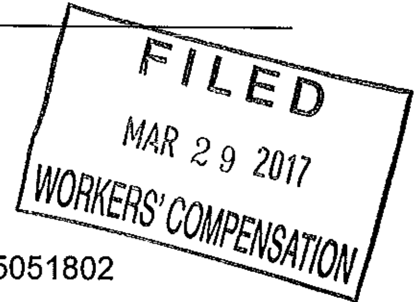
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CHARLES L. COLLING, Claimant, vs. MIDWESTERN MECHANICAL, Employer, and TWIN CITY FIRE INS. CO., c/o CREATIVE RISK SOLUTIONS, Insurance Carrier, Defendants.	:	File No. 5051802 ALTERNATE MEDICAL CARE DECISION Head Note No.: 2701



STATEMENT OF THE CASE

Charles Colling, claimant, filed a petition in arbitration seeking workers' compensation benefits from Midwestern Mechanical, employer, as a result of an injury he allegedly sustained on June 25, 2014, that allegedly arose out of and in the course of her employment. This case was heard and fully submitted in Des Moines Iowa, on March 28, 2017. The evidence in this case consists of the testimony of claimant, Exhibits 1-3, and Exhibit A.

FINDINGS OF FACT

Having reviewed the written evidence before and during this telephonic hearing; having heard the testimony of the witnesses and the statements of counsel, I make the following Findings of Fact:

1. On or about June 25, 2014, claimant suffered an injury which arose out of and in the course of his employment with Midwestern Mechanical. While he was working as a journeyman plumber, he was struck in the left testicle. Over time, he developed bilateral testicular neuropathic pain.

2. As a result of the work injury, claimant received authorized care from urologist Craig Block, M.D., who subsequently referred claimant to a pain management specialist, Jeremy Poulson, D.O. Dr. Poulson began treating claimant in September

2014 and continued to do so until early in 2017 when defendants terminated treatment and care pursuant to an opinion letter from Douglas Martin, M.D., decreeing that the claimant's current symptomatology arising from the work injury requires no additional care. (Ex. A) Dr. Martin is a board certified family practice physician, as well as a fellow in the college of occupational and environmental medicine and a fellow in the American Academy of Disability Evaluating Physicians. (Ex. A, p. 10)

Claimant was evaluated by another urologist, Dr. Deibert, who initially recommend injections. When injection therapy failed to provide anything but temporary relief, Dr. Deibert recommended surgical denervation. On September 20, 2016, claimant underwent bilateral subinguinal spermatic cord denervation. (Ex. A, p. 2) Dr. Deibert recommended claimant continue with his Lyrica and returned claimant to the care of Dr. Poulson.

3. Claimant expressed dissatisfaction with the offered care. (Ex. C 3)

4. Claimant desires ongoing medical care including treatment with Dr. Poulson and a continuation of the prescriptions ordered by Dr. Poulson including, but not limited to, Lyrica, Tramadol and Cymbalta.

5. Since the defendants denial of care, claimant has not been able to obtain Lyrica. He is currently unemployed. His group health insurance does not cover Lyrica, but rather the generic alternative Gabapentin. Gabapentin is not efficacious for the claimant, but out of pocket coverage for Lyrica would cost claimant $200.00 a month which he is unable to afford.

6. While accepting the work injury, defendants argue that pursuant to the opinion of Dr. Martin, no further care is reasonable care. Dr. Martin opined claimant's prescriptions for Tramadol and Lyrica are unnecessary as literature does not suggest that either are appropriate in claimant's condition. First, Dr. Martin is unconvinced that claimant has a neuropathic pain disorder for which Lyrica is appropriate treatment. (Ex. A, p. 6) Second, Dr. Martin believes that acetaminophen is equally efficacious as Tramadol. (Ex. A, p. 6)

7. Dr. Poulson, a board certified pain medicine doctor, wrote that claimant has reduced VAS pain scores while on Lyrica and Tramadol whereas acetaminophen is not as helpful.

CONCLUSIONS OF LAW

As claimant is seeking relief in this case, claimant bears the burden of proof to show by a preponderance of the evidence that the offered medical treatment is not reasonably suited to treat the injury without undue inconvenience to the employee. See Lawyer, Iowa Workers' Compensation Law and Practice,§15-4 and cases cited therein.

Under Iowa law, the employer is required to provide care to an injured employee and is permitted to choose the care. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997). Iowa Code section 85.27 provides, in relevant part:

> For purposes of this section, this 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 therefore, allow and order other care.

The question of reasonable care is a question of fact.

An application for alternate medical care is not granted simply because the employee is dissatisfied with the care the employer has chosen. Mere dissatisfaction with the care is not sufficient grounds to grant an application for alternate medical care. The employee has the burden of proving that the care chosen by the employer is unreasonable. Unreasonableness can be established by showing 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. West Side Transport v. Cordell, 601 N.W.2d 691 (Iowa 1999); Long v. Roberts Dairy Company, 528 N.W. 2d 122 (Iowa 1955). Unreasonableness can be established by showing that the care authorized by the employer has not been effective and is "inferior or less extensive" than other available care requested by the employee. Pirelli-Armstrong, at 437.

An employer's failure to follow recommendations of an authorized physician in matters of treatment is commonly a failure to provide reasonable treatment. Boggs v. Cargill, Inc., File No. 1050396 (Alt. Care January 31, 1994).

Defendants urge adoption of their position that Dr. Martin's opinions should govern claimant's medical care and ignore the medical opinions of Dr. Paulsen, Dr. Block, and Dr. Diebert who are the authorized treating physicians in this case. Dr. Paulsen has treated claimant since September of 2014.

He has the most knowledge and experience in treating claimant and to disrupt or ignore his treatment recommendations would not be reasonable.

In this case, defendants have terminated care. Claimant testified that he has ongoing pain and discomfort as a result of his work injury and that the care provided by authorized treating physician, Dr. Paulsen, alleviates some of the pain. The care defendants have proferred, which is no care at all, is inferior and less extensive than the care of the authorized treatment physicians.

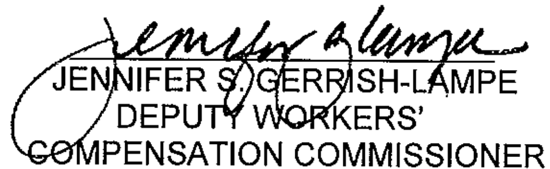
ORDER

THEREFORE, the following is ordered:

1. Claimant's petition for alternate care is granted. Defendants are specifically ordered to immediately provide at their expense the medical care requested in the petition, namely: a re-authorization of the treatment with Dr. Poulson, Dr. Block, and/or Dr. Diebert along with the prescription medications recommended by those authorized treating physicians.

2. Defendants shall pay the costs of this alternate care proceeding pursuant to Division of Workers' Compensation Services rule 876 IAC 4.33.

Signed and filed this 29th day of March, 2017.



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