

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TAMMY SCHMIT,

Claimant,

vs.

AREA RESIDENTIAL CARE,

Employer,

and

WEST BEND MUTUAL
INSURANCE CO.,

Insurance Carrier,
Defendants.

FILED

FEB 09 2017

WORKERS COMPENSATION

File Nos. 5058168, 5058216

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapters 17A and 85. The expedited procedure of rule 876 IAC 4.48, the "alternate medical care" rule, is requested by claimant, Tammy Schmit. Claimant filed a petition for alternate medical care on January 30, 2017. The alternate medical care claimant came on for hearing on February 9, 2017. The proceedings were recorded digitally and constitute the official record of the hearing.

Claimant requested authorization of physical therapy sessions utilizing a laser treatment modality, designed to treat an injury to claimant's left middle finger on October 26, 2015 and to her right pinky finger on February 8, 2016. Defendants admitted the occurrence of work related injuries on October 26, 2015 and February 8, 2016 and did not dispute liability for the conditions sought to be treated by this proceeding. The evidentiary record consists of claimant's exhibit 1, defendants' exhibits A through D, and the testimony of claimant and Melissa Altheimer.

By an order filed February 16, 2015 by the workers' compensation commissioner, this decision is designated final agency action. Any appeal would be by petition for judicial review under Iowa Code section 17A.19.

ISSUE

The issue presented for resolution is whether claimant is entitled to alternate medical care in the form of authorization of physical therapy sessions utilizing laser treatment modality.

FINDINGS OF FACT

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

Claimant suffered stipulated injuries to her left middle finger on October 26, 2015 and right pinky finger on February 8, 2016. Claim representative, Melissa Altheimer, was assigned by defendant-insurance carrier to adjust claimant's workers' compensation claim. (Ms. Altheimer's testimony) Defendants authorized medical treatment for both conditions with Julie Muenster, ARNP, of Tri-State Occupational Health. At Ms. Muenster's orders, claimant's treatment included a course of physical therapy with Jeremy Jordan, PT. (Claimant's testimony; Ms. Altheimer's testimony)

Ms. Altheimer testified claimant requested evaluation by a hand specialist. (Ms. Altheimer's testimony) Pursuant to her request, defendants arranged for claimant to be evaluated on June 23, 2016, by James Johns, M.D. Following examination, Dr. Johns informed claimant that prolonged stiffness and swelling are typical results of such injuries. He opined claimant was non-surgical and recommended as-needed conservative treatment, including taping, anti-inflammatories and "as needed modalities." (Exhibit 1, page 8; Ex. C, p. 1) Claimant testified Dr. Johns indicated claimant needed to learn to "deal" with her pain. (Claimant's testimony)

At a physical therapy session on June 23, 2016, Mr. Jordan noted he would attempt a "laser therapy modality" at claimant's next session. (Ex. 1, p. 5) At physical therapy on June 27, 2016, Mr. Jordan utilized a "Class IV laser" in claimant's session. (Ex. 1, p. 5; Ex. B, p. 1) Following a session on June 30, 2016, Mr. Jordan noted continued pain complaints and opined claimant might benefit from orthopedic evaluation. (Ex. B, p. 2) Claimant testified Mr. Jordan informed her he also recommended multiple additional sessions of laser treatment. (Claimant's testimony)

Claimant returned to Ms. Muenster on July 7, 2016. At that time, Ms. Muenster noted claimant had completed her course of physical therapy, but continued to complain of pain and slight limitations in movement. Ms. Muenster recommended claimant perform home exercises and issued an orthopedic referral, for consideration of any additional treatment options. (Ex. 1, p. 4)

On July 8, 2016, Mr. Jordan completed a discharge summary indicating claimant was discharged from physical therapy due to "max rehab potential / plateau." (Ex. B, p. 3)

On October 6, 2016, claimant was evaluated by board certified hand and orthopedic surgeon, Edwin Castaneda, M.D. (Ex. D, p. 2) Following examination, Dr. Castaneda opined he did not recommend surgical intervention for either finger. (Ex. D, p. 1) Claimant testified Dr. Castaneda, like Dr. Johns, advised her to accept and learn to "deal" with her pain. (Claimant's testimony)

