BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SHAWN WELDON,

Claimant,

vs.

FOLIENCE,

Employer,

and

EMC INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 5068954

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, Shawn Weldon.

The alternate medical care claim came on for hearing on May 31, 2019. The proceedings were digitally recorded which constitutes the official record of this proceeding. This ruling is designated final agency action and any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code 17A.

The record consists of Claimant's Exhibits 1 and 2 and Defendants' Exhibits 1 and 2. Defendants also submitted an April 17, 2018 letter from Emily Nuetzman at the end of the hearing which was admitted as Defendants' Exhibit 3.

Claimant testified at the hearing. Ms. Nuetzman participated in the conference call, but did not testify.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of an MRI that was recommended by Sunil Bansal, 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 occurring on July 1, 2018. Claimant has expressed dissatisfaction with the medical care being provided by the defendants.

Claimant testified that after his work injury of July 1, 2018 he started to experience low back pain with some radiation down a leg. Claimant said that this pain was different than the back pain he has had in the past. Claimant said this pain interfered with walking, sitting and sleeping.

Claimant testified he was not having the same spasms in Nicholas Bingham's November 28, 2018 progress note. Clamant testified he has tenderness in this area.

Claimant testified he has modified how he lifts and performs activities that impact his back. Claimant does not lift items over 30 pounds and has been following recommendations from physical therapy on how to undertake movements.

Claimant testified that he occasionally will have back pain that radiates to his leg. Claimant has non-radiating back pain more often. Claimant agreed that Dr. Bingham diagnosed claimant with acute midline low back pain without sciatica on November 28, 2018. (Claimant's Ex. 2, page 1) Dr. Bingham had a radiologist review x-rays of claimant's low back who also did not find evidence of sciatica. (Clm. Ex. 2, p. 2)

Dr. Bingham examined claimant on January 16, 2019. Dr. Bingham returned claimant to work without restrictions. (Defendants' Ex. 1, p. 3) Claimant's last visit with Dr. Bingham was February 4, 2019. Dr. Bingham noted claimant had returned to work with complaints of pain of no higher than one on a one to ten scale. Dr. Bingham noted that when claimant has pain it is located in the left lumbosacral area. (Def. Ex. 2, p. 1) Claimant agreed that the record of his visit with Dr. Bingham was accurate for that day. Claimant testified that his encounters with Dr. Bingham were short and very little testing.

Claimant testified that when he saw Dr. Bansal on April 10, 2019 for the independent medical examination (IME) Dr. Bansal had him perform a straight leg raise test which was positive on the left side. (Clm. Ex. 1, p. 5) Claimant said he researched the straight leg raise test and said it can indicate sciatica. Dr. Bansal recommended an MRI of the lumbar spine, with possible epidural injections based upon results. (Clm. Ex. 1, p. 6)

On April 17, 2019 defendants asked Dr. Bingham to review Dr. Bansal's IME and whether he agreed with Dr. Bansal's recommendation for an MRI. Dr. Bingham wrote,

> No, patient did not suffer acute trauma that would suggest new spinal injury, and had no true radicular signs or symptoms.

(Def. Ex. 3, p. 1)

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); 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 their own treating physician. Pote v. Mickow Corp., File No. 694639 Review-Reopening Decision June 17, 1986).

In this case, Dr. Bingham stated on April 17, 2019 an MRI is not necessary. This is consistent with the assessments and treatment he has provided to claimant. The defendants have provided reasonable care. Given the lack of new symptoms since claimant last saw Dr. Bingham in February 2019 the care being offered by defendants is reasonable.

Certainly the claimant wants to have full functionality return and have the ability to lift and move as he did before his work injury. However, at the present time the defendants' care is reasonable.

ORDER

THEREFORE, IT IS ORDERED:

The claimant's petition for alternate medical care is denied

Signed and filed this 3rd day of June, 2019.

JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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