

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MARK J. HEITMAN,

Claimant,

vs.

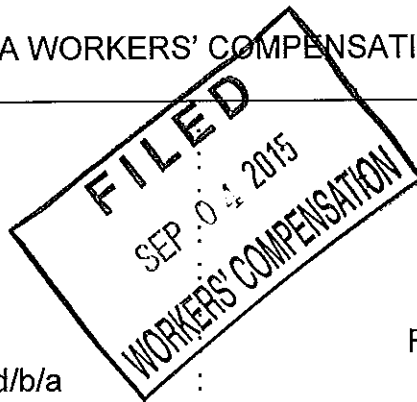
SEATON CORPORATION d/b/a
STAFFING SOLUTIONS
HOLDINGS, INC.,

Employer,

and

NEW HAMPSHIRE INSURANCE
COMPANY,

Insurance Carrier,
Defendants.



File No. 5060002

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, Mark Heitman. Claimant appeared personally and through his attorney, Bob Rush. Defendants appeared through their attorney, Stephen Spencer.

The alternate medical care claim came on for hearing on September 4, 2015. 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 exhibit 1, which is a five-page office note from James V. Nepola, M.D. at the University of Iowa Hospitals and Clinics. Claimant's exhibit was received without objection. No witnesses were called to testify, but counsel both offered helpful legal arguments.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care. Claimant seeks an order compelling defendants to authorize and pay for a functional capacity evaluation ordered by his authorized treating surgeon, Dr. Nepola.

FINDINGS OF FACT

The undersigned having considered all the evidence in the record finds:

The facts related to this alternate medical care proceeding are not significantly disputed. All parties concur that Dr. Nepola is an authorized treating physician for claimant's right shoulder. All parties concur that Dr. Nepola evaluated claimant on July 28, 2015. All parties concur that Dr. Nepola declared claimant at maximum medical improvement as of that date. All parties concur that Dr. Nepola recommended a functional capacity evaluation. Specifically, Dr. Nepola's office note at Exhibit 1, page 5 states, "FCE to determine abilities."

Claimant contends that any recommendations made by Dr. Nepola should be authorized because he is the authorized medical provider. Defendants contend that the functional capacity evaluation is not medically necessary in this circumstance and that the issue of permanent disability has already been tried and will be submitted to the undersigned on September 22, 2015 when the parties file post-hearing briefs in the underlying arbitration proceeding. Defendants contend that since the claimant has achieved maximum medical improvement, the results of the functional capacity evaluation cannot be introduced into evidence or considered by the undersigned for purposes of evaluating claimant's permanent disability, and that there is no medical necessity for performing the functional capacity evaluation.

With regard to the parties' competing interests, I find that the recommendation made by Dr. Nepola is to obtain a functional capacity evaluation. I find that the recommendation is not made for purposes of determining permanent impairment or permanent disability. Rather, Dr. Nepola is recommending the functional capacity evaluation as a diagnostic test to assist in setting reasonable and safe permanent work restrictions for the claimant. The recommendation for the functional capacity evaluation is not driven by or necessarily even related to the arbitration proceeding previously tried to the undersigned.

Accordingly, I find the functional capacity evaluation recommended by Dr. Nepola in this case to be a form of medical treatment. I find the recommendation for a functional capacity evaluation to be reasonable and appropriate under the circumstances presented.

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); 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).

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).

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).

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).

The primary fighting issue in this case is a legal question. Stated succinctly, the question is whether a functional capacity evaluation is a form of medical treatment pursuant to Iowa Code section 85.27 for which an employer may be obligated to pay. The agency has prior case law that supports either party's position.

In Crawford v. Maytag Co., File No. 5022533 (Alternate Medical Care February 2008), another deputy commissioner held that "the functional capacity evaluation in this case is better suited to an independent medical evaluation under Iowa Code section 85.39 is correct. A functional capacity evaluation in this case is not for medical treatment but rather to determine the level of vocational capacity after reaching

maximum medical improvement." Having reached that conclusion, this agency denied the alternate medical care request for a functional capacity evaluation in Crawford.

However, in Sears v. Midwest Continental, Inc., File No. 5029555 (Alternate Medical Care July 2009), a deputy commissioner concluded:

A functional capacity evaluation is a test, which can be helpful to a physician for an independent medical examination but also helpful in determining if claimant can be returned to work, or what work restrictions claimant needs. As such, the recommendation for a functional capacity evaluation is in fact a recommendation for further treatment.

In Sears, the deputy analyzed the purpose of the functional capacity evaluation in that specific case and determined that the functional capacity evaluation was "to determine if claimant can return to work, and if so, under what restrictions." Having made that finding, the deputy concluded, "As such, the recommendation for a functional capacity evaluation is in fact a recommendation for further treatment." Sears v. Midwest Continental, Inc., File No. 5029555 (Alternate Medical Care July 2009).

Both of these cases and analyses appear to be accurate given the specific facts and circumstances of the cases before each of the deputy commissioners. Therefore, I conclude that the determination of whether a functional capacity evaluation is appropriately categorized as medical treatment pursuant to Iowa Code section 85.27 is a factually specific determination. If the functional capacity evaluation is conducted for purposes of determining ranges of motions and other factors necessary for rendering a permanent impairment rating or establishing (or defending) a claim for permanent disability, the functional capacity evaluation is not likely to be considered medical treatment pursuant to Iowa Code section 85.27. Crawford v. Maytag Co., File No. 5022533 (Alternate Medical Care February 2008).

On the other hand, if the purpose of the functional capacity evaluation is to help the treating physician to diagnose, or quantify, claimant's residual functional abilities for purposes of assisting the physician to outline permanent work restrictions, then the functional capacity evaluation is more like treatment and is compensable pursuant to Iowa Code section 85.27. Sears v. Midwest Continental, Inc., File No. 5029555 (Alternate Medical Care July 2009).

Under the circumstances of this case, I found that the recommendation made by Dr. Nepola was for purposes of diagnosing claimant's condition in the sense that he needs to know claimant's residual physical and functional capabilities to properly outline medical restrictions for claimant's continued and future employment activities. Given that the purpose of the requested functional capacity evaluation is not to determine permanent impairment or to establish or bolster a permanent disability claim (a claim that has already been tried to the undersigned by not yet decided), but rather, to assist in establishing claimant's work restrictions, I conclude that the nature of the functional

capacity evaluation recommendation by Dr. Nepola in this case is "treatment" or "diagnosis" under Iowa Code section 85.27.

Since Dr. Nepola is the authorized treating physician, his recommendation for another diagnostic study, a functional capacity evaluation in this case, should be followed. Therefore, I conclude that claimant is entitled to his request for alternate medical care.

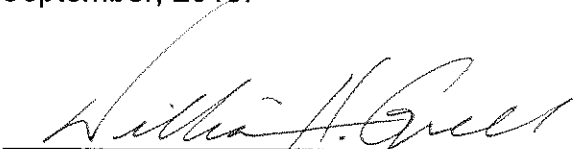
ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is granted.

Within twenty-one (21) days of the entry of this order, defendants shall authorize and schedule the recommended functional capacity evaluation.

Signed and filed this 4th day of September, 2015.


WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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