

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

HOLLY KARNES,

Claimant,

vs.

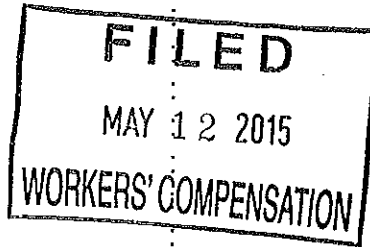
CAJN-SJB EXPRESS, INC.,

Employer,

and

CONTINENTAL CASUALTY CO. (CNA),

Insurance Carrier,
Defendants.



File No. 5052482

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

This is a contested case proceeding under Iowa Code chapter 17A. Claimant sustained a work-related injury on October 17, 2013. Claimant filed a petition for alternate medical care. The petition was filed on April 21, 2015. Claimant stated she was dissatisfied with the quality of care she was receiving as defendants refused to authorize any additional medical treatment for claimant. (Original Notice and Petition)

Defendants filed an answer. A first report of injury was filed on July 10, 2014.

The hearing administrator set the case for a telephone hearing on May 1, 2015, at 10:30 a.m. The hearing was recorded by digital means. The digital recording is the official record of the proceedings.

Claimant testified on her own behalf. She was the sole witness to testify. Claimant offered exhibits 1, 2 and 3 (7 pages total). Defendants offered exhibits A and B (7 pages total). All proffered exhibits were admitted as evidence in the hearing.

According to the Iowa Workers' Compensation Commissioner, the deputy workers' compensation commissioner presiding at the contested case in an application for alternate medical care, pursuant to rule 876 IAC 4.48, is hereby delegated the authority to issue the final agency decision on the application, Iowa Code section 86.3. There is no right of intra-agency appeal on this decision. Continental Telephone Co. v. Colton, 348 N.W.2d 623 (Iowa 1984) and Leaseamerica Corp. v. Iowa Dept. of Revenue, 333 N.W.2d 847 (Iowa 1983).

If claimant is dissatisfied with the medical care she has been receiving, she must communicate his dissatisfaction to the employer. Such dissatisfaction must be communicated to the employer prior to the filing of the original notice and petition. Iowa Code section 85.27.

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.

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).

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 Dec. January 31, 1994).

A referral by an authorized physician to another practitioner is generally found to be authorized care. Coleman v. Coleman Indus. Cleaning, 4 Iowa Indus. Comm'r Rep. 67 (1984).

Claimant testified defendants authorized treatment for her spine condition with Cassim M. Igram, M.D., at Iowa Ortho. Claimant underwent MRI testing of thoracic and lumbar spine. Dr. Igram opined there was nothing in the studies to indicate claimant needed surgery. (Exhibit A, page 1) Dr. Igram noted there was quite a bit of pain at the low back area, and claimant had limited range of motion of the back. (Ex. A, p. 2)

Dr. Igram diagnosed claimant with:

Lumbar sprain or strain

Lumbago

(Ex. A, p. 2) [The orthopedist noted the pain was most likely myofascial in nature.
(Ex. A, p. 2) Dr. Igram referred claimant for a physical medicine and rehabilitation
consult. (Ex. A, p. 2)]

Defendants then referred claimant to Joseph J. Chen, M.D., clinical associate professor, at the Spine Rehabilitation Program at the University of Iowa Hospitals and Clinics. (Ex. B)

Dr. Chen diagnosed claimant with:

1. Chronic low back pain
2. MVA (motor vehicle accident) sequel
3. Obesity, morbid, BMI 40.0-49.9
4. Encounter related to worker's [sic] compensation claim

(Ex. B, p. 2)

Dr. Chen reviewed images from the July 1, 2014 MRI testing of the thoracic and lumbar spine. Dr. Chen wrote, "I don't see any worrisome abnormalities that explains her pain." (Ex. B, p. 2)

Dr. Chen conducted an in-depth discussion with claimant and her spouse about claimant's chronic low back pain. Dr. Chen reported to claimant:

Impression:

Holly L. Karnes is a 37 y.o. woman who has predominantly chronic mechanical and myofascial low back pain. She has had MRI imaging of her thoracic and lumbar spines that don't show any worrisome structural abnormality. She has predominantly axial back and buttock pain which I told her seems to be mostly myofascial. We further discussed that not everything that feels like a "pinch" in the back and buttock represents a "pinched nerve" and in fact most of these complaints come from areas of muscles. We discussed the concept of small fiber nerve irritability and more importantly muscle fatigue symptoms which resemble her pain symptoms with activities. The majority of her pain is likely myofascial based upon it being quite easily reproduced on examination today with

palpation, passive stretch of the piriformis, and activation of the gluteal attachment muscles.

I also gave her a copy of our patient education booklet, Chronic Back Pain: A Guide for Patients and Families, and told her to refer to this which can help explain some of the concepts for improving her chronic back pain.

I discussed chronic musculoskeletal pain with her. I explained that chronic pain frequently cannot be completely identified with current medical technologies. I briefly explained to her that the best explanation for her pain is that she has increased small fiber nerve "irritability" that excessively stimulates or "short-circuits" her spinal cord which, instead of normally "filtering" such signals, inadvertently "amplifies" these sensations and overwhelms her brain's ability to "over-ride" these pain signals. I explained that parts of this model have been substantiated by studies on central sensitization and neural plasticity in chronic pain. I explained the absence of successful medical intervention to "block" the innumerable small fiber nerves coming from these painful muscles, joints, and soft-tissue structures, nor the ability for us to "re-program" her spinal cord filters to her pre-injury state. Successful strategies for improving a person's ability to "over-ride" these pain signals include using of cognitive-behavioral exercises, learning stress management and pain management skills. She and her husband seem to understand. She says she isn't interested in surgery since her husband has had back surgery in the past too.

