

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ANA MARIA ZAVALA
Claimant,

vs.

WELLS ENTERPRISES
Self-Insured Employer,

Defendant.

File No. 22012798.02

Head Notes: 2701

STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapters 85 and 17A. By filing an original notice and petition for alternate medical care, claimant, claimant, Ana Maria Zavala invoked the expedited procedure of rule 876 IAC 4.48.

The alternate medical care claim came on for telephonic hearing on May 22, 2023. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Claimant appeared personally and through her attorney, Judy L. Freking. Defendant appeared through their attorney Steven Durick.

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. Any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code section 17A.

The evidentiary record consists of Claimant's Exhibits 1 - 3, consisting of 10 pages and Defendant's Exhibits A - C consisting of 8 pages. Ms. Zavala testified on her own behalf. No other witnesses testified at the hearing.

ISSUE

The issue presented for resolution is whether the claimant is entitled to an alternate medical care order requiring defendants to authorize treatment with Dr. Drexler.

FINDINGS OF FACT

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

Claimant, Ana Maria Zavala, sustained an injury to her bilateral hands and upper extremities as a result of her work duties at Wells Enterprises on July 6, 2022. Defendant accepted the injury as compensable and provided medical treatment related to the injury. Defendant selected and authorized care with Yorell Manon Matos, M.D.,

at CNOS. Through this proceeding claimant is seeking to have defendant authorize treatment with Kathlyn J. Drexler, M.D.

Dr. Manon Matos performed right endoscopic carpal tunnel release on August 26, 2022, and left endoscopic carpal tunnel release on November 16, 2022. (Cl. Ex. 1, p. 1) Ms. Zavala returned to CNOS in November 2022. She reported that both hands were excruciatingly painful. She was having difficulty performing daily activities. (Cl. Ex. 1, p. 1) On January 25, 2023, Ms. Zavala reported that her preoperative paresthesias had resolved, but she still had significant pain and sensitivity at the surgical sites. Dr. Manon Matos noted that Ms. Zavala had continued occupational therapy and light duty and she had significant improvement. Ms. Zavala reported significant improvement. She still had some soreness and swelling at the surgical sites, but her pain was much improved. Her right wrist was worse than the left. Dr. Manon Matos assured Ms. Zavala that her painful sites will continue to improve. Ms. Zavala wanted to return to regular work. Dr. Manon Matos placed her at maximum medical improvement (MMI) and released her to full duty. (Cl. Ex. 1, pp. 2-3)

Ms. Zavala testified that she returned to work but due to pain in her hands she was unable to perform her job duties. She reported pain, swelling, loss of control of her hands, and dropping cones on the line. Ms. Zavala advised Julie, the on-site nurse, that she had problems grabbing the cones. Her right hand was not responding to grabbing the cones and she was having pain all the way to her neck. The people on her line were upset that she was not keeping the pace. Wells moved her to another line for a couple of weeks where she did not have to do packing. She then returned to her original line. Ms. Zavala testified she continued to ask for medical treatment from Wells but was told that the insurance had denied a second opinion and Dr. Manon Matos had released her from his care, so there was nothing they could do. According to Ms. Zavala, going to see her family doctor was just a suggestion from the nurse. Her health insurance through Wells paid for this treatment. (Testimony)

On March 29, 2023, Ms. Zavala sought treatment with Kathlyn J. Drexler, M.D., at AMG Orthopedic and Sports Medicine. Ms. Zavala reported to the orthopedic surgeon that the first two weeks after her right carpal tunnel release, she felt she was doing well but thinks this was because she had dressings on and was not using her hand. Once the dressings were removed and she started using her hand, she began to struggle with right palm pain and pain at the base of thenar eminence. She has tried ultrasound treatment with no pain relief. She recovered well after the left carpal tunnel release and believes her postoperative pain was consistent with normal healing. She rated her pain as 10/10 on the right and 5-6/10 on the left. Dr. Drexler's diagnosis was work-related right long finger trigger digit and right palm mass, rule out neuroma versus persistent median nerve compression. Dr. Drexler performed a steroid injection for the right palm mass and right long finger trigger digit. Dr. Drexler also recommended a referral to Dr. Buchanan for ultrasound evaluation of the right palm mass and median nerve to rule out a neuroma vs persistent compression. Dr. Drexler restricted Ms. Zavala to avoid lifting greater than 5 pounds to the right hand. (Cl. Ex. 2, pp. 1-3)

At some point between when Ms. Zavala was placed at MMI and April 2023, she removed herself from work for one week. According to Ms. Zavala, Wells HR advised her to use FMLA. After one week HR advised her to seek short-term disability. Ms. Zavala tried on more than two attempts to return to work; however, HR advised Ms. Zavala that she could not return to work until the restrictions were modified because Wells could not accommodate the 5-pound lifting restriction. (Testimony)

Defendant authorized Ms. Zavala to return to see Dr. Manon Matos on April 20, 2023. Ms. Zavala reported she did well following the operations until March 17, 2023 when she was returned to her regular job. Her symptoms have recurred in both hands, right much worse than the left. The doctor's assessment was status post bilateral endoscopic carpal tunnel releases and bilateral thumb CMC joint osteoarthritis. Dr. Manon Matos felt she had additional pain related to bilateral thumb CMC joint osteoarthritis, less likely due to prior endoscopic carpal tunnel release. However, he felt there was no clear causality, but repetitive pinching and gripping may have aggravated her symptoms. He recommended a work conditioning program to strengthen her hands and upper extremities. The work condition program may be performed with either John Stollberg, OT/CHT, at Tri-State Nursing or with a program of their choice. Dr. Manon Matos allowed her to continue with full duty work. Ms. Zavala was to follow-up with him in 4 to 6 weeks. (Def. Ex. A, pp. 1-4) Defendant authorized the work conditioning program recommended by Dr. Manon-Matos with John Stollberg. (Def. Ex. C, p. 1)

