

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

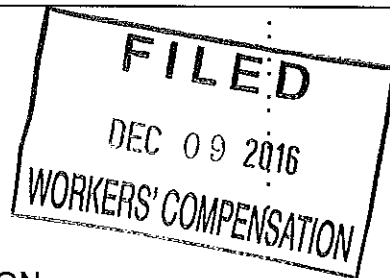
DEBRA SLADEK,

Claimant,

vs.

K-MART CORPORATION,

Employer,
Self-Insured,
Defendants.



File No. 5000113

ALTERNATE MEDICAL
CARE DECISION

Head Note No.: 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, Debra Sladek. Claimant appeared personally and through her attorney, Thomas Currie. Defendant appeared through their attorney, Cassie Wolfgram.

The alternate medical care claim came on for telephone hearing on December 8, 2016. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's February 16, 2015 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 1-6, which total ten pages and defendant's exhibits A-D, which total nine pages. All exhibits were received into evidence without objection. Claimant provided testimony and no other witnesses were called.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care in the form of continued chiropractic care with Ryan Bowman, D.C.

FINDINGS OF FACT

After hearing the testimony of the witness and argument of counsel and after considering all the evidence, the undersigned finds as follows:

Debra Sladek, claimant, sustained a work-related injury on August 20, 1982. Claimant testified that the injury primarily related to her low back, for which she has had three surgeries, in 1983, 1988 and 2014. However, the injury has also involved headaches and neck pain.

Ms. Sladek testified that her condition has made it very painful to sit in an upright position, which prohibits driving and makes riding in a car difficult. She stated that she typically lies down in the car when she has to go somewhere. Ms. Sladek testified that regularly lying down and/or sitting at an angle causes a strain on her neck.

Treatment for her work injury has included chiropractic care with Ryan Bowman, D.C. Most recently that care has occurred from August 30, 2016 through October 4, 2016. (Ex. 1) This case was authorized by defendants on July 20, 2016. (Ex. D, p. 1) Ms. Sladek testified that the treatments were beneficial in temporarily reducing her pain. She stated that while receiving chiropractic treatment, she was able to tolerate sitting up straight and was able to ride, sitting up in the car. She was able to tolerate activities such as riding in the car to a store. Ms. Sladek further stated that she felt that she stood and walked straighter, which she related to falling less often. She experiences reduced low back pain, neck pain and headaches. She testified that the treatments with Dr. Bowman improved her quality of life.

Defendant's presented an opinion from Darin Smith, M.D., in which he stated that he would not recommend further surgery for Ms. Sladek unless there were "new neurological deficits . . ." (Ex. B, p. 1) He then goes on to state that "[t]he likelihood of improving patient's back condition or associated pain is almost zero in my opinion." (Id.) This opinion is dated October 16, 2014. (Id.) About 21 months before Ms. Sladek received authorization for chiropractic treatment.

Defendant's also provided an opinion from Joseph Chen, M.D. of the University of Iowa Hospitals and Clinics, Department of Orthopedics and Rehabilitation, in which Dr. Chen recommends pool-based exercises at a program level that Ms. Sladek can tolerate and a cessation of opiate medication. (Ex. C, p. 2) Dr. Chen then states that "I have no further recommendations for supervised medical care related to her work injury." (Id.) This opinion is dated July 24, 2013, or about three years before claimant received authorization for chiropractic treatment.

There is no evidence that either Dr. Smith or Dr. Chen were questioned directly about the reasonableness of the chiropractic care provided by Dr. Bowman and whether or not continued treatments would be appropriate.

Defendant's rely primarily on an opinion of Michael Dudick, D.C., who prepared a Peer Review Report dated October 25, 2016. (Ex. A, p. 3) Dr. Dudick did not examine or speak to Ms. Sladek. He did, however, speak to Dr. Bowman by telephone, in which it is noted that Dr. Bowman recommended chiropractic care of once per week for at least 8 more treatments, not 6, for the purpose of palliative relief. Dr. Dudick then

reviewed the medical records and opined that the requested six additional chiropractic treatments for the lumbar spine are not medically necessary. (Id.)

