BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JIMMY COCHRAN,

Claimant,

vs.

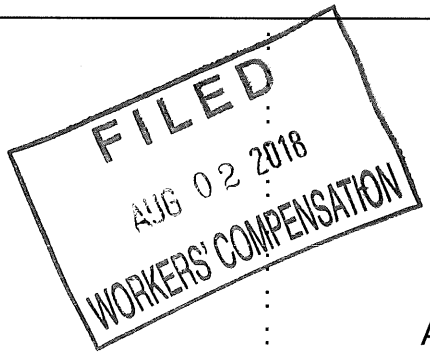
QUEST LINER, INC.,

Employer,

and

STANDARD FIRE INS. CO.,

Insurance Carrier,
Defendants.



File No. 5065497

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. This case proceeded to an arbitration hearing before the undersigned on July 31, 2018 in Waterloo, Iowa. One of the issues identified on the hearing report and order for the arbitration hearing is claimant's request for alternate medical care. The intent of this decision is to resolve the single issue of alternate medical care, not the entire case. The expedited procedure of rule 876 IAC 4.48 was not invoked by claimant, Jimmy Cochran. This issue was brought to the agency via an arbitration petition, not an application for alternate medical care; therefore, this decision is not final agency action. The remaining issues from the arbitration hearing will be addressed in a separate arbitration decision.

The record consists of joint exhibits 1-3, claimant's exhibits 1-3; defendants' exhibits A-C. Claimant also testified live at the time of the hearing. The parties have stipulated that Mr. Cochran sustained an injury to his right upper extremity which arose out of and in the course of his employment on February 3, 2017. (Hearing Report)

ISSUE

The issue for resolution is whether the claimant is entitled to alternate medical care.

FINDINGS OF FACT

Claimant, Jimmy Cochran, sustained an injury to his right upper extremity arising out of and in the course of his employment with Quest Liner, Inc. on February 3, 2017. Mr. Cochran filed a prior application for alternate medical care on June 29, 2018. Pursuant to Rule 876 IAC 4.48 a telephone hearing was held and an expedited hearing was held. In his application for alternate medical care claimant requested that the defendants authorize treatment with Thomas G. Fry, M.D.; a physician Mr. Cochran had selected to undergo an IME with. At the alternate care hearing defendants argued they should be allowed to have the treating physician, Jeffrey MacMillan, M.D. review and comment on Dr. Fry's treatment recommendations. As a result of the alternate care hearing the undersigned issued an alternate care decision on July 13, 2018 denying claimant's petition for alternate medical care.

This brings us to claimant's current request for alternate medical care. Claimant is once again requesting that defendants authorize treatment with Dr. Fry. At the arbitration hearing Mr. Cochran testified that the most recent authorized physician was Dr. MacMillan. Mr. Cochran last saw Dr. MacMillan on March 29, 2018. At that time the doctor assessed Mr. Cochran with right hand pain. Dr. MacMillan noted that all diagnostic testing had been normal and all treatment modalities had been ineffective. Dr. MacMillan placed him at maximum medical improvement (MMI) and released him from care. Dr. MacMillan noted that Mr. Cochran's options were to proceed with a functional capacity evaluation (FCE) with the intention of a final rating and release or a work conditioning program. As far as Mr. Cochran knows, defendants have not arranged for any of these things to take place. (Testimony; JE3 pp. 42-43)

On June 7, 2018 Mr. Cochran saw Dr. Fry for an independent medical examination (IME). This was done at the request of claimant's attorney. Mr. Cochran continued to have significant pain in his right hand. He also had stiffness and swelling. He reported that the pain could be sharp and burning and seemed to extend along the sides of his fingers. Dr. Fry felt Mr. Cochran had a "fairly classic presentation for saddle syndrome (adhesions between intrinsic muscles at the intermetacarpal ligament) which is maximal involving the long finger but has some affect on the index and ring finger." (Cl. Ex. 1, p. 9) He also thought Mr. Cochran might have a component of reflex sympathetic dystrophy, but it would be minimal. Dr. Fry recommended surgery and subsequent occupational therapy. Mr. Cochran would like to undergo that treatment in an attempt to have a better recovery from his injury. Mr. Cochran hopes that the surgery will help him return to the workforce. (Testimony; Cl. Ex. 1)

The arbitration record is void of any evidence to show that defendants have authorized any treatment or even scheduled an appointment for Mr. Cochran to return to see Dr. MacMillan since March of 2018. Mr. Cochran filed his petition for alternate medical care on June 29, 2018. Defendants still have not offered any treatment or even

scheduled an appointment for Mr. Cochran to see a medical provider. I find that defendants' failure to authorize treatment or schedule a follow-up appointment with the authorized treating physician constitutes an abandonment of care. I further find that defendants have failed to provide prompt and reasonable care.

REASONING AND CONCLUSIONS OF LAW

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).

> [T]he 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.

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 v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). Determining what care is reasonable under the statute is a question of fact. Id. 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). In Pirelli-Armstrong Tire Co., 562 N.W.2d at 433, the court approvingly quoted Bowles v. Los Lunas Schools, 109 N.M. 100, 781 P.2d 1178 (App. 1989):

> [T]he words "reasonable" and "adequate" appear to describe the same standard.
>
> [The New Mexico rule] requires the employer to provide a certain standard of care and excuses the employer from any obligation to provide other services only if that standard is met. We construe the terms "reasonable" and "adequate" as describing care that is both appropriate to the injury and sufficient to bring the worker to maximum recovery.

The commissioner is justified in ordering alternate care when employer-authorized care has not been effective and evidence shows that such care is "inferior or less extensive" care than other available care requested by the employee. Long, 528 N.W.2d at 124; Pirelli-Armstrong Tire Co., 562 N.W.2d at 437.

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).

I conclude that defendants are currently offering no treatment. I further conclude that this is inferior or less extensive care than the care with Dr. Fry that claimant is requesting. Additionally, defendants' delay in authorizing any treatment or even scheduling an appointment for the claimant with the authorized physician is unreasonable and a failure to provide prompt and reasonable care. Thus, I conclude that claimant has carried his burden of proof to show that the authorized care, which in this case is none, is unreasonable.

ORDER

THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care is granted.

Defendants shall authorize treatment with Dr. Fry.

Signed and filed this 2nd day of August, 2018.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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