Jonathan Buchanen, M.D., saw Ms. Zavala on April 21, 2023, for right hand, third finger pain. Ms. Zavala reported that since her right hand surgery she has experienced hand pain. Dr. Buchanen noted she came to him for a second opinion. A median nerve ultrasound demonstrated complete release at the carpal tunnel with mild widening. The ulnar nerve was visualized from the forearm to the ulnar volar wrist and significant enlargement with Guyon's canal. She had an injection in March helped tremendously but does still have pain and weakness. His assessment was ulnar neuropathy at Guyon's canal, right wrist. He had several treatment options including corticosteroid injection of the ulnar nerve at the level of the hamate, surgical release, or occupational/hand therapy. Because Ms. Zavala was under the care of Dr. Drexler, Dr. Buchanen wanted to discuss the treatment options with Dr. Drexler. (Cl. Ex. 2, pp. 4-6)

As prescribed by Dr. Manon Matos, Ms. Zavala attended OT Work Conditioning with John Stollberg at Tri-State on May 3, 2023 for three hours from 12:50 p.m. to 3:50 p.m. The therapist noted Ms. Zavala had a fair tolerance to the initial work conditioning sessions but did have a limited activity tolerance due to reported pain. The therapist felt work conditioning was needed for wrist and hand range of motion, strengthening, endurance, training, tendon gliding, and gripping. The therapist noted Ms. Zavala had a fair prognosis for recovery. The plan was for her to attend therapy three times per week for four weeks. (Def. Ex. B, pp. 1-3)

On May 11, 2023, John Stollberg advised a representative from Sedgwick that Ms. Zavala had cancelled her upcoming appointments as she indicated she was having surgery with Dr. Drexler. (Def. Ex. C)

Ms. Zavala testified that the surgeon in Sioux Falls has recommended a carpal tunnel reversal, release of ulnar nerve, removing scar tissue and releasing a trigger finger. She would like to proceed with that recommended treatment. Ms. Zavala is not satisfied with the care from Dr. Manton- Matos because he tells her the pain she has been experiencing is normal. She has asked him for an injection or something for pain relief because the pain is more severe now than before surgery. She feels her left hand has healed beautifully but her right hand has gotten worse. (Testimony)

Ms. Zavala testified that her therapy appointment with John Stollberg lasted four hours. Because she is not comfortable driving due to numbness in her hand, Wells provided transportation for her appointments. Ms. Zavala had to leave work approximately one hour before her therapy appointment and returned approximately one hour after her appointment. She was not paid for the time she missed work due to her therapy. It is unclear to the undersigned exactly how many therapy appointments she has attended with Mr. Stollberg. She testified that she has attended 6 appointments in two weeks. (Testimony) However, her first appointment was on May 3, 2023 and by May 11, 2023, Mr. Stollberg stated that she had cancelled her upcoming appointments. (Def. Ex. C, p. 1)

Ms. Zavala testified that Dr. Drexler advised her to stop going to the physical therapy because it was not helping. According to Ms. Zavala, Dr. Drexler wrote a letter stating that she believed Ms. Zavala's nerve was so damaged that the therapy was making it worse, and she should stop attending therapy. However, because Ms. Zavala has not given any such letter to her attorney and it is not part of the evidentiary record I do not give this testimony any weight. Ms. Zavala wants Dr. Drexler to be the authorized treating physician. (Testimony)

In this case, defendant authorized and are continuing to offer occupational therapy with John Stollberg as recommended by the authorized treating physician, Dr. Manon-Matos. Claimant does not want to continue with the therapy, instead she desires to have Dr. Drexler be the authorized treating physician.

Considering the evidence in this record, I find that claimant failed to prove that the care defendant is offering is unreasonable. Defendant is offering the occupational therapy recommended by the authorized treating surgeon in this case. It is noteworthy that Dr. Buchanen also recommended occupational therapy as a treatment option for Ms. Zavala. (Cl. Ex. 2, pp. 4-6) I find that the occupational therapy recommended by Dr. Manon Matos which is being offered by the defendant is not unreasonable care.

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 and Air Conditioning 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).

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

In this case, claimant was provided reasonable and appropriate medical care through the surgeon and occupational therapy. Claimant failed to comply with the treatment recommendations of the authorized surgeon. She cancelled her future occupational therapy appointments. Dr. Manon Matos has recommended therapy. One of the treatment options mentioned by Dr. Buchanen is therapy. Instead of completing the recommended and authorized therapy, claimant desires to undergo surgery and treat with a doctor of her own choosing, Dr. Drexler. Claimant failed to prove alternate medical care is reasonable and necessary. Accordingly, I conclude claimant failed to carry her burden of proof in this situation and that the petition for alternate medical care should be denied at this time.

Although the petition for alternate medical care is denied at this time, defendant is reminded that Iowa Code section 85.27(7) requires that if an employee meets the requirement of the section, and if required to leave work for one full day or less to receive medical services, the employee shall be paid an amount equivalent to the wages lost at the employee's regular rate of pay for the time the employee is required to leave work. If defendant fails to comply with this subsection, the care offered may be less reasonable.

ORDER

THEREFORE IT IS ORDERED:

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

Signed and filed this 23rd day of May, 2023.

A handwritten signature in black ink, appearing to read 'Erin Q. Pals', is written over a horizontal line.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies To:

Judy L. Freking (via WCES)

Steven Durick (via WCES)