

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

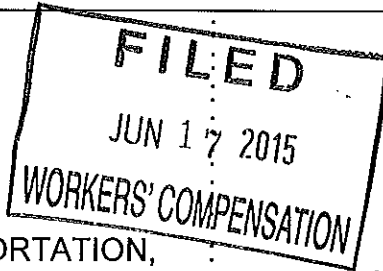
JOHN HICKS,
Claimant,

vs.

JACK COOPER TRANSPORTATION,
Employer,

and

APPLIED UNDERWRITERS,
Insurance Carrier,
Defendants.



File No. 5052632
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, John Hicks.

The alternate medical care claim came on for hearing on June 17, 2015. The proceedings were tape-recorded which constitutes the official record of this proceeding. By order filed February 16, 2015, this ruling is designated final agency action.

The record consists of claimant's exhibits 1-3; defendants' exhibit A and B as well as the testimony of the claimant.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of compound cream recommended by Dr. Meyers.

FINDINGS OF FACT

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

Defendants admitted liability for an injury occurring in Iowa on April 1, 2015 including that Iowa has jurisdiction over this claim. Claimant is an over-the-road driver. He was injured when he fell off of a tractor trailer ladder ten feet landing on his right arm. Since this injury, he has had pain radiating from his elbow to his thumb; and weakness from the hand to the elbow. Claimant reported his injury to his dispatcher in

Kentucky who told him to see his family physician as under Kentucky law he was entitled to choose his physician. He went to his family physician in South Carolina (claimant lives in South Carolina) at Colonial Family Practice. There, he was sent to Edward Meyers, M.D., by the family physician as Dr. Meyers handled workers' compensation injuries. Dr. Meyers began treating claimant. Defendants accepted the injury and paid for care with Dr. Meyers and began paying claimant weekly benefits.

Under this care plan the claimant had an MRI and physical therapy. Dr. Meyers prescribed a CFP joint nerve cream on April 6, 2015. The defendants then sent this request to a utilization review pursuant to Kentucky regulations (KRS 342.035) and the request was ruled not medically necessary so the insurance carrier denied the request. Dr. Meyers has also referred claimant to Danny Ford, M.D., an orthopedic specialist located in Sumter, South Carolina where claimant lives. Further, Dr. Meyers referred claimant to John Baker, M.D., a neurologist for an EMG.

Claimant hired counsel in Iowa where the injury occurred and counsel wrote a letter requesting that the cream be authorized under Iowa Code section 85.27. This request was denied. Defendants have now scheduled an appointment to see an orthopedic physician in Columbia, South Carolina for June 29, 2015. This physician is located a minimum of 90 miles round trip from claimant's home. Claimant first learned of this appointment the evening before this hearing.

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 (Iowa 1997).

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).

Dr. Meyers has been claimant's treating physician since the onset of this injury. The defendants now seek to change that care in favor of an orthopedic physician located more than 90 miles from claimant's home. This is unreasonable. It is unreasonable to interfere with Dr. Meyers recommendations for medication including the cream he has recommended and the referrals to nearby specialists to treat claimant. Claimant has been unable to work since this injury and interference with recommendations made two months ago is adding to delay in claimant's recovery. Claimant's request for alternate care is granted.

ORDER

THEREFORE IS ORDERED:

The claimant's petition for alternate medical care is granted. Defendants shall provide and pay for the care recommended by Dr. Meyer including the CFP joint cream and any referrals he may make to treat this work injury.

Signed and filed this 17th day of June, 2015.



RON POHLMAN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

HICKS V. JACK COOPER TRANSPORTATION

Page 4

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