

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

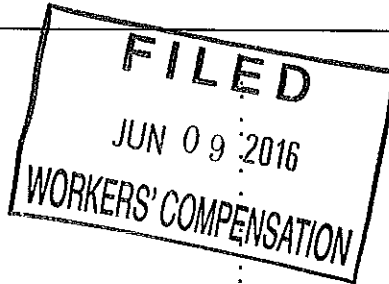
KIM COMER,
Claimant,

vs.

COMPASS CLINIC ASSOC., P.L.L.C.,
Employer,

and

THE HARTFORD,
Insurance Carrier,
Defendants.



File No. 5061103

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, Kim Comer. Claimant appeared personally and through her attorney, John Dougherty. No attorney gave notice of appearance on behalf of the defendants. An answer was not filed by defendants. The employer appeared through its representative, Bruce Buchanan. The Hartford did not appear.

The alternate medical care claim came on for hearing on June 9, 2016. 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 record consists of claimant's exhibits numbered pages one through three. Claimant testified on her own behalf. No other witnesses were called to testify.

ISSUE

The issue presented for resolution is whether the claimant is entitled to left knee surgery, which has been recommended by Mark Fish, M.D.

FINDINGS OF FACT

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

Claimant slipped and fell at work on February 3, 2016 and sustained a left knee injury. Defendants have accepted liability for this claim and authorized medical care for claimant. Defendants' authorized medical provider referred claimant to an orthopaedic surgeon, Dr. Mark Fish.

As a result of the referral, Dr. Fish became an authorized medical provider. Dr. Fish has recommended claimant submit to surgery on her left knee. Claimant desires to proceed with the recommended surgery. (Claimant's testimony)

Defendants have not authorized the recommended surgery. Instead, defendants obtained a records review and opinion from William Milnor, M.D. Dr. Milnor's credentials are not clear in this record. He appears to be licensed in California, Kentucky, Indiana and Texas. It appears that he is likely an orthopaedic surgeon but there is nothing in the record to indicate whether he is a knee specialist. (Claimant's exhibit)

Dr. Milnor opines that "Applicable clinical practice guidelines generally do not support arthroscopic treatment of the knee including chondroplasty as well as sub-chondroplasty and debridement to treat osteoarthritis of the knee." (Claimant's exhibit, page 2) Dr. Milnor further opines, "the medical necessity for arthroscopic treatment of the left knee including debridement chondroplasty or sub-chondroplasty as stated in the physician's note, and internal fixation of unclear stress fractures of the distal femur and proximal tibia is not clearly established." (Claimant's ex, p. 2)

It is apparent that Dr. Milnor has not personally examined claimant. Although Dr. Milnor does not believe that the medical necessity for the recommended surgical procedure is clearly established in the medical reports from Dr. Fish, Dr. Fish is in the best clinical position to provide an opinion on the necessity of the recommended procedure.

Although Dr. Milnor opines that clinical practice guidelines generally do not support the recommended treatment, he does not say that the recommended treatment would never be medically necessary or reasonable. This may well be one of those situations where general practice guidelines are not applicable. Again, Dr. Fish would be in the best clinical position to make that assessment and determination. Having personally evaluated and treated claimant, Dr. Fish has recommended surgical intervention. Given that Dr. Fish has personally evaluated claimant, I consider his opinion to be most persuasive in this situation. I find that the treatment recommended by Dr. Fish is both medically reasonable and medically necessary.

Reviewing the report from Dr. Milnor, I also find that he does not recommend any alternate medical care for claimant's left knee. At this time, it appears that defendants are denying medical necessity of claimant's recommended left knee surgery but are not offering any alternative treatment for the left knee. I find that the defendants' lack of any treatment options at the present time is clearly less extensive and inferior to the treatment recommendations being made by Dr. Fish. Therefore, I find that the defendants are not currently offering reasonable medical care to treat claimant's left knee injury.

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).

When a designated physician refers a patient to another physician, that physician acts as the defendant employer's agent. Permission for the referral from defendant is not necessary. Kittrell v. Allen Memorial Hospital, Thirty-fourth Biennial Report of the Industrial Commissioner, 164 (Arb. November 1, 1979) (aff'd by industrial commissioner). See also Limoges v. Meier Auto Salvage, Iowa Industrial Commissioner Reports 207 (1981).

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 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).

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).

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).

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 treatment recommended by Dr. Fish is both medically reasonable and medically necessary. Defendants are not entitled to disregard the reasonable medical opinions and recommendations of the medical provider they selected as the authorized medical provider. More importantly, I also found that the employer is not offering any alternate treatment options for claimant's left knee. Therefore, defendants challenge the reasonableness and necessity of the treatment recommended by Dr. Fish without offering any alternative treatment options. Clearly, the treatment recommended by Dr. Fish is superior to and more extensive than no treatment at all. Therefore, I conclude that claimant has proven entitlement to the alternate medical care she seeks and specifically to proceed with the left knee surgery recommended by Dr. Fish.


ORDER

THEREFORE IT IS ORDERED:

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

Defendants shall authorize and hold claimant harmless for all medical expenses related to the recommended left knee surgery to be performed by Dr. Mark Fish.

Signed and filed this 9th day of June, 2016.


WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

John P. Dougherty
Attorney at Law
4090 Westown Parkway, Ste. E
West Des Moines, IA 50266
Johndougherty3@me.com

Compass Clinic Associates
Attn: Bruce Buchanan
2500 82nd Place
Urbandale, IA 50322
FAX: 515-412-5123

The Hartford
PO Box 14471
Lexington, KY 40512

The Hartford
PO Box 4912
Syracuse, NY 13221

WHG/kjw