

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

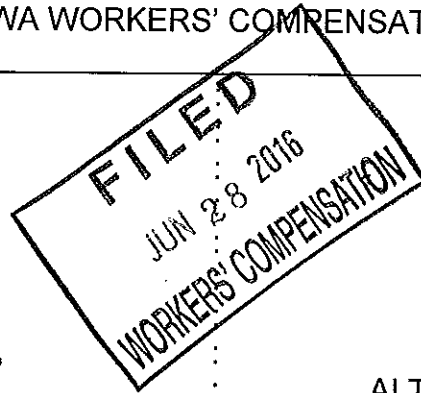
KYLE McDOLE,
Claimant,

vs.

THE WALDINGER CORP.,
Employer,

and

EMCASCO INSURANCE CO.,
Insurance Carrier,
Defendants.



File No. 5052076

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. Kyle McDole, claimant, appeared with his attorney. Defendants appeared through their attorney.

The alternate medical care claim came on for hearing on June 28, 2016. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Iowa Workers' Compensation 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 exhibit 1, and defendants' exhibits A through E. All exhibits were offered and received into evidence.

FINDINGS OF FACT

Claimant sustained a work-related injury on December 26, 2012. The injury resulted in a left hip arthroscopic labrum repair with Cam resection. Jason Sullivan, M.D., performed the surgery on February 15, 2016.

Claimant engaged in aggressive physical therapy for three days per week. Effective March 22, 2016, Dr. Sullivan released claimant to sedentary work only. (Exhibit B, page 1)

During his direct testimony, claimant requested reimbursement for prescription charges prescribed by Kevin DeRegnier, D.O., claimant's personal physician. A copy of the prescription charges was not attached. However, claimant testified the total cost equaled \$300.00 and the cost was for pain medication filled at Montrose Pharmacy in Winterset, Iowa.

Earlier in claimant's treatment, a Dr. Fish, M.D., (first name unknown) had referred claimant to his personal physician for prescription management. Defendants had been paying some prescriptions with a prescription card known as "Cypress Care Card."

Dr. Sullivan took over the case from Dr. Fish. Dr. Sullivan would not prescribe narcotic pain medications for claimant. Consequently, the patient continued to obtain his pain medication from Dr. DeRegnier.

Claimant's last appointment with Dr. Sullivan occurred on June 14, 2016. In the clinical notes, Dr. Sullivan wrote in relevant part:

Current Medication

- Flomax 0.4 MG Capsule CAPS, 0 days, 0 refills
- Ibuprofen 200 MG Tablet 0 days, 0 refills
- OxyCONTIN 10 MG Tablet ER 12 Hour Abuse-Deterrent T12A, 0 days, 0 refills

Allergies

- No Known Allergies

Physical Exam

On physical exam today, Kyle is able to ambulate without a limp. He has 5/5 quad and hamstring strength. He has full range of motion to the knee. His hip flexion is to 90 degrees. His internal rotation is 10 degrees, external rotation is 30 degrees. He is able to perform a straight leg raise with hip flexion strength of 5/5, abduction strength 5/5, and adduction strength 5/5. He has no tenderness to palpation over the lateral aspect of the hip. Distally neurovascularly intact.

Assessment

24-year-old male four months out from left hip arthroscopy, labrum repair, and osteoplasty.

Plan

- OTHER

PATIENT STATUS/General: General Patient Status given to patient

Kyle is doing excellent. He can return to work without restrictions. He is maximally medically improved. He is still tapering down on narcotic pain medications which he was on for a long time prior to his surgery. I recommend he gets off those completely which he is trying to do. At this point, follow up PRN.

(Ex. D, p. 2)

Claimant testified he has cut back on his dose of pain medication and takes two-thirds of the dosage he formerly took. He says Dr. DeRegnier wants claimant "to step down gradually."

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 1975).

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).

The employee bears the burden to establish what care is reasonable and it is a question of fact. Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995). The determination will be based on what is reasonably necessary. Long, at 124.

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. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988).

Dr. DeRegnier was authorized early on in claimant's treatment to manage claimant's medicine. Under Assmann v. Blue Star Foods, File No. 866389 (Decl. Ruling, May 19, 1988), defendants may not interfere into matters involving Dr. DeRegnier's professional judgment.

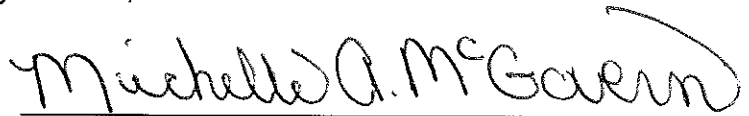
The issue with respect to past due medical costs is preserved for the upcoming arbitration decision. It is not an issue covered under a petition for alternate medical care.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay for all future causally related prescriptions that Dr. DeRegnier orders.

Signed and filed this 28th day of June, 2016.



MICHELLE A. MCGOVERN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies To:

Christopher D. Spaulding
Attorney at Law
2423 Ingersoll Ave.
Des Moines IA 50312-5233
chris.spaulding@sbsattorneys.com

D. Brian Scieszinski
Attorney at Law
801 Grand Ave., Ste. 3700
Des Moines IA 50309-2727
Scieszinski.brian@bradshawlaw.com

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