

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

WAVIE COX,

Claimant,

vs.

LOVES TRAVEL STOPS & COUNTRY
STORES,

Employer,

and

INDEMNITY INS. CO. OF NORTH
AMERICA,

Insurance Carrier,
Defendants.

File No. 20009767.01

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. The expedited procedure of rule 876 IAC 4.48 is invoked by claimant, Wavie Cox. Claimant appeared personally and through his attorney, Joseph Powell. Defendants appeared through their attorney, Robert Gainer.

The alternate medical care claim came on for hearing on October 27, 2020. 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 evidentiary record consists of Claimant's exhibit 1-3 and Defendants' Exhibits A and B, and claimant's testimony during the telephonic hearing. During the course of the hearing defendants accepted liability for the July 13, 2020 work injury and for the back condition for which claimant is seeking treatment.

ISSUE

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

FINDINGS OF FACT

Claimant, Wavie Cox, sustained a work injury to his back on July 13, 2020. Defendants have accepted liability for the back injury and authorized treatment with Michael Dolphin, D.O., at Orthopaedic Specialists. Mr. Cox saw Dr. Dolphin on August 12, 2020. A July 29, 2020 MRI revealed a left paracentral disc herniation at L5-S1 causing S1 nerve impingement. Dr. Dolphin diagnoses included: low back pain, radiculopathy lumbar spine, other intervertebral disc displacement of the lumbosacral region. Dr. Dolphin noted to date Mr. Cox had treated with medications with slight improvement. He stated:

At this point, the patient would like to proceed with surgical intervention. We did discuss nonsurgical options such as observation, physical therapy, and epidural steroid injection. He is a fall risk at this point and using a walker and as such would like to proceed with surgery. This would be a left L5-S1 microdiscectomy to be done as an outpatient.

(Cl. Ex. 1, p. 2)

Mr. Cox testified that he has had bad experiences in the past (before this work injury) with epidural steroid injections. He does not wish to have any additional injections, he wants to proceed with operative treatment as recommended by Dr. Dolphin, the authorized treating doctor. (Testimony)

Defendants sent Mr. Cox to Carrim M. Igram, M.D., at the University of Iowa Hospitals and Clinics (UIHC) for a second opinion on September 9, 2020. Mr. Cox reported his pain as 8/10. His pain was localized along the lower back and radiated into the left buttock with numbness and tingling to his left foot. He reported that he was using a wheeled walker to prevent falls when ambulating for longer distances. He also has a cane that he uses. Dr. Igram examined Mr. Cox and noted findings consistent with Waddell's sign and an indication of probably poor prognosis with surgical intervention. Dr. Igram noted that Mr. Cox had tried Flexeril and anti-inflammatories with minimal improvement. He had not completed any physical therapy following the injury. Dr. Igram felt that Mr. Cox has an exacerbation of his previous condition consistent with the injury on July 13, 2020. He noted that Mr. Cox did have therapy and injections in the past for his underlying back issues. Dr. Igram noted that an operation is an option, but he personally would have a difficult time predicting operative phase success. He went on to state that if Mr. Cox would like to pursue operative intervention with the treating surgeon, he had no objection to that treatment. Dr. Igram does not indicate whether physical therapy would be reasonable treatment or not. (Testimony; Cl. Ex. 2)

On September 22, 2020, Dr. Dolphin issued physical therapy orders. He recommended strengthening, stretching and teaching home exercise program. He recommended therapy 2-3 times per week for 4 to 6 weeks. Dr. Dolphin asked that the therapy notes be sent to him so they would be available at the next appointment. There are no clinical notes that correlate with this date of treatment. (Def. Ex. B) Mr. Cox did not see Dr. Dolphin on September 22, 2020. He does not know why the physical therapy was ordered or whether the therapy is for before or after an operation. He has only been to Dr. Dolphin on that one occasion in August. No one has contacted Mr. Cox to schedule any physical therapy. (Testimony)

Dr. Dolphin is an authorized doctor in this case. He saw Mr. Cox in August. At that time, the two of them discussed surgical and nonsurgical treatment recommendations. As the result of that appointment, Dr. Dolphin recommended surgery and Mr. Cox wanted to undergo surgery. Rather than authorize the surgery recommended by the authorized treating doctor back in August, defendants sent Mr. Cox to UIHC for a second opinion with Dr. Igram. Dr. Igram has stated that he had no objection to the operation. It is not known whether Dr. Igram believes that physical therapy would be reasonable treatment. On September 22, 2020, Dr. Dolphin issued orders for physical therapy. There is no context to the therapy orders from Dr. Dolphin. Mr. Cox has not seen nor spoken with Dr. Dolphin since the August appointment. It is not clear if the therapy is to be performed before or after surgery. It is not known if Dr. Dolphin issued these orders intending Mr. Cox to undergo therapy until he undergoes surgery or if there is another purpose for the therapy. Mr. Cox has a clear preference to undergo surgery rather than conservative treatment. Dr. Dolphin recommended surgery and Dr. Igram has no objection to the surgery. By refusing to authorize the surgery, I find defendants are interfering with the medical judgment of Dr. Dolphin, its own treating physician.

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 June 17, 1986).

Based on the above findings of fact, I conclude defendants are interfering with the medical judgment of its own treating physician by refusing to authorize the recommended surgery. Because defendants are interfering with the medical judgment of its own treating physician, I conclude the treatment being offered by the defendants is not reasonable care.

ORDER

THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care is granted.

Defendants shall authorize the surgery as recommended by the authorized treating physician, Dr. Dolphin.

Signed and filed this 27th day of October, 2020.

A handwritten signature in black ink, appearing to read "Erin Q. Pals", is written over a horizontal line.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Joseph Powell (via WCES)

Robert Gainer (via WCES)