BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MATTHEW MILLER,	File No. 5046140
Claimant,	ALTERNATE MEDICAL
vs.	CARE DECISION
WHIRLPOOL CORPORATION,	
Employer, Self-Insured, Defendant.	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, Matthew Miller.

The alternate medical care claim came on for hearing on March 17, 2016. The proceedings were digitally recorded which constitutes the official record of this proceeding. This ruling is designated final agency action and any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code 17A.

The record consists of claimant's exhibits 1, 2 and 3 and defendant's Exhibit A.

Administrative notice was taken of the arbitration decisions in File No. 5046140 that found that Chad Abernathey, M.D. was an authorized physician who performed two surgeries upon the claimant.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care. The care claimant requested in his petition was,

> Claimant's authorized treating physician, Dr. Gene Gessner has recommended Claimant have an MRI and be evaluated by Dr. David Segal. Authorization has not been provided for recommended care.

Defendant agreed to provide an MRI that was recommended by Gene Gessner, M.D., and that request is no longer in issue, as it will be provided by the defendant.

FINDINGS OF FACT

The undersigned having considered all of the testimony and evidence in the record finds:

Defendant admitted liability for an injury occurring on March 20, 2012. An arbitration decision was issued on September 9, 2014 finding claimant permanently and totally disabled. That decision was appealed by defendant. The parties reached a compromise settlement before the commissioner ruled upon the appeal. The compromise settlement left open claimant's medical care.

Claimant had two neck surgeries by Dr. Abernathey. Claimant last saw Dr. Abernathey in 2013. At that last visit he was by Dr. Abernathey that there was nothing more he could do for him.

Claimant received treatment from Dr. Gessner, a pain specialist. Claimant said that Dr. Gessner has prescribed narcotic medication and that he is currently taking 8 pain pills per day. Claimant said his neck condition is worsening. Claimant testified that it has been a number of years since he has had an MRI. I found claimant's testimony credible.

Dr. Gessner examined claimant on February 18, 2016. He wrote, "It is my opinion that the patient should get a new MRI and be evaluated by Dr. David Segal in Cedar Rapids. Will pursue approval of these with Workman's [sic] Comp." (Exhibit 1, page 2) Claimant notified the defendant of this recommendation on February 18, 2016. (Ex. 2, p. 1)

Dr. Segal is a neurosurgeon who practices in Cedar Rapids. Claimant credibly testified that Dr. Gessner made a decision to specifically refer him to Dr. Segal and that it was Dr. Gessner's idea, not his.

On February 26, 2016 defendant notified claimant that an appointment had been scheduled for claimant to see Dr. Abernathey on March 14, 2016. (Ex. A, p. 1) (This appointment has been rescheduled for March 18, 2016).

As of the day of the alternate care hearing no MRI had been scheduled. If claimant attends the appointment with Dr. Abernathey, the doctor will not have a recent MRI to review.

I find that Dr. Gessner is an authorized treating physician in the case. I find he has made a referral for an MRI and also a specific referral to Dr. Segal.

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-reopen 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); 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. v. Reynolds, 562 N.W.2d 433 (Iowa 1997), 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" 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.

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).

In this case the authorized physician, Dr. Gessner, made recommendations for an MRI and then a referral to Dr. Segal. The defendant decided to first send claimant to Dr. Abernathey and then obtain an MRI.

I find the defendant is not providing reasonable care for the following reasons:

1) The defendant is interfering with the medical judgment of Dr. Gessner by not approving a specific referral to Dr. Segal.

2) The referral to Dr. Abernathey before an MRI is likely to be of little or no value. The last time Dr. Abernathey saw claimant he told him there was nothing further he could offer. Without the benefit of a new MRI, it is

doubtful that Dr. Abernathey can provide a valid medical opinion at this time.

3) Claimant's condition is getting worse. A referral to the physician who performed two unsuccessful surgeries is not reasonable.

The defendant has failed to provide reasonable care. The claimant's request for alternate care is granted.

Defendant shall contact Dr. Segal's office within five (5) days of this decision and arrange an appointment. Defendant shall arrange for an MRI to be conducted and the results provided to Dr. Segal before claimant's examination by Dr. Segal.

ORDER

Therefore is ordered:

The claimant's petition for alternate medical care is granted as set forth above.

Signed and filed this 17th day of March, 2016.

JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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