

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JARED KAIN,

Claimant,

File No. 21006052.03

vs.

JEO CONSULTING GROUP INC.,

ALTERNATE MEDICAL CARE

Employer,

DECISION

and

THE PHOENIX INSURANCE CO.,

Insurance Carrier,
Defendants.

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, Jared Kain. Claimant appeared telephonically and through his attorney, Joseph Powell. Defendants appeared through attorney Julie Burger.

Claimant's application for alternate medical care was filed on October 11, 2023. Claimant alleges bilateral arm injuries occurring on August 5, 2020. He seeks authorization to be seen at Mayo Clinic, pursuant to the referral of Patricia Kallemeier, M.D., the authorized treating physician. Defendants filed an answer on October 19, 2023, and admitted liability for the injury alleged. Defendants' answer states that medical care has been directed to Joseph Buckwalter, M.D., at the University of Iowa Hospital and Clinics (UIHC).

The claim came on for hearing on October 23, 2023. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's July 21, 2023 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 Exhibits 1 and 2, consisting of 10 pages; Defendants' Exhibit A, consisting of 2 pages, and claimant's sworn testimony. ¹ Both attorneys also presented arguments regarding their clients' positions.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of authorization for claimant to seek treatment at the Mayo Clinic, pursuant to the referral of Patricia Kallemeyer, M.D.

FINDINGS OF FACT

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

Claimant sustained bilateral upper extremity injuries while working for defendant employer on August 5, 2020. Shortly after the injury, claimant began authorized treatment with Dr. Kallemeyer at Des Moines Orthopaedic Surgeons (DMOS). (Claimant's Testimony) Claimant testified that he trusts Dr. Kallemeyer and they have a good relationship.

At his July 20, 2023 appointment with Dr. Kallemeyer, claimant reported continuing bilateral elbow pain, and continuing bilateral ring and small finger numbness and tingling with nocturnal waking. (Claimant's Exhibit 1, page 1) After examination and discussion with claimant, Dr. Kallemeyer noted that she had no additional surgical treatments to offer, as she does not think a tennis elbow surgery will be helpful. (Cl. Ex. 1, p. 2) However, due to claimant's ongoing symptoms, Dr. Kallemeyer recommended a second opinion evaluation at the Mayo Clinic with Shawn O'Driscoll, M.D. Claimant testified that Dr. Kallemeyer told him that the remaining treatment for his elbow condition is something she does not do, so he asked for a referral because he trusts Dr. Kallemeyer.

Dr. Kallemeyer provided a patient status report that day indicating claimant had no work restrictions, and recommending a second opinion at Mayo Clinic with Dr. O'Driscoll. (Cl. Ex. 1, p. 4) On July 24, 2023, Dr. Kallemeyer sent a "test order form" to the insurance carrier, containing the specific referral to "Mayo Clinic – Dr. Shawn O'Driscoll." (Cl. Ex. 1, p. 5) On July 25, 2023, the insurance carrier provided a letter indicating that the referral to "Mayo Clinic – Dr. Shawn O'Driscoll" was determined to be medically necessary, and was therefore approved. (Cl. Ex. 2, p. 8)

Claimant testified that within a couple of weeks, as he was preparing for his appointment at Mayo Clinic, he learned that Dr. O'Driscoll had recently retired. Upon learning this news, he called Dr. Kallemeyer to let her know. Claimant testified that Dr. Kallemeyer then recommended he see Sanjeev Kakar, M.D., also at Mayo Clinic.

¹ Claimant's exhibit list includes an exhibit 3; however, at hearing claimant's attorney clarified there are only 2 exhibits.

Claimant testified that Dr. Kallemeier told him she has seen Dr. Kakar give presentations and believes he is a good choice. Claimant testified that sometime in August he learned that Dr. Kakar had agreed to see him. The Mayo Clinic wanted an updated MRI of the elbow, and Dr. Kallemeier ordered the MRI on August 9, 2023. (Cl. Ex. 1, pp. 6-7) However, since that time claimant has learned that the Mayo Clinic physicians prefer to order the MRI on their own, so the doctor can specify the order.

On August 16, 2023, claimant's attorney emailed defense counsel regarding the Mayo Clinic referral. (Cl. Ex. 2, pp. 9-10) Defense counsel replied that the referral to Mayo had not been authorized, and defendants had a request in to Dr. Buckwalter at UIHC and were waiting to hear back. (Cl. Ex. 2, p. 9) Claimant's attorney replied, requesting Dr. Kallemeier's referral to Mayo Clinic be authorized, and noting his client's dissatisfaction with treatment.

