

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CINDY RICHARDSON,

Claimant,

vs.

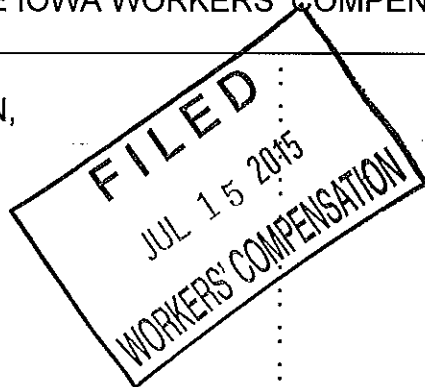
KWIK TRIP, INC.,

Employer,

and

ZURICH AMERICAN INS. CO.,

Insurance Carrier,
Defendants.



File No. 5046182

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

This is a contested case proceeding under Iowa Code chapters 85 and 17A. The expedited procedures of rule 876 IAC 4.48, the "alternate medical care" rule, are invoked by claimant, Cindy Richardson.

This alternate medical care claim came on for hearing on July 15, 2015. The proceedings were recorded digitally and constitute the official record of the hearing. By an order filed by the workers' compensation commissioner, this decision is designated final agency action. Any appeal would be a petition for judicial review under Iowa Code section 17A.19.

The record in this case consists of claimant's exhibits 1 through 7; defendants' exhibits G through H, and the testimony of claimant. Defendants' exhibits were paginated by the undersigned for clarity of the record.

ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of care recommended by Sherri Vesely, DNP.

FINDINGS OF FACTS

Defendants admit liability for a work-related back injury occurring on September 16, 2011.

In a July 29, 2013 letter, Daniel Miller, D.O. assessed claimant as having lumbar spondylosis and bilateral SI (sacroiliac) joint degeneration. Dr. Miller was the authorized treating physician for claimant. He opined claimant's work-related injury caused an exacerbation of the preexisting condition. He did not have further treatment recommendations at that time. (Ex. G, p. 1)

On July 22, 2014 claimant was evaluated by Dr. Miller with continued complaints of low back pain on the right side. Claimant was continued on her current medications. (Ex. 7, pp. 2-3)

In a note dated October 31, 2014 Dr. Miller again indicated claimant's work injury exacerbated an underlying chronic back condition and that claimant's SI joint degeneration was related to her work injury. He recommended claimant continue with the use of nonsteroidal anti-inflammatory medications. (Ex. G, p. 2)

A March 31, 2015 arbitration decision found claimant sustained an aggravation of a lower back injury resulting in permanent restrictions and impairment. The decision noted the authorized treating physician assessed claimant as having bilateral SI joint degeneration and the condition was aggravated by the work injury. Claimant was found to have sustained a 10 percent loss of earning capacity entitling her to 50 weeks of permanent partial disability benefits.

In correspondence dated April 27, 2015, claimant's counsel requested defendants send claimant to an authorized treating physician for back pain. (Ex. 1) An April 28, 2015 letter from defendants' counsel indicated that future medical care was not ordered by the March 31, 2015 arbitration decision, and the request for care was denied. (Ex. 2)

In correspondence dated May 17, 2015 claimant's counsel noted it was well established law in Iowa that a claimant is entitled to lifetime medical benefits for a compensable injury. (Ex. 4)

In correspondence dated May 29, 2015, claimant's counsel again requested defendants arrange for authorized back care for claimant. (Ex. 5)

In a June 22, 2015 note, Nurse Practitioner Vesely noted claimant had a work injury that resulted in persistent SI joint pain. Nurse Practitioner Vesely indicated claimant needed pain management that might include epidural injections, visits to a pain specialist, pain medication, chiropractic care or additional testing. (Ex. 6) Claimant testified she routinely treats with Nurse Practitioner Vesely.

Claimant testified she has been told that pain she has in her right side of her low back, which feels to be at where the back pockets of her pants are, is caused by SI joint degeneration. She said her SI joint pain affects her back and will radiate into her hip and leg on the right. She said her doctors have referred to this condition as a back condition.

Claimant testified she saw Dr. Miller in September and November of 2014. She said Dr. Miller prescribed baclofen, nabumetone, and gabapentin. She said all three medications have helped her with her back pain. She said Dr. Miller also prescribed a compound cream for her SI joint condition, but that the insurer declined to pay for this cream. (Ex. 7, p. 3)

Claimant said she sees a chiropractor and occasionally gets chiropractic manipulations. She said this treatment makes her pain more manageable so she can continue to function.

Claimant said that in the past she has had physical therapy and epidural injections, recommended by Dr. Miller, to help with her pain. She said these modalities have also helped with her pain.

CONCLUSION 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 R. App. P. 6.14(6).

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

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).

A claimant is entitled to unlimited lifetime medical benefits for compensable injuries under Iowa Code section 85.26(2). Huntzinger v. Moore Business Forms, Inc., 320 N.W.2d 545, 547-548 (Iowa 1982).

Opinions from Dr. Miller, and the March 31, 2015 arbitration decision, found claimant's SI joint condition is a work-related injury. Records indicate Dr. Miller, the authorized treating physician, was treating claimant and prescribing medication for her SI joint condition.

Claimant testified she saw Dr. Miller in September and November of 2014 for treatment of her back and SI joint condition. At that time Dr. Miller prescribed medications for her SI joint condition. He also prescribed a compound cream for the condition, which the insurer declined to authorize.

Claimant testified she is out of medication prescribed by Dr. Miller. Defendants have an ongoing obligation to provide claimant medical care for her low back and SI joint condition. Since April of 2015 claimant has asked for care for her SI joint and low back condition. Defendants have ignored their obligation to provide ongoing care for claimant. Defendants have failed to provide care for claimant's compensable injury. The total lack of providing care is found to be unreasonable.

Claimant has carried her burden of proof she is entitled to alternate medical care. Defendants shall authorize and provide care recommended by Nurse Practitioner Vesely including, but not limited to, chiropractic care, pain

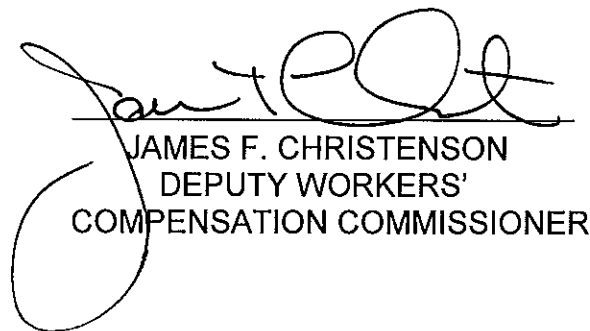
management, physical therapy, pain medication, epidural injections, or visits to a pain specialist.

ORDER

THEREFORE IT IS ORDERED:

That claimant's petition is granted. Defendants shall furnish the care recommended by Nurse Practitioner Vesely.

Signed and filed this 15th day of July, 2015.



JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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