

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BOON XIONG,

Claimant,

vs.

MATHY CONSTRUCTION COMPANY,

Employer,

and

ZURICH AMERICAN INSURANCE
COMPANY,Insurance Carrier,
Defendants.

File No. 1659076.03

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, Boon Xiong.

This alternate medical care claim came on for hearing on December 18, 2019. 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, Defendants' Exhibits A through C and the testimony of claimant. Claimant's exhibits were number 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 authorization of back surgery recommended by Mark Pichelmann, M.D.

FINDINGS OF FACT

Defendants accept liability for a work-related injury to claimant occurring on November 8, 2018.

A review of the administrative record of this agency indicates claimant filed a petition for alternate medical care regarding the injury at issue in this case, asking for authorization for a discogram recommend by the authorized treating physician Dr. Pichelmann.

A review of the administrative file indicates that on November 8, 2019 defendants filed an answer indicting they were authorizing the discogram recommended by Dr. Pichelmann.

On November 12, 2019, claimant dismissed the petition for alternate medical care concerning the November 8, 2018 date of injury and a July 9, 2019 date of injury. In a professional statement, claimant's counsel indicated this alternate medical care petition was dismissed after an agreement by defendants to authorize a discogram for diagnosis of claimant's back pain. (Exhibit 1, page 5)

On November 25, 2019 claimant was evaluated by Dr. Pichelmann. Claimant had a discogram on November 20, 2019. The discogram results were concordant with pain at the L4-5 and L5-S1 levels. A two level fusion was discussed and chosen as a treatment option by claimant. Surgery was scheduled for December 17, 2019. (Ex. A)

In a November 26, 2019 letter, and claimant's counsel requested approval of the surgery with Dr. Pichelmann. (Ex. 1, p. 3)

On December 2, 2019 claimant was evaluated by Larry Studt, M.D., for low back pain. The record of the visit indicates claimant's discogram was concordant with pain at the L4 through S1 levels. Claimant was apprehensive about surgery and wanted more information about the surgery. Claimant was assessed as having a work-related lumbar back injury with radiculopathy. Dr. Studt recommended claimant continue with the plan as outlined by Dr. Pichelmann. (Ex. 1, pp 6-7)

On December 3, 2019, claimant's counsel again wrote defendants for approval of the surgery. (Ex. 1, p 4)

In a December 16, 2019 letter, written by defendants' counsel, Dr. Studt agreed a second opinion regarding claimant's surgery would be a reasonable request. Dr. Studt also noted claimant's original injury of November of 2018 was related to a back injury. (Ex. B)

In a December 18, 2019 letter, written by claimant's counsel, David Boarini, M.D., indicated a discogram was not a reliable indicator in determining whether to perform a two-level fusion and that a second opinion by a qualified neurosurgeon be completed before moving forward with a fusion. Dr. Boarini also indicated that, while he has not seen claimant, a second opinion is recommended regarding issues of causation, diagnosis and whether to proceed with a two-level fusion. (Ex. C)

Claimant testified he wanted to have the surgery recommended by Dr. Pichelmann. He said he takes medication daily for his pain. He said he has low back pain radiating down his left leg to the area of his Achilles. He said that some days his pain is almost unbearable.

Claimant indicated, on cross-examination he would be willing to see a second doctor for another opinion. He testified on re-direct he would not be interested in seeing another doctor if it meant further delaying the surgery. Claimant said he needs the surgery recommended by Dr. Pichelmann now.

CONCLUSIONS OF LAW

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

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 June 17, 1986).

Defendants agreed to authorize a discogram for claimant's injury. Dr. Pichelmann is identified in pleadings with this agency as an authorized physician. Defendants' counsel was unclear if Dr. Pichelmann was authorized. However, defendants do not deny Dr. Pichelmann is authorized to treat claimant. The record indicates defendants' have paid for the discogram recommend by Dr. Pichelmann and for claimant's treatment with Dr. Pichelmann. Given this record it is found Dr. Pichelmann is authorized to treat claimant.

Dr. Studt initially recommended the surgery prescribed by Dr. Pichelmann. After speaking with defendants' counsel, Dr. Studt indicated a second opinion before surgery is reasonable. Because of Dr. Studt's changing opinions, it is found his opinions regarding reasonableness of care are not convincing

Dr. Boarini is not authorized to treat claimant. Dr. Boarini has not examined nor seen claimant. Dr. Boarini opined claimant should get a second opinion prior to surgery. Given this record, the opinions of Dr. Boarini regarding reasonableness are not convincing as they apply to this case.

On September 30, 2019, claimant was recommended by Dr. Pichelmann to have a discogram. Defendants delayed that testing. Claimant filed a petition for alternate medical care to have the discogram performed, and in early November 2019, after the filing of a petition, defendants' agreed to authorize the discogram.

Dr. Pichelmann has been authorized by defendants to treat claimant. He recommended, on November 25, 2019, claimant have back surgery based on findings the discogram was concordant with claimant's pain.

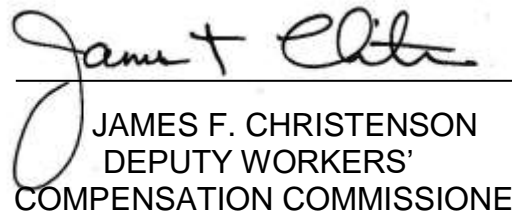
I am empathetic to defendants' counsel's concerns regarding the limited amount of time to investigate alternate medical care petitions. However, the record before this agency indicates claimant has had to file two petitions for alternate medical care for care recommended by an authorized physician.

The record indicates Dr. Pichelmann is authorized to treat claimant. He has recommended back surgery. The opinions of Drs. Studt and Boarini are found not convincing. Given this record, and based on the other facts as detailed above, claimant has carried his burden of proof that the delay in authorizing the care recommended by Dr. Pichelmann is unreasonable. Claimant is entitled to the requested care.

ORDER

THEREFORE IT IS ORDERED claimant's petition for alternate medical is granted. Defendants shall authorize the surgery recommended by Dr. Pichelmann.

Signed and filed this 19th day of December, 2019.


JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Tom Drew (via WCES)

Jeffrey Baker (via WCES)