We discussed our Spine Center's approach has been able to educate patients about their potential back pain, reassure patients that exercise is safe and therapeutic, and focus on improving her ability to perform daily recreational and vocational activities even despite increases in pain. We discussed that our Spine Rehabilitation Team could teach her ways of managing pain by learning specific physical as well as cognitive-behavioral exercises. Because she reports her pain has been limiting many of her activities of daily living, I discussed that we should also have her return for a Spine Rehab Evaluation.

We discussed that EMG/NCS testing is not likely to be helpful. I explained that it is likely that her large nerve roots and medium sized nerves are functioning normally with examination today.

We did agree to a return to work plan that involves limiting her to lifting only up to 20 lbs and restricting her from prolonged sitting or standing of more than 30 minutes at a time, and avoiding sitting on the floor. She is interested in trying to look for a gym membership to do pool exercises or other exercise tapes and I encouraged her to do so without concerns.

I discussed with her case manager Shelley Fox from Genex Services that we should have her return for the Spine Rehab Evaluation. I discussed that since she reports that she didn't have any significant back pain prior to her work-related motor vehicle accident that I do believe her current myofascial pain is related to this work incident. She also denied any significant weight gain or change in her health status close to the time of her motor vehicle accident.

(Ex. B, p. 3)

Claimant participated in the multi-disciplinary back rehabilitation program at the University of Iowa Hospitals and Clinics. The program lasted for ten days.

On October 28, 2014, Dr. Chen determined claimant had reached maximum medical improvement (MMI). (Ex. B, p. 5) Dr. Chen imposed the following permanent work restrictions:

She is able to lift 20 pounds on an occasional basis (defined as up to 1/3 of a workday).

She is able to lift 10 pounds on a repetitive basis (defined as 1/3 to 2/3 of a workday).

She is able to push or pull 40 pounds.

She is limited to occasional twisting, bending, reaching, stooping, squatting, kneeling, pushing and pulling (defined as up to 1/3 of a workday).

(Ex. B, p. 5) Dr. Chen determined additional medical treatment was not warranted. (Ex. B, p. 5)

On January 21, 2015, claimant presented to Peter G. Matos, D.O., MPH, for an independent medical examination (IME). Dr. Matos was not retained to provide medical treatment. During the course of the IME, Dr. Matos opined additional medical testing and acupuncture therapy would be beneficial for claimant. Dr. Matos wrote in his report of January 21, 2015:

Alternate Medical Review

Based on the medical documentation provided and my independent medical exam, I believe the patient would benefit from additional medical testing and acupuncture therapy. She is highly motivated to get better and is frustrated that no one has investigated her chronic symptoms any further. I am recommending a lumbar and a thoracic x-ray to rule out a spinal abnormality that could possibly be causing radicular pain. In addition, an EMG is recommended to identify subtle, focal neurologic dysfunction due to chronic radicular pain.

Medical Rationale

The patient describes radicular pain in the L5-S1 dermatome and describes tailbone pain. This pain has gone on greater than 4 weeks without resolution. While an MRI has been obtained no recent lumbar x-rays or EMG of the lower extremities has been performed.

The patient is active in a home exercise program and may benefit from a passive modality such as acupuncture. Acupuncture has been shown to improve functionality and decrease pain when used with an active modality such as a home exercise program. A trial of two acupuncture visits a week for two weeks is recommended to see if acupuncture treatment decreases symptoms, use of pain medications and increases functionality.

(Ex. 1, p. 2)

Claimant is now requesting all of the testing and treatment modalities recommended by Dr. Matos, the independent medical examiner. Claimant testified she has constant back pain in the area of her tailbone; she experiences occasional back pain in her mid-back; she encounters numbness in her bilateral legs with the right leg worse than the left; and finally, she has muscle spasms in her legs and feet.

Dr. Chen has not examined claimant since October 28, 2014. All of his prior treatment modalities have been reasonable and necessary. However, it has been over six months since claimant has had any treatment. It is appropriate for defendants to schedule a follow-up appointment for claimant with Dr. Chen, the authorized treating physician.

ORDER

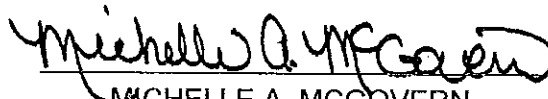
THEREFORE, IT IS ORDERED:

Defendants shall schedule a follow-up appointment for claimant with Joseph Chen, M.D., at the University of Iowa Hospitals and Clinics.

Defendants shall contact the University of Iowa Hospitals and Clinics within seven (7) days of the filing of this decision.

Defendants shall also forward a copy of the independent medical report from Peter G. Matos, D.O., to Dr. Chen prior to the date of claimant's follow-up appointment.

Signed and filed this 12th day of May, 2015.


MICHELLE A. MCGOVERN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

KARNES V. CAJN-SJB EXPRESS, INC.
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