had been authorized with Mr. Manely, voluntarily dismissed his petition. Despite authorizing care with Mr. Manely, it appears defendants took no further action with respect to arranging the evaluation from January 11, 2016 until February 7, 2016. Claimant ultimately presented to Mr. Manely on February 22, 2016, almost two months following filing of the original alternate care petition. Upon attendance at this appointment, claimant was then notified Mr. Manely believed he was not authorized to treat claimant, but only to opine as to causation and offer treatment recommendations.

Claimant is understandably frustrated by this chain of events. He has sustained work related injuries for which he requires medical attention; however, he has not been

provided with dependable medical treatment. Despite the appointment with Mr. Manely, claimant remains in essentially the same position as he occupied prior to the first alternate care proceeding: without appropriate medical treatment.

That being said, defendants have authorized claimant to present to Dr. Chen for evaluation of his conditions. As an orthopedic physiatrist, Dr. Chen is qualified to meet both the referrals issued by Mr. Manely. Furthermore, even had Mr. Manely understood his authorization to include treatment of claimant's conditions, Mr. Manely is not a physiatrist or orthopedic specialist. Thus, a referral to a physician(s) such as Dr. Chen would have been required regardless of Mr. Manely's authorization to treat claimant.

Upon receipt of Mr. Manely's report, on or about March 7, 2016, defendants investigated a proper referral for claimant and arrived at Dr. Chen. Defendants conveyed authorization of, at minimum, an orthopedic referral on March 7, 2016. Given Dr. Chen has been authorized to evaluate claimant and is uniquely qualified as an orthopedic physiatrist, it is determined the care being offered by defendants is reasonable in theory and defendants have not abandoned care.

However, given past delays in scheduling and miscommunication with respect to the extent of authorizations, the undersigned cannot find the care offered by defendants is entirely reasonable. It is therefore determined defendants maintain the ability to direct claimant's care; however, the authorized referral to Dr. Chen must manifest in an appointment to take place within 20 days of this decision. Furthermore, defendants shall clearly convey to Dr. Chen that he is authorized to treat claimant's work related complaints and not merely evaluated causation and attendant issues.

ORDER

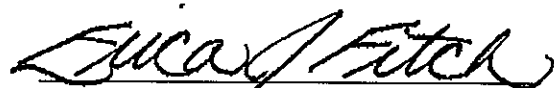
THEREFORE, IT IS ORDERED:

Claimant's application for alternate care is granted in part and denied in part.

Claimant is not granted the ability to direct his own medical treatment.

Defendants shall arrange for Dr. Chen to assume claimant's care at an appointment to occur no more than 20 days from the date of this decision.

Signed and filed this 28th day of March, 2016.



ERICA J. FITCH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies To:

Dustin M. Mueller
Attorney at Law
2423 Ingersoll Ave.
Des Moines, IA 50312
dustin.mueller@sbsattorneys.com

Benjamin T. Cook
Attorney at Law
5400 University Ave.
West Des Moines, IA 50266
ben.cook@blfinancial.com

EJF/srs