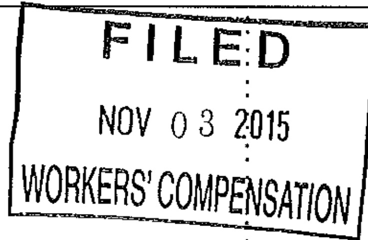
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



CINDY RICHARDSON,

Claimant,

vs.

KWIK TRIP, INC.,

Employer,

and

ZURICH AMERICAN INSURANCE CO.,

Insurance Carrier,
Defendants.

File No. 5046182

ALTERNATE MEDICAL CARE DECISION

Head Note No.: 2701

STATEMENT OF THE CASE

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

Claimant filed a petition on October 16, 2015 and in the petition alleged the defendants were not providing the care recommended by authorized treating provider Sherry Vesely. The claimant seeks an order establishing that the defendants do not have any rights in choosing care and that the defendants must promptly authorize any and all care recommended by Dr. Vesely, Dr. Sedlacek, and Dr. Beane without any undue inconvenience to the claimant. The claimant also requested sanctions and asserted that the defendant had abandoned care.

Defendants filed an answer on October 19, 2015 admitting the occurrence of a work injury and accepting liability for the back condition. In the letter attached to the answer, the defendants authorize treatment with Douglas Sedlacek, M.D., as well as chiropractic treatment but recommended that claimant see Eric Bantz, D.C., instead of Joel Beane, D.C.

The alternate medical care claim came on for hearing on November 2, 2015. The proceedings were recorded, and constitute the official record of the matter. Pursuant to the Order of Delegation filed on February 16, 2015, by workers compensation commissioner, this decision is designated as a final agency action. Appeal of this decision is by petition for judicial review pursuant to Iowa Code section 17.19.

The record consists of Claimant's Exhibits 1-6, Defendants Exhibit A, and the testimony of the claimant.

ISSUE

The issue presented for resolution is whether claimant is entitled to alternate medical care in the form of an order removing the right to direct care from the defendants along with additional orders authorizing care from Dr. Vesely, Dr. Sedlacek, and Dr. Beane.

FINDINGS OF FACT

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

Claimant was found to have suffered a 10 percent loss of earning capacity arising out of a work injury to her back on September 16, 2011. Claimant maintains that her back injury is a permanent condition that cannot be improved.

Claimant filed an alternate medical care petition on June 30, 2015. A decision was rendered on July 15, 2015 which authorized Sherry Vesely a nurse practitioner as an authorized treating physician. The decision stated, "Defendant shall authorize and provide care recommended by Nurse Practitioner Vesely including, but not limited to, chiropractic care, pain management, physical therapy, pain medication, epidural injections, or visits to a pain specialist."

Claimant was seen by Ms. Vesely on August 24, 2015 wherein Ms. Vesely recommended pain injections and chiropractic treatment. On September 4, 2015, Mr. Neal communicated the claimant's desire to have care with Dr. Sedlacek. On the same day, the counsel for defendants wrote back that there is no indication from Ms. Vesely as to who was to provide the care and that the claimant did not have the option of choosing her own providers.

On September 8, 2015, claimant sought care with Dr. Sedlacek for an injection. As Dr. Sedlacek had not been authorized by the defendants (and not been named specifically by Ms. Vesely until September 18, 2015), the insurance carrier refused to pay. Claimant went ahead with the injection and filed with her private health insurance company.

Dr. Sedlacek would like to see claimant again for a medial block and if the medial block was successful, he would recommend radiofrequency treatment. Claimant has not authorized or scheduled any further appointments due to the cost and uncertainty as to whether that medical care would be provided by the workers by the defendant employer as per the previous order.

On October 10, 2015, counsel for the claimant sent the defendants' medical records of Dr. Vesely showing that she has specifically recommended Dr. Sedlacek and Dr. Beane. The care with Dr. Sedlacek was authorized on October 19, 2015, along with chiropractic care with Dr. Bantz.

Claimant testified that the referral to Dr. Beane occurred as follows:

Ms. Vesely asked claimant who she was seeing for chiropractic treatment. The claimant responded she had seen Dr. Beane since 2012 for the back but for many years prior to that for other problems. Dr. Vesely then replied "so we might as well keep Dr. Beane since he knows what is going on."

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

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).

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 19, 1988).

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 June 17, 1986).

When a designated physician refers a patient to another physician, that physician acts as the defendant employer's agent. Permission for the referral from defendant is not necessary. Kittrell v. Allen Memorial Hospital, Thirty-fourth Biennial Report of the Industrial Commissioner, 164 (Arb. November 1, 1979) (aff'd by industrial commissioner). See also Limoges v. Meier Auto Salvage, I Iowa Industrial Commissioner Reports 207 (1981).

The defendants argue that they maintain the right to choose the medical provider who treats the claimant. While the defendant does have the right to choose care they must do so in a timely and prompt fashion less they be deemed to have abandoned the care. Further, the referrals do not need permission or approval from the defendants.

The alternate care procedure requires the claimant to express dissatisfaction with the care provided. This was done via email on September 4, 2015 with a follow-up on October 10, 2015. It is on October 10, 2015 that the specific doctors recommended by Dr. Vesely were relayed to the defendant s. Defendants replied within 9 days of the expression of dissatisfaction. That period of time cannot be said to have been an abandonment of care.

While the employer has the right to choose the provider of care, the right to select the provider does not include the right to determine how an injured worker should be diagnosed, evaluated, treated, or other matters of professional judgment. When a designated physician refers a patient to another physician that physician acts as the defendant employers agent and further permission for the referral from the defendant is not necessary.

In this particular case the defendants point out that the referral was not done based on any medical justification but due to the fact that the claimant requested Dr. Beane. Defendant argues that the claimant has seen Dr. Beane for several years and has received no improvement in her condition. The claimant asserts that her condition is permanent and cannot be changed even with treatment.

It is the claimant's burden to show that the care offered by defendants is not reasonable or presents an undue inconvenience to the claimant. In this case, Dr. Bantz is a chiropractor who is in the same locale as the claimant. She asserts that no treatment can improve her condition, only maintain it. Ms. Vesely has no personal

knowledge or experience with claimant's choice of medical provider, but instead referred to Dr. Beane primarily because of claimant's suggestion.

To find that referrals based on an injured worker's request or suggestion should automatically be deemed approved would diminish the employer's right to choose the medical provider. In this case, based on the evidence it cannot be found that Ms. Vesely chose Dr. Beane based on some medical reason or judgment. Therefore, it cannot be said that Ms. Vesely was acting as an agent of the defendant. Rather, Ms. Vesely was acting as the agent of the claimant. See also (Lacina v. Fansteel, Inc., File No. 5031505 (Alt. Care January 19, 2011))

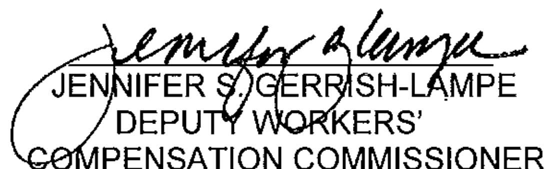
Claimant did not carry her burden to show that the care of Dr. Bantz is unreasonable and unduly inconvenient.

ORDER

THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care is denied in part and granted in part. As to the issue of abandonment of care, claimant's petition is denied. There is no finding of abandonment of care. As to the issue of Dr. Sedlacek, it is determined that the issue is granted. Defendants have designed Dr. Sedlacek as an authorized treating physician. His recommendations for treatment shall be followed. As to the issue of Dr. Beane, the petition is denied.

Signed and filed this 3rd day of November, 2015.



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