Despite ongoing symptoms, claimant received no further treatment of her complaints. (Claimant's testimony)

Claimant's counsel authored a letter to Ms. Alzheimer dated December 28, 2016. By the letter, counsel described claimant's ongoing complaints and requested authorization of additional physical therapy sessions, specifically including the laser procedure recommended by Mr. Jordan. (Ex. 1, p. 1)

Claimant's counsel then authored a letter to Mr. Jordan dated January 16, 2017. By the letter, counsel requested confirmation that Mr. Jordan believed "the laser procedure may be beneficial" in treatment of both of claimant's finger injuries. Mr. Jordan signed the letter, expressly indicating agreement. (Ex. 1, p. 9)

Following receipt of Mr. Jordan's opinion, claimant's counsel contacted Ms. Alzheimer and requested authorization of physical therapy sessions utilizing the laser procedure recommended by Mr. Jordan. Ms. Alzheimer declined to authorize the requested care, stating defendants had "approved all treatment that was recommended by her authorized treating physicians." (Ex. 1, p. 10)

On February 9, 2017, Dr. Castaneda issued responses to inquiry from defendants' counsel. Dr. Castaneda initialed a statement indicated he did not believe the laser procedure was a reasonable and necessary treatment for claimant. (Ex. D, p. 3) Dr. Castaneda authored a handwritten statement indicating he was unaware of any laser treatment which would be effective in treating a stable joint. (Ex. D, p. 4)

At evidentiary hearing, Ms. Alzheimer testified no treatment for claimant's complaints was currently pending. (Ms. Alzheimer's testimony)

CONCLUSIONS 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 Rule of Appellate Procedure 6.14(6).

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).

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.

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. Assman 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." "Determining what care is reasonable under the statute is a question of fact." Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995).

Claimant suffered stipulated injuries to her left middle finger and right pinky finger. Defendants authorized medical treatment for both conditions, including physical therapy performed by Jeremy Jordan, PT.

Defendants authorized Mr. Jordan to perform physical therapy services. Mr. Jordan, utilizing his professional judgment, recommended additional physical therapy utilizing a laser treatment modality. Although a treating physician has not recommended such a modality, a physician referral is not an absolute requirement in creating a treatment plan. Many injured workers receive treatment of work related injuries from nurses or physician assistants. In fact, claimant's initial designated provider with respect to her injuries was a nurse, Ms. Muenster. The recommendations of such providers are valued and generally followed in crafting treatment plans. I, therefore, see no reason to disregard the opinion of an authorized physical therapist based solely on a lack of physician referral for a particular treatment modality.

Defendants have provided thorough evaluation of claimant's complaints, including with two hand specialists. However, claimant continues to suffer with

symptoms and has requested additional treatment which is minimally invasive and unlikely to cause any further deterioration of claimant's condition. Defendants have not offered any alternative form of treatment. Given this factual backdrop, I find defendants' treatment plan is less extensive than the treatment requested by claimant and that defendants' denial of laser treatments, as recommended by Mr. Jordan, is unreasonable.

It is determined that a course of physical therapy sessions, specifically including laser treatment, is reasonable and appropriate. However, given the uncertainty with respect to success of such treatments, I believe the duration of the course of therapy should be limited to four weeks. During this period, defendants are responsible for laser treatments, to be performed pursuant to the recommendations of Mr. Jordan. At the conclusion of this four-week period, the efficacy of such treatments will, ideally, be evident and thus, allow defendants to evaluate the reasonableness of further treatment.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's application for alternate medical care is granted. Defendants shall authorize four weeks of physical therapy sessions involving the laser treatment modality, to be performed under the professional guidance of Mr. Jordan.

Signed and filed this 9th day of February, 2017.



ERICA J. FITCH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies To:

Zeke McCartney
Attorney at Law
PO Box 239
Dubuque, IA 52004-0239
mccartney@rkenline.com

Mark A. Woollums
Attorney at Law
1900 E. 54th St.
Davenport, IA 52807
maw@bettylawfirm.com

EJF/srs