

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JARROD EVILSIZOR,

Claimant,

vs.

NORTHERN AG SERVICES, INC.,

Employer,

and

MICHIGAN MILLERS MUTUAL INS.,

Insurance Carrier,
Defendants.

File No. 5030278.01

ALTERNATE MEDICAL CARE

DECISION

STATEMENT OF THE CASE

On March 29, 2021, claimant filed a petition for alternate medical care pursuant to Iowa Code 85.27(4) and 876 Iowa Administrative Code 4.48. The defendants filed an answer accepting liability for the left hip, low back, and psychiatric conditions pursuant to a Compromise Settlement approved on July 29, 2016. The defendants denied liability for any injury to the neck. Accordingly, any claim for alternate medical care pertaining to a neck injury is dismissed without prejudice.

The undersigned presided over the hearing held via telephone and recorded digitally on April 12, 2021. That recording constitutes the official record of the proceeding under 876 Iowa Administrative Code 4.48(12). Claimant participated personally, and through his attorney, Gary Nelson. The defendants participated through their attorneys, Joshua Duden and Jane Lorentzen. The evidentiary record consists of three pages of exhibits from the claimant, labeled 1 through 3, and eight pages of exhibits from the defendants, labeled Exhibit A through E. The defendants also submitted an affidavit of Kimberly Dodge. All of the exhibits were received into evidence without objection.

On February 16, 2015, the Iowa Workers' Compensation Commissioner issued an order delegating authority to deputy workers' compensation commissioners, such as the undersigned, to issue final agency decisions on applications for alternate care. Consequently, this decision constitutes final agency action, and there is no appeal to

the commissioner. Judicial review in a district court pursuant to Iowa Code 17A is the avenue for an appeal.

ISSUE

The issue under consideration is whether claimant is entitled to alternate care under Iowa Code 85.27(4) in the form of a new mechanical recliner every 9 to 12 months.

FINDINGS OF FACT

Claimant, Jarrod Evilsizor, sustained a work injury to his left hip and lower back on February 25, 2009. The work incident arose out of, and in the course of his employment with the defendant employer. Defendants accepted liability for the February 25, 2009, left hip and lower back injuries in their answer, and verbally at hearing.

As a result of his left hip and lower back injuries, Mr. Evilsizor had a left hip replacement, a revised left hip replacement and low back surgery. (Testimony). He also suffers lymphedema. (Testimony). As a result of these injuries, he sits in a recliner for 16 hours per day. (Testimony). He is generally in the recliner from 6 a.m. to 10 p.m. (Testimony). He used to sleep in the recliner, but stopped doing that. (Testimony). Elevating his legs helps his condition. (Testimony). He alternates sitting squarely on his buttocks and on his right side. (Testimony). Mr. Evilsizor claims that his daily use of the recliner caused it to wear more rapidly. (Testimony). The defendants previously paid for around six recliners. (Testimony). Mr. Evilsizor gets out of the chair one to three times per hour to avoid blood clots. (Testimony). He also lets his dogs out at these times. (Testimony). About six times per year, Mr. Evilsizor goes fishing using a boat that he owns. (Testimony). He fishes on Lake Superior or Lake Gogebic. (Testimony).

Mr. Evilsizor testified that over time, the cushion of the recliner flattens. (Testimony). This causes the recliner to become uncomfortable to sit on. (Testimony). The portion of the chair below the cushion also sags, which causes Mr. Evilsizor difficulty when he tries to get out of the chair. (Testimony). When the chair begins to wear, Mr. Evilsizor experiences more pain, including in his elbows. (Testimony). This generally begins around six to nine months after he buys a new recliner. (Testimony). Mr. Evilsizor told Dr. Tumas about his increasing symptoms, which occur when his recliner begins to wear out. (Testimony).

No one has inspected the chair. (Testimony). Mr. Evilsizor provided the defendants with photos of his chair. (Testimony; Defendants' Exhibits D:1-2). The photos show a chair that appears worn and sagging, as Mr. Evilsizor indicated in his testimony. (Testimony; DE D:1-2). Mr. Evilsizor still has two of the prior recliners, which are used around his home by guests. (Testimony).

Aistis J. Tumas, M.D., is the authorized treating physician. (Testimony). Mr. Evilsizor has seen Dr. Tumas for several years. (Testimony). Mr. Evilsizor's wife works at the same medical clinic in Ashland, Wisconsin, where Dr. Tumas practices. (Testimony). Dr. Tumas indicated that Mr. Evilsizor has chronic left leg lymphedema that is severe and requires a power recliner chair. (Claimant's Exhibit 1). Dr. Tumas opined that Mr. Evilsizor's power recliner is medically necessary. (CE 1). Dr. Tumas concluded that Mr. Evilsizor's power recliner wore out from daily long-term use and needs to be replaced every nine to twelve months. (CE 1).

