BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BLANDINE B. LOSEYA,

Claimant,

vs.

TYSON FRESH MEATS, INC.,

Employer,
Self-Insured,
Defendants.

File No. 5055587

ALTERNATE MEDICAL CARE DECISION

HEAD NOTE NO: 2701

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, Blandine Loseya. Claimant appeared personally and through her attorney, Eric Loney. Defendant, Tyson Fresh Meats (hereinafter referred to as "Tyson"), appeared through its attorney, Lisa Peterson.

The alternate medical care claim came on for hearing on March 10, 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 1-3, which include a total of 4 pages as well as defendant's exhibits A through E, which contain 11 pages. Neither party called a witness to testify at the hearing. Counsel presented arguments, however.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care to treat her ongoing neck and/or shoulder symptoms.

FINDINGS OF FACT

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

Claimant sustained injuries to her bilateral shoulder and/or neck injuries as a result of her work activities at Tyson on June 3, 2015. Tyson selected physicians to

provide claimant care. She has been evaluated and treated by the selected physicians. She has been provided appropriate diagnostic testing, including x-rays and MRI's.

Defendant authorized an orthopaedic evaluation through Thomas S. Gorsche, M.D. Dr. Gorsche evaluated claimant on January 13, 2016. He opined that claimant is not a surgical candidate, attempted to provide claimant injections but was not able to complete the injections, and referred claimant back for follow up with the occupational physician, Robert L. Gordon, M.D. (Ex. D)

Dr. Gordon has provided claimant medical care for her neck and shoulder complaints and attempted injections into claimant's shoulders in February 2016. Ultimately, in a report dated February 10, 2016, Dr. Gordon opined that claimant had achieved maximum medical improvement and released claimant with no further treatment recommendations. (Ex. 3)

Claimant contends that she has ongoing symptoms and needs treatment for her symptoms. Defendants contend that they have provided claimant all reasonable and necessary medical care and that no further medical treatment is recommended. Review of the evidence in this record reveals that claimant continues to complain of ongoing symptoms in her neck and bilateral shoulders. However, the evidence demonstrates that she is not a surgical candidate and that no further medical care is being recommended. I find that claimant has not proven that any additional medical treatment exists, which is likely to improve her condition or reduce her symptoms. Therefore, I find that the defendants have provided all reasonable medical care recommended to date.

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).

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).

"To establish a claim for alternative medical care, an employee must show that the medical care furnished by the employer is unreasonable." Bell Bros. Heating v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010).

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, claimant produced no evidence to establish that the care offered by defendants to date has been inferior or less extensive than other available care. In fact, claimant has failed to prove that any alternative medical care is available or recommended for her conditions. The evidentiary record establishes that claimant continues to have symptoms. However, the current evidentiary record also establishes through unrebutted medical evidence that claimant has achieved maximum medical improvement, is not a surgical candidate, and that no further medical care is recommended.

Claimant does not request specific alternate medical care because no specific alternate medical care has been recommended. Defendants have offered all reasonable medical care that has been recommended by a medical provider. Defendants have not denied any recommended care at the present time because no further care is recommended. Therefore, I conclude that claimant has failed to prove that the care offered by defendants has been unreasonable. Claimant has failed to prove that there is alternate medical care available that is more extensive or superior to the care that has been offered by defendants. I conclude claimant has failed to establish her claim for alternate medical care on the record presented.

ORDER

THEREFORE IT IS ORDERED:

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

Signed and filed this 10th day of March, 2016.

WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Eric J. Loney
Attorney at Law
1311 – 50th St.
West Des Moines, IA 50266
eric@loneylaw.com

Lisa A. Peterson
Attorney at Law
800 Stevens Port Dr., Ste. DD713
Dakota Dunes, SD 57049
Lisa.peterson@tyson.com

WHG/kjw