BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LOUISE HACKENBERG,

Claimant,

vs.

WALGREENS,

Employer,

and

AMERICAN ZURICH INS. CO.,

Insurance Carrier,
Defendants.

File No. 5052395

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, Louise Hackenberg.

The alternate medical care claim came on for hearing on April 8, 2014. The proceedings were digitally recorded, which constitutes the official record of this proceeding. By order filed February 16, 2015, this ruling is designated final agency action.

The record consists of claimant's exhibit 1; defendants' exhibits A-B.

ISSUE

Liability is admitted on this claim. The sole issue presented for resolution is whether the claimant is entitled to an award of alternate medical care.

FINDINGS OF FACT

Louise Hackenberg was employed with Walgreen Drug Stores when she sustained an injury to her left shoulder arising out of and in the course of her employment on October 2, 2014. The authorized treating orthopedic surgeon is Benjamin E. Tuy, M.D. Ms. Hackenberg last saw him on March 20, 2015. In the plan portion of that clinical note Dr. Tuy states:

> I think at this point she may be a candidate for a shoulder arthroscopy and subacromial decompression. We talked about this and I think it is best for her to be sent to a shoulder specialist in Des Moines for surgical evaluation and definitive treatment. I would recommend that she see

> Dr. Honkamp, but I explained to her that this would be subject to work comp approval.

(Exhibit 1, page 2)

Defendants have scheduled an appointment for the claimant to be seen by Steven A. Aviles, M.D., at Iowa Ortho in Des Moines. Claimant is seeking alternate care with Dr. Honkamp. Claimant contends that defendants are interfering with the recommendations of Dr. Tuy, the authorized provider because they have scheduled an appointment for her to see Dr. Aviles rather than Dr. Honkamp.

There is no dispute that both Dr. Aviles and Dr. Honkamp are shoulder specialists located in Des Moines. Claimant offered no evidence to show that the care being offered by the defendants is unreasonable or somehow inferior to any care that might be offered by Dr. Honkamp. Rather, claimant seems to interpret Dr. Tuy's clinical note as a specific referral to Dr. Honkamp. However, a review of the note shows that Dr. Tuy only recommends that Ms. Hackenberg be seen by a shoulder specialist in Des Moines for surgical evaluation and treatment. Dr. Tuy then goes on to recommend Dr. Honkamp, but then acknowledges that the choice of shoulder specialist is ultimately up to the work comp carrier. Thus, Dr. Tuy essentially defers back to the workers' compensation carrier as to which shoulder specialist she should see. I find that Dr. Tuy recommends Ms. Hackenberg be seen by a shoulder specialist in Des Moines. Defendants have authorized Ms. Hackenberg to see Dr. Aviles, a shoulder specialist in Des Moines. I find the authorization of Dr. Aviles is 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).

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).

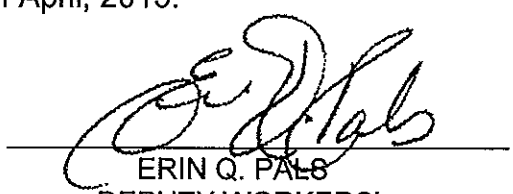
Based on the above findings, I conclude that the defendants' authorization of Dr. Aviles is reasonable care.

ORDER

THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care is denied.

Signed and filed this 9th day of April, 2015.



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