

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CRISPIN REYES,

Claimant,

vs.

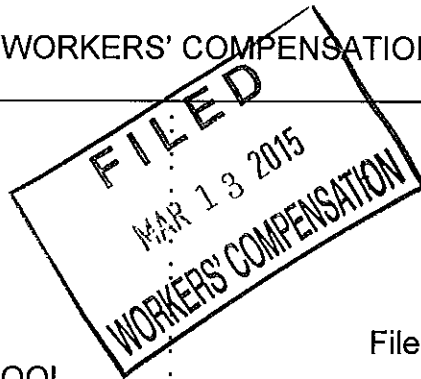
ROSENBOOM MACHINE & TOOL,

Employer,

and

FEDERAL INSURANCE CO/CHUBB
GROUP,

Insurance Carrier,
Defendants.



File No. 5049899

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, Crispin Reyes.

The alternate medical care claim came on for hearing on March 13, 2015. The proceedings were tape-recorded, which constitutes the official record of this proceeding. By order filed April 15, 2003, this ruling is designated final agency action.

The record consists of claimant's exhibits 1 and 2 and defendants' exhibits A and B.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of carpal tunnel release surgery recommended by R. Blake Curd, M.D.

FINDINGS OF FACT

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

Defendants admitted liability for an injury to claimant's right wrist occurring on November 24, 2014. Claimant saw Jeffery Goerss, M.D. who referred claimant for an orthopedic consultation when conservative care had failed after seven weeks. Claimant saw R. Blake Curd, M.D. on February 2, 2015. Dr. Curd recommended an injection to see if the symptoms could be calmed down:

PLAN: At this point, I recommended based on his clinical carpal tunnel, that we try an ultrasound guided corticosteroid injection to see if we can calm him symptoms down. If we do not get longstanding relief with the injection then he is going to be a candidate for, perhaps, an endoscopic carpal tunnel release, and before I try that we may try a course of Cymbalta to see if we can calm his symptoms down.

(Exhibit B, page 2)

Claimant had the injection and returned for followup on February 20, 2015 with no improvement. The plan reported by Dr. Curd's physician's assistant following this visit was:

PLAN: I went through a lengthy discussion with Crispin. He has had two separate carpal tunnel injections; one by Dr. Curd and one elsewhere. He has worn a night splint for carpal tunnel syndrome. He has been taking Cymbalta for three weeks and it seems that nothing we have done to treat the carpal tunnel syndrome has helped him at all. His nerve test shows only mild carpal tunnel syndrome. I think the only other option we would have for him is to proceed with endoscopic carpal tunnel release. Dr. Curd mentioned this and brought this up on his February 2nd dictation. I just informed him that usually we would like to see some response from the carpal tunnel injection as an indicator whether he would do well with the surgery or not so I don't think there is a 100% guarantee he is going to respond very well from the surgery. I discussed this with him and he understands this. He would like to proceed. I went through the risks versus benefit discussion of the surgery, had him sign the risk discussion sheet. He will have to have this cleared through work comp and they will let him know.

(Ex. B, p. 3)

The nurse case manager, Theresa Davis, RN, BSN wrote to claimant's counsel:

Dr. Curd's office has recommended a CTR for the mild carpal tunnel syndrome diagnosis. At this time the work comp carrier has recommended a job video/analysis to be completed along with an IME. This will need to be coordinated prior to them authorizing the surgery etc. I just wanted to keep you in the loop.

(Ex. 1, p. 2)

Claimant's counsel wrote the claims representative on March 3, 2015 requesting that claimant have the surgery recommended by Dr. Curd authorized. Defendants have not authorized this surgery. Defense counsel argue that given that the carpal is diagnosed as mild (see Exhibit A) and the length of time since the injury that a second opinion is appropriate in case the problem in this case is not carpal tunnel. To that end, an appointment is scheduled with Dr. Nipper in Sioux Falls, South Dakota for March 27, 2015.

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).

The evidence in the record indicates that the treating physician has recommended surgery after weighing the examination results and treatment history. The defendants are not free to interfere with that judgment of their chosen physician. The claimant is entitled the alternate care requested.

ORDER

Therefore it is ordered:

The claimant's petition for alternate medical care is granted. Defendants shall provide and pay for the carpal tunnel release surgery recommended by Dr. Curd to treat the claimant's right wrist injury pursuant to Iowa Code section 85.27.

Signed and filed this 13th day of March, 2015.



RON POHLMAN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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