Mr. Evilsizor obtained a new power recliner in late February of 2021. (CE 2). The invoice is for one thousand one hundred ninety-two and 50/100 dollars (\$1,192.50). (CE 2). On March 9, 2021, Kimberly Dodge, a claims adjuster with Michigan Millers Insurance, wrote a letter to Mr. Evilsizor recapping a phone conversation dated March 8, 2021. (CE 3). Ms. Dodge noted that Michigan Millers Insurance paid for a new recliner in March of 2020. (CE 3). She further opined that replacing the recliner less than one year later was unreasonable. (CE 3). Ms. Dodge offered to pay up to one thousand two hundred and 00/100 dollars (\$1,200.00) every three years for a replacement recliner. (CE 3). The defendants provided invoices showing that they purchased recliners for Mr. Evilsizor in 2019 and 2020. (DE A-B).

CONCLUSIONS OF LAW

Iowa Code 85.27(4) provides, in relevant part:

For purposes of this section, the employer is obligated 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.

Iowa Code 85.27(4). See Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

"Iowa Code section 85.27(4) affords an employer who does not contest the compensability of a workplace injury a qualified statutory right to control the medical care provided to an injured employee." Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 769 (Iowa 2016) (citing R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 195, 197 (Iowa 2003)). "In enacting the right-to-choose provision in section 85.27(4), our legislature sought to balance the interests of injured employees against the competing interests of their employers." Ramirez, 878 N.W.2d at 770-71 (citing Bell

Bros., 779 N.W.2d at 202, 207; IBP, Inc. v. Harker, 633 N.W.2d 322, 326-27 (Iowa 2001)).

Under the law, the employer must furnish “reasonable medical services and supplies *and* reasonable and necessary appliances to treat an injured employee.” Stone Container Corp. v. Castle, 657 N.W.2d 485, 490 (Iowa 2003) (emphasis in original)). Such employer-provided care “must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee.” Iowa Code 85.27(4).

An injured employee dissatisfied with the employer-furnished care (or lack thereof) may share the employee’s discontent with the employer and if the parties cannot reach an agreement on alternate care, “the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order the care.” Id. “Determining what care is reasonable under the statute is a question of fact.” Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995); Pirelli-Armstrong Tire Co., 562 N.W.2d at 436. As the party seeking relief in the form of alternate care, the employee bears the burden of proving that the authorized care is unreasonable. Id. at 124; Gwinn, 779 N.W.2d at 209; Pirelli-Armstrong Tire Co., 562 N.W.2d at 436. Because “the employer’s obligation under the statute turns on the question of reasonable necessity, not desirability,” an injured employee’s dissatisfaction with employer-provided care, standing alone, is not enough to find such care unreasonable. Id.

The defendants argued that Iowa Code section 85.27(5) applies in this case. The plain language of Iowa Code section 85.27(5) indicates that it applies to an “artificial member” or “orthopedic appliance.” A recliner is neither an artificial member, nor an orthopedic appliance.

The Iowa Supreme Court opined that “care” means “prevention or alleviation of a physical or mental defect or illness.” Manpower Temporary Services v. Sioson, 529 N.W.2d 259, 263 (Iowa 1995)(citations omitted). Care includes “such things as crutches, artificial members, and appliances because these things, just as services by health care professionals, prevent or alleviate physical or mental defects or illnesses.” Id. 876 Iowa Administrative Code 8.5 defines appliances as, “hearing aids, corrective lenses, orthodontic devices, dentures, orthopedic braces, or any other artificial device used to provide function or for therapeutic purposes.”

In this case, Mr. Evilsizor uses a recliner due to his left hip issues and lymphedema. He stays in the recliner for 16 hours per day. Dr. Tumas, the authorized treating physician, opined that a power recliner chair is medically necessary for Mr. Evilsizor’s lymphedema. Dr. Tumas also recommended that the power recliner be replaced every 9 to 12 months. Mr. Evilsizor was a credible witness who testified that his chair begins to wear out with six to nine months of every day use. Photos of the recliner in question show a worn chair.

It is reasonable for the defendants to provide Mr. Evilsizor with a replacement chair. They have replaced his chair on a yearly basis for the last two years, at least. Dr. Tumas, the treating physician, provided a recommendation for a replacement chair to be provided every 9 to 12 months. Based upon the evidence in the record, providing a replacement chair every 9 to 12 months is reasonable and necessary.

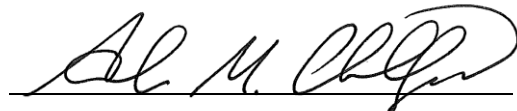
IT IS THEREFORE ORDERED:

The claimant's petition for alternate care is granted.

Defendants shall reimburse the claimant one thousand one hundred ninety-two and 50/100 dollars (\$1,192.50) for the cost of a power recliner.

Defendants shall provide the claimant with a replacement power recliner every 9 to 12 months based upon the recommendations of Dr. Tumas.

Signed and filed this 13th day of April, 2021.

A handwritten signature in black ink, appearing to read "Al M. Phillips", written over a horizontal line.

ANDREW M. PHILLIPS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Gary Nelson (via WCES)

Jane Lorentzen (via WCES)

Joshua Duden (via WCES)