

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BRIAN DENEMARK,

Claimant,

vs.

ARCHER DANIELS MIDLAND
COMPANY,Employer,
Self-Insured,
Defendant.

File No. 20001051.04

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO.: 2701

Claimant Brian Denemark filed an Original Notice and Petition Concerning Application for Alternate Care ("Application for Alternate Care") on August 2, 2021, requesting a finding and order that Stanley Mathew, M.D. is his treating physician for medical care and pain management, and ordering ADM to pay for left upper extremity magnetic resonance imaging ordered by Dr. Mathew. ADM filed an answer admitting liability for the condition.

On August 12, 2021, a hearing was held on the Application for Alternate Care by telephone conference call. Attorney Dennis Currell represented Denemark. Denemark appeared and testified. Attorney Peter Thill represented ADM. Exhibits 1 through 6 and A through H were admitted into the record. The proceeding was recorded digitally by iPhone and the digital record is the official record of the proceeding.

The undersigned has been delegated with the authority to issue final agency action in this matter. Appeal of this decision, if any, is to the district court pursuant to Iowa Code section 17A.19.

FINDINGS OF FACT

Denemark injured his left upper extremity while working for ADM on December 12, 2019. Denemark has continued to experience problems with his left upper extremity. In December 2020, Defendant arranged for an appointment with Ericka Lawler, M.D., an upper extremity orthopedic surgeon with the University of Iowa Hospitals and Clinics ("UIHC"), a premier medical institution in Iowa.

Dr. Lawler diagnosed Denemark with a triangular fibrocartilage complex ("TFCC") tear and irritation of the left ulnar nerve. (Exhibit 2) On January 29, 2021, Dr. Lawler performed a left TFCC repair and Guyon's decompression on Denemark. (Ex. 5, page 1) Following surgery Dr. Lawler ordered physical therapy for Denemark. (Ex. 2)

Denemark testified he has attended 50 sessions of physical therapy. (Denemark Testimony)

Denemark continued to complain of symptoms, including numbness and pain following the January 2021 surgery. (Denemark Testimony) Denemark's attorney sent a letter to ADM's attorney on June 15, 2021, requesting a second opinion with either Dr. Ebinger or Dr. Wills with Steindler Orthopedics in Iowa City. (Ex. 1) His request was denied.

Denemark's attorney asked David Segal, M.D., to conduct a records review independent medical examination and to offer opinions. (Ex. 3) Dr. Segal did not examine Denemark or speak to him before rendering his opinions. (Ex. 3) On July 12, 2021, Dr. Segal issued an opinion letter recommending additional treatment, including the magnetic resonance imaging Denemark is requesting in this proceeding. (Ex. 3)

The next day, Denemark attended an appointment with Stanley Mathew, M.D. (Ex. 4) ADM did not schedule the appointment. Denemark produced Exhibit 4 at hearing, which is an order for magnetic resonance imaging. Exhibit 4 lists a diagnosis of neuropathic pain. No records were produced regarding any exam, findings, or recommendations Dr. Mathew made during the July 13, 2021 appointment. Denemark testified Dr. Mathew prescribed gabapentin for him. (Denemark Testimony)

On July 17, 2021, Denemark attended an appointment with Dr. Lawler at the UIHC. (Ex. 5) Dr. Lawler noted Denemark had seen Dr. Mathew and Dr. Mathew had prescribed gabapentin and ordered left wrist magnetic resonance imaging. (Ex. 5, p. 1) Denemark complained of symptoms and pain. Dr. Lawler noted she had ordered electromyography, which was normal, and an ultrasound study, which was also normal. (Exs. 5, pp. 3-4; A, B) Dr. Lawler found "[a]t this point, there is no true surgical indication because his electrodiagnostics and US were normal. He could receive an injection, and continue working on strengthening. Though, unsure what to do in the future. He may continue to improve," and noted Denemark had agreed to undergo a left wrist joint injection that day. (Ex. 5, p. 4) Dr. Lawler noted Denemark had seen Dr. Mathew and was taking a new nerve medication, and she recommended he continue to follow up with Dr. Mathew. (Ex. 5, p. 4) Dr. Lawler diagnosed Denemark with left cubital tunnel syndrome, imposed a 20 pound lifting restriction, and recommended Denemark continue with physical therapy and to attend a follow-up appointment in four weeks. (Ex. 5, p. 4)

On July 20, 2021, Denemark's attorney sent Dr. Mathew records from the UIHC, noting his attorney believed that Dr. Lawler's recommendation that Denemark continue to follow up with Dr. Mathew regarding gabapentin for pain control indicated he was now considered an "authorized treating provider." (Ex. C)

ADM requested an opinion letter from Dr. Lawler. On July 28, 2021, Dr. Lawler responded to questions posed by ADM, as follows, noting she had last examined Denemark on July 15, 2021:

