

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TRAVIS SCHULTZ,

Claimant,

vs.

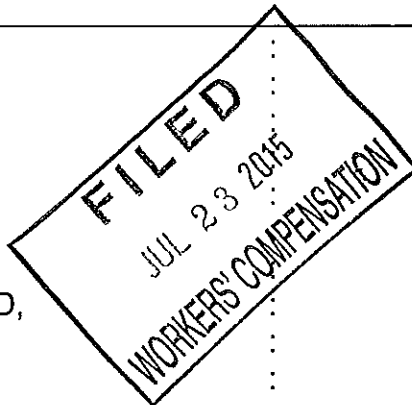
VENDORS UNLIMITED,

Employer,

and

CINCINNATI INSURANCE,

Insurance Carrier,
Defendants.



File No. 5049177

ALTERNATE MEDICAL
CARE DECISION

HEAD NOTE NO: 2701

This is a contested case proceeding under Iowa Code chapters 85 and 17A. The expedited procedures of rule 876 IAC 4.48, the "alternate medical care" rule, are invoked by claimant Travis Schultz.

This alternate medical care claim came on for hearing on July 23, 2015. The proceedings were recorded digitally and constitute the official record of the hearing. By an order filed by the workers' compensation commissioner, this decision is designated final agency action. Any appeal would be a petition for judicial review under Iowa Code section 17A.19.

The record in this case consists of claimant's exhibits 1 through 2; defendants' exhibits A through C, and the testimony of claimant. Defendants' exhibits were paginated by the undersigned for clarity of the record.

ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of a neurological evaluation.

FINDINGS OF FACT

Defendants accept liability for an injury to claimant occurring on October 6, 2010. Claimant fell from his delivery truck and injured his groin. Claimant testified that he initially had tingling, numbness and burning in his groin and the back of his legs.

On April 26, 2011 claimant was evaluated at the University of Iowa Hospitals and Clinics (UIHC) by Usman Saleem, M.D. Claimant was assessed as having neuropathic pain. Claimant was treated with medication. (Exhibit 1, page 1)

Claimant returned to the UIHC in May of 2013 with complaints of persistent pain in the perineal region. Claimant was assessed during that time as having complex regional pain syndrome (CRPS). Claimant had a permanent spinal cord stimulator (SPS) placed in late May of 2013 to help with pain. (Ex. 1, pp. 2-5; Ex. C)

On July 7, 2013 claimant returned in follow-up at the UIHC. Claimant had two unexplained falls when his legs gave out on him when the stimulator was off. Overall claimant had improvement in his symptoms with the stimulator. (Ex. 1, p. 5)

Claimant testified that in approximately July of 2014 he began experiencing tingling and burning sensations in his arms. (Ex. 2, p. 10)

Claimant returned to the UIHC on July 9, 2014 with complaints of numbness and tingling in his right hand and left lower extremity. Claimant was evaluated by Esther Benedetti, M.D. Dr. Benedetti did not believe claimant's complaints of new symptoms were related to the spinal cord stimulator. A neurological consultation was recommended at that time. (Ex. 1, pp. 6-7; Ex. A)

In a March 5, 2014 letter, Dr. Benedetti indicated claimant's symptoms of tingling and numbness in his arms and legs were not related to his injury or the SPS. She recommended claimant be evaluated by a neurologist and again noted the symptoms were not related to his work injury or the SCS. (Ex. B)

In a June 4, 2015 report, Mark Taylor, M.D. gave his impressions of claimant's condition following an independent medical evaluation (IME). Dr. Taylor opined he believed symptoms in claimant's legs were caused by the work injury. He was unable to give an opinion regarding causation of claimant's symptoms in his upper extremities. Dr. Taylor noted claimant was receiving appropriate care. (Ex. 2)

On July 6, 2015 claimant was evaluated in a follow-up exam by Dr. Benedetti. Claimant was pleased with the relief he was getting from pain. Claimant reported having continued numbness and tingling in the upper and lower extremities. Dr. Benedetti opined these symptoms were not related to his work injury or the SCS. Dr. Benedetti recommended claimant be evaluated by a neurologist. She also recommended claimant begin tapering on Topamax. (Ex. C)

Claimant testified he believes his leg and arm symptoms are due to his work injury. He testified he did not have leg and arm symptoms prior to his work injury.

Claimant testified Dr. Benedetti has discussed with him tapering off of Topamax as it can possibly cause nerve damage.

Claimant testified that to the best of his knowledge, he has not had a neurological evaluation since his work injury.

Claimant testified he still works as a driver for Vendors Unlimited. He said he gets relief from the SCS. He said he only uses the SCS at night to help him sleep. He said he cannot use the SCS during the day.

CONCLUSION OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

Iowa Code section 85.27(4) provides, in relevant part:

For purposes of this section, the 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. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

The employee requesting the care has the burden to prove the care being offered by the employer is unreasonable. R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 196–96 (Iowa 2003); Lynch Livestock v. Bursell, No. 14-1133, Filed May 20, 2015 (Iowa Ct. App.).

Claimant seeks a neurological evaluation to assess symptoms he has in his arms and legs. Dr. Taylor, the physician chosen by claimant for his IME, indicates claimant's symptoms in his legs are caused by the work injury, but has no opinion regarding causation of symptoms in claimant's arms. Dr. Taylor also opines claimant's care has been appropriate. (Ex. 2, p. 10)

Dr. Benedetti has treated claimant for several years. She recommended claimant have a neurological evaluation, but did not believe the symptoms claimant experiences in his arms and legs are caused by the work injury. (Exs. B and C)

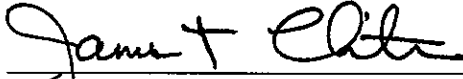
I am empathetic to claimant's situation. The record indicates that despite problems he has with numbness, tingling and burning following his work accident, he continues to try to work as a driver for defendant employer. However, Dr. Taylor gives no opinion regarding causation of claimant's upper extremity symptoms. He finds claimant's care has been appropriate. Dr. Benedetti does not believe claimant's symptoms in the arms and legs are caused by the work injury. Given this record, claimant has failed to carry his burden of proof that defendants' denial of a neurological evaluation is unreasonable.

ORDER

THEREFORE, it is ordered:

That claimant's petition for alternate medical care is denied.

Signed and filed this 23rd day of July, 2015.



JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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