The defendant denied the chiropractic care based primarily, if not exclusively, on the opinion of Dr. Dudick as demonstrated in the denial letter to Dr. Bowman, dated October 25, 2016. (Ex. A, pp. 1-2) The denial of authorization was based on Dr. Dudick's opinion that the chiropractic care was not medically necessary.

Dr. Bowman reviewed the report authored by Dr. Dudick and responded to claimant's counsel on November 10, 2016, noting, among other things, that Dr. Dudick compares Ms. Sladek's case to one that is acute and uncomplicated. (Ex. 45, p. 1) Dr. Bowman states and the undersigned agrees, from the evidence presented, this 34 year old work injury represents something other than a straight forward acute, uncomplicated episode. Dr. Bowman is also critical of Dr. Dudick's conclusion that there was a lack of measurable short and long term objective goals with time measures. Dr. Bowman indicated that he offered how Ms. Sladek scored on the NDI, but Dr. Dudick "did not express interest" in that assessment. (Ex. 4, p. 2) Although Dr. Bowman does not elaborate further, the undersigned understands the NDI to be the scoring method to establish patient improvement over a period of time related to the treatment provided. (Id.) Dr. Bowman has recommended further chiropractic care, apparently consisting of at least 8 additional treatments. (Ex. A, p. 3)

Ms. Sladek's primary authorized provider concerning the work injury has been Richard Neiman, M.D. She testified that she has been treating with Dr. Neiman, a neurologist, since the injury occurred about 34 years ago. Dr. Neiman has indicated that chiropractic care is appropriate. (Ex. 6)

At this time, defendants have taken the position that no additional care is required, including chiropractic care, referring to it as merely palliative care. Claimant did not suggest at the hearing that the chiropractic treatment being sought is curative, rather claimant readily admits that the care is palliative in nature.

REASONING AND 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).

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); Bell Bros. Heating v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); Long

v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). Determining what care is reasonable under the statute is a question of fact. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). The employer's obligation turns on the question of reasonable necessity, not desirability. Id.; Harned v. Farmland Foods, Inc., 331 N.W.2d 98 (Iowa 1983).

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).

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 Decision June 17, 1986).

In this case, the employer has rejected the recommendation of at least 8 additional chiropractic treatments made by their authorized provider, Dr. Bowman, in favor of an opinion prepared by Dr. Dudick, a chiropractor from out of state, who has never evaluated or spoken to Ms. Sladek. The opinion of Dr. Dudick is flawed as he has failed to consider Ms. Sladek's scoring on the NDI and has assessed a 34 year old work injury through the lens of an acute uncomplicated matter, which is not accurate. Further, claimant has testified that the chiropractic care she has previously received from Dr. Bowman has been helpful to reduce pain, improve her mobility and prevent falls.

Dr. Bowman, an authorized treating provider, has recommended continued chiropractic treatment in the form of at least 8 additional treatments. Dr. Neiman, her long time treating physician has indicated that chiropractic care is appropriate. The fact that the care being recommended is palliative and will not cure claimant's condition is not controlling.

Defendant has failed to authorize the additional treatment with Dr. Bowman, an authorized provider, and interfered with recommended care, which is unreasonable. Defendants are ordered to provide, at a minimum, the 8 additional treatments with Dr. Bowman. Further, defendants would do well to consider carefully whether or not additional treatment should be authorized in the future, if the same is recommended by their authorized provider.

ORDER

THEREFORE IT IS ORDERED:

Claimant's Petition for Alternate Medical Care is granted.

Defendants are ordered to authorize care with Ryan Bowman, D.C., in the immediate future for at least eight (8) additional treatments.

Signed and filed this 9th day of December, 2016.



TOBY J. GORDON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Thomas J. Currie
Attorney at Law
1853 51st Street NE, Suite 1
Cedar Rapids, IA 52402
tcurrie@currieliabo.com

Scott McLeod
Attorney at Law
PO Box 2457
Cedar Rapids, IA 52406
smcleod@lynchdallas.com

Cassandra Wolfgram
Attorney at Law
PO Box 2457
Cedar Rapids, IA 52406
cwolfgram@lynchdallas.com

TJG/kjw