1. "At any time have you referred Mr. Denmark to an outside provider, including, but not limited to, Dr. Stanley Mathew for medical care for his work injury?"
During the course of treatment, I have referred Mr. Denmark to physical therapy, US evaluation, and EMG. I have not referred Mr. Denmark to any other physicians for his work injury.
2. "Are you currently recommending any diagnostic testing for Mr. Denmark, including, but not limited to, and [sic] MRI of the left upper extremity, for his work injury?"
I do not have any current recommendations for diagnostic testing for Mr. Denmark.
3. "Are you currently recommending treatment at a pain clinic for Mr. Denmark's work injury and if so, would you choose to refer him to the University of Iowa Hospitals & Clinics Pain Clinic for care for the left upper extremity?"
I have not referred Mr. Denmark to a pain clinic as he was already receiving treatment by Dr. Stanley Mathew when I last saw him. Due to the fact that I do not have a cause for Mr. Denmark's persistent pain, I think evaluation by a pain physician would be helpful. I do not have a preference with regarding [sic] to pain physician evaluation.
4. "What medications, if any, are you currently recommending for his work injury?"
I have not prescribed any medications recently for Mr. Denmark. I did encourage him to follow up with prescribing provider regarding the Gabapentin prescription that he received. I have recommended over the counter medications like ibuprofen and acetaminophen. He also reported using diclofenac gel and hydroxyzine which can be beneficial.

(Ex. 6, pp. 1-2) Dr. Lawler also recommended restrictions. (Ex. 6, p. 2)

On July 28, 2021, Dr. Mathew restricted Denmark from working until his next appointment with him on September 20, 2021. (Ex. E, p. 6) Denmark testified he has only attended one appointment with Dr. Mathew, on July 13, 2021. (Denmark Testimony)

Dr. Lawler ordered a pain consultation for Denmark. (Ex. F) ADM attempted to schedule a pain consultation with Drs. Harman, Kline, and Dery. (Ex. H) On August 2, 2021, Dr. Harman declined to see Denmark. (Ex. H) Dr. Kline declined to see Denmark on August 6, 2021. (Ex. H) Dr. Dery is with the Steindler Clinic where Denmark had previously requested treatment with Drs. Ebinger or Wills, both hand specialists. (Denmark Testimony) On August 10, 2021, Dr. Dery requested all of Dr. Mathew's records before making a decision on whether he would treat Denmark. (Ex. H) Neither Denmark's attorney nor ADM's attorney had been able to obtain Dr.

Mathew's records from the June 2021 visit before the August 12, 2021 hearing. Denemark testified he did not wish to see Dr. Dery, but did not explain why. (Denemark Testimony) Denemark continues to complain of numbness and pain in his left upper extremity. (Denemark Testimony)

CONCLUSIONS OF LAW

Under Iowa Code section 85.27 (2021), an employer is required to furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under Iowa Code chapters 85 and 85A. The employer has the right to choose the provider of care, except when the employer has denied liability for the injury. Id.

"The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." Id. § 85.27(4). If the employee is dissatisfied with the care, the employee should communicate the basis for the dissatisfaction to the employer. Id. If the employer and employee cannot agree on alternate care, the commissioner "may, upon application and reasonable proofs of necessity therefore, allow and order other care." Id.

The employee bears the burden of proving the care authorized by the employer is unreasonable. R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 196 (Iowa 2003). "The employer's obligation under the statute turns on the question of reasonable necessity, not desirability." Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995). The care authorized by the employer is unreasonable if it is ineffective, inferior, or less extensive than the care requested by the employee. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997). The determination of whether care is reasonable is a question of fact. Long, 528 N.W.2d at 123.

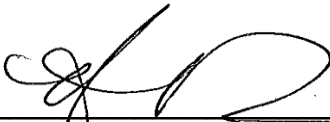
Denemark is experiencing ongoing pain in his left wrist. Denemark is receiving treatment with Dr. Lawler, a physician at a premier institution, the UIHC. Denemark underwent surgery with Dr. Lawler in late January 2021 and he remains symptomatic and he is complaining of new symptoms following surgery. Dr. Mathew ordered left upper extremity magnetic resonance imaging and Dr. Segal also recommended the imaging. Dr. Lawler ordered electromyography and ultrasound, both of which were normal. She has not recommended any imaging at this time. Dr. Segal has not examined Denemark. Denemark did not produce any records from Dr. Mathew documenting his findings on examination supporting his recommendation of magnetic resonance imaging or any other findings. Dr. Lawler is the only physician who has personally examined Denemark and she performed surgery on him. She has recommended a pain management referral. ADM has been working on finding a physician who will accept Denemark as a patient. Two physicians declined to see him, and Dr. Dery wishes to review Dr. Mathew's records before making a decision on whether to see Denemark. ADM has not delayed Dr. Dery's decision. Dr. Mathew has not released his records from the July 13, 2021 appointment to any party to this case.

Denemark told Dr. Lawler he had been prescribed gabapentin and she supported he try it and continue seeing Dr. Mathew, the prescriber. She did not refer Denemark to Dr. Mathew. I do not find her notes made Dr. Mathew a treating physician, stripping ADM of the ability to direct Denemark's care. Denemark has not established ADM has abandoned care or that the care offered is ineffective, inferior, or less extensive than the care requested by Denemark. I do not find he is entitled to direct his own care, or that ADM should be required to pay for treatment with Dr. Mathew or the magnetic resonance imaging ordered by Dr. Mathew. ADM is responsible for following the recommendations of Dr. Lawler, the treating physician, including her recommendation Denemark receive a pain consultation.

ORDER

Claimant's Application for Alternate Care is DENIED.

Signed and filed this 12th day of August 2021.



HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Dennis Currell (via WCES)

Peter Thill (via WCES)