

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MEGEN CLARK,

Claimant,

vs.

PRAIRIE FARMS DAIRY, INC.,

Employer,

and

INDEMNITY INSURANCE COMPANY
OF NORTH AMERICA,Insurance Carrier,
Defendants.

File No. 22001534.01

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. By filing an original notice and petition for alternate medical care, claimant, Megan Clark, invoked the expedited procedure of rule 876 IAC 4.48.

The alternate medical care claim came on for telephonic hearing on July 18, 2022. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Claimant appeared personally and through her attorney, Joseph Lyons. Defendants appeared through their attorney, Thomas Wolle.

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. Any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code section 17A.

The evidentiary record consists of claimant's exhibits 1-3, consisting of six pages and defendants' exhibits A and B, consisting of three pages. Ms. Clark testified on her own behalf. No other witnesses testified at the hearing.

ISSUE

The issue presented for resolution is whether the claimant is entitled to an alternate medical care order requiring defendants to authorize an orthopaedic surgeon for treatment of claimant's right hand.

FINDINGS OF FACT

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

Megen Clark, claimant, sustained a right-hand injury on January 18, 2022, while performing work for the employer, Prairie Farms Dairy, Inc. On that date, her hand was crushed by a 100-pound block of cheese and caught between or on some rollers. Defendants admitted the work injury and provided claimant medical care.

The defendants authorized occupational medicine physician, Jonathon Fields, M.D. Dr. Fields recommended occupational therapy for claimant's hand. Ms. Clark testified that she participated in occupational therapy and that the therapy was helpful.

However, Ms. Clark testified that she continues to experience symptoms in her right hand and fingers. Specifically, claimant testified that she continues to experience pain, swelling, numbness and tingling, decreased strength, decreased activity levels, and that she experiences fatigue quickly in her right hand and drops things. She testified that her symptoms were worsened by repetitive activities that involve grasping or gripping items.

Ms. Clark sought evaluation with her personal physician for several medical issues, most of which are not related to this work injury, on May 24, 2022. Her personal physician, Scott Bohner, D.O., noted complaints of pain in claimant's right hand. Dr. Bohner did not provide a specific diagnosis of claimant's condition. He noted, "She would like to have a second opinion. She understands that this likely would have to be paid for by herself. Patient will be referred to hand surgery for further evaluation and treatment." (Claimant's Ex. 2, p. 3) Pursuant to Dr. Bohner's notes, the idea of seeking a second opinion with an orthopaedic surgeon appears to come from claimant. However, at hearing, claimant testified that the idea for an orthopaedic referral and evaluation was Dr. Bohner's.

After Dr. Bohner's evaluation and recommendations, claimant was re-evaluated by Dr. Fields. On June 15, 2022, Dr. Fields noted, "Swan necking again barely noticeable on her right ring finger." (Claimant's Ex. 3, p. 5) Yet, Dr. Fields noted no swelling, full range of motion in the right wrist, and intact sensation in the fingertips. Dr. Fields described his evaluation as "essentially normal today with no physical examination findings." (Claimant's Ex. 3, p. 5) Dr.

Fields recommended no further diagnostic testing, declared maximum medical improvement, and released claimant to return to work without medical restrictions as of June 15, 2022. (Defendants' Ex. B)

Dr. Fields records, "I explained to Mrs. Clark that I had no further treatment recommendations and her examination was normal. I had not explanation for her reported symptomatology." (Defendants' Ex. B) However, in his office note, Dr. Fields noted "she could certainly seek another medical opinion for this, as I have no medical explanation for her reported symptomatology." (Claimant's Ex. 3, p. 5)

The medical treatment offered by defendants to date has been helpful to claimant and her symptoms. However, the treatment has not fully resolved claimant's symptoms. As a result, I find that the treatment offered by the defendants has not been fully effective in resolving claimant's injury.

I also find that claimant has at least one objective finding: swan necking in the right ring finger. (Claimant's Ex. 3, p. 5) Dr. Fields acknowledges that he has no medical explanation for this finding or the ongoing symptoms reported by claimant. I find that Dr. Bohner believes and recommends an orthopaedic evaluation for claimant's right-hand injury. Dr. Fields also notes the possibility of a second opinion and I find that he believes a second opinion evaluation to be a reasonable option under the circumstances. Therefore, I find that claimant has proven a second opinion evaluation with an orthopaedic surgeon is a reasonable treatment option.

Currently, defendants offer no alternate treatment. In fact, Dr. Fields has acknowledged that he has no further treatment to offer. He also acknowledges that he has no medical explanation for claimant's ongoing symptoms. I find that the orthopaedic evaluation recommended by Dr. Bohner and acknowledged as a reasonable option by Dr. Fields is superior or more extensive than the release from care by Dr. Fields and no offer of ongoing care from defendants.

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 and Air Conditioning 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). **"To establish a claim for alternative medical care, an employee must show that the medical care furnished by the employer is unreasonable."** **Bell Bros. Heating v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010).**

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).

In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997), the supreme court held that "when evidence is presented to the commissioner that the employer-authorized medical care has not been effective and that such care is 'inferior or less extensive' than other available care requested by the employee, . . . the commissioner is justified by section 85.27 to order the alternate care."

In this case, I found that the care offered by defendants to date has provided some benefit. However, claimant continues to complain of symptoms and the authorized physician identified at least one objective finding of ongoing difficulties related to the work injury. As such, I found that the treatment offered by defendants has not been entirely effective.

I also found that claimant has identified additional, more extensive treatment, that could be offered. Claimant's personal physician recommended an orthopaedic evaluation and the authorized physician commented on a second opinion evaluation. I found that an orthopaedic evaluation was proven to be reasonable by both claimant's personal physician as well as the authorized physician. At the present time, defendants are not offering any additional medical treatment. Accordingly, I conclude that claimant has proven more extensive, or superior, treatment is available. I conclude claimant has proven entitlement to alternate medical care and specifically an evaluation with an orthopaedic surgeon for her right-hand condition.

ORDER

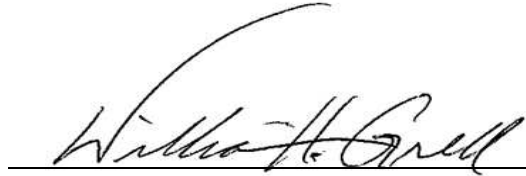
THEREFORE, IT IS ORDERED:

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

Defendants shall select and authorize an orthopaedic surgeon within 14 days of the filing of this decision.

Defendants shall schedule claimant for the first reasonably available appointment time with the orthopaedic surgeon they select.

Signed and filed this 18th day of July, 2022.

A handwritten signature in black ink, reading "William H. Grell", written over a horizontal line.

WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Joseph Lyons (via WCES)

Thomas Wolle (via WCES)