On September 26, 2023, defense counsel advised claimant's attorney that an appointment had been scheduled for claimant with Dr. Buckwalter, to take place on November 14, 2023. (Defendants' Exhibit A, page 2) On September 28, 2023, the attorneys clarified via email that the appointment with Dr. Buckwalter was an appointment for medical treatment pursuant to Iowa Code section 85.27, as opposed to an independent medical evaluation under section 85.39. (Def. Ex. A, p. 1)

Claimant testified that he wants to follow Dr. Kallemeier's treatment recommendations, as he trusts her "one hundred percent." Claimant acknowledged that there is no written documentation regarding Dr. Kallemeier's referral to Dr. Kakar after learning of Dr. O'Driscoll's retirement. He denies that he provided a name to Dr. Kallemeier or specifically asked her to refer him to the Mayo Clinic for treatment. Claimant also testified that he has reviewed Dr. Buckwalter's biography online, and did not see any references to Dr. Buckwalter having clinical expertise with respect to elbow conditions. I find claimant to be a credible witness.

I find that Dr. Kallemeier, the authorized treating physician, made a specific referral to Dr. O'Driscoll at the Mayo Clinic. Upon learning of the doctor's recent retirement, she made a specific referral to Dr. Kakar, another physician at the same clinic. Dr. Kakar is ready, willing, and able to treat claimant. A specific referral for treatment purposes, even for a second opinion, is generally considered a treatment recommendation, and defendants are not entitled to substitute their judgment for that of the authorized treating physician. Therefore, claimant is entitled to alternate medical care.

REASONING AND CONCLUSIONS OF LAW

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.

Iowa Code § 85.27(4).

Defendants' "obligation under the statute is confined to *reasonable* care for the diagnosis and treatment of work-related injuries." Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995) (emphasis in original). In other words, the "obligation under the statute turns on the question of reasonable necessity, not desirability." Id.

Similarly, an application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care 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.

An employer's right to select the provider of medical treatment to an injured worker does not include the right to determine how an injured worker should be diagnosed, evaluated, treated, or other matters of professional medical judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 18, 1988). Defendants are not entitled to interfere with the medical judgment of their own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening, June 17, 1986).

The right to choose the care means the right to choose the provider, not the treatment modalities recommended by the provider. The employer must provide the treatment, testing, imaging or other treatment modalities recommended by its own authorized treating physician, even if another consulting physician disagrees with those recommendations. Haack v. Von Hoffman Graphics, File No. 1268172, p. 9 (App. July 31, 2002) [MRI and x-rays]; Cahill v. S & H Fabricating & Engineering, (Alt Care, File No. 1138063, May 30, 1997) (work hardening program); Hawxby v. Hallett Materials, File No. 1112821, (Alt Care, February 20, 1996); Leitzen v. Collis, Inc. File No. 1084677, (Alt Care, September 9, 1996). The right to choose the care does not authorize the employer to interfere with the medical judgment of its own treating physician. Boggs v Cargill, Inc. File No. 1050396, (Alt Care, January 31, 1994).

Ultimately, determining whether care is reasonable under the statute is a question of fact. Long, 528 N.W.2d at 123. In this case, the authorized treating physician, Dr. Kallemeier, has made a specific referral to the Mayo Clinic, first to Dr.

O'Driscoll and then to Dr. Kakar upon learning of Dr. O'Driscoll's retirement. A specific referral for treatment purposes, even for a second opinion, is generally considered a treatment recommendation and can be ordered through alternate care. Dr. Kallemeier is intimately familiar with claimant's condition and has the medical expertise to refer claimant for appropriate treatment. Defendants cannot interfere with the medical judgement of their own authorized physician. The failure to follow medical recommendations for treatment is the failure to provide reasonable care. As such, claimant is entitled to alternate medical care.

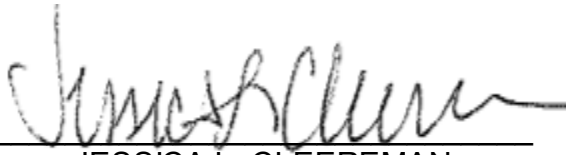
ORDER

THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care is granted.

Defendants will immediately authorize claimant for treatment at the Mayo Clinic with Dr. Kakar, as recommended by Dr. Kallemeier.

Signed and filed this 24th day of October, 2023.



JESSICA L. CLEEREMAN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Joseph Powell (via WCES)

Julie Burger (via WCES)