

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BETTY CLARK,

Claimant,

vs.

SEDONA STAFFING,

Employer,

and

ACE AMERICAN INSURANCE CO.,

Insurance Carrier,
Defendants.

FILED

MAR 16 2018

WORKERS COMPENSATION

File No. 5054351

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapters 17A and 85. The expedited procedure of rule 876 IAC 4.48, the "alternate medical care" rule, is requested by claimant, Betty Clark. Claimant filed a petition on March 5, 2018. She alleged at paragraph 5 of her petition:

Reason for dissatisfaction and relief sought: Claimant seeks referral to tertiary care center for chronic left wrist issues as referred by Dr. Mark Taylor and Dr. Castandeda [*sic*].

Defendants filed an answer on March 9, 2018. Defendants admitted the occurrence of a work injury on September 24, 2014 and did not dispute liability for the medical condition sought to be treated by this proceeding.

The alternative medical care claim came on for hearing on March 15, 2018. The proceedings were recorded digitally and constitute the official record of the hearing. By an order filed February 16, 2015 by the workers' compensation commissioner, this decision is designated final agency action. Any appeal would be by petition for judicial review under Iowa Code section 17A.19.

The evidentiary record consists of Claimant's Exhibit 1, Defendants' Exhibits A through C, and the testimony of the claimant. The parties did not submit hearing briefs.

ISSUE

The sole issue presented for resolution is whether claimant is entitled to alternate medical care in the form of referral to a specialist at a tertiary care center, preferably Ericka Lawler, M.D., of the University of Iowa Hospitals & Clinics (UIHC).

FINDINGS OF FACT

The undersigned, having considered all of the testimony and evidence in the record, finds:

Claimant suffered a stipulated work-related injury to her left wrist and hand on September 24, 2014. Defendants authorized medical care, including with Edwin Castaneda, M.D. On June 8, 2015, Dr. Castaneda examined claimant and opined she sustained an injury to the ulnar carpus, with signs and symptoms consistent with possible ulnar impingement syndrome. He opined claimant had failed conservative treatment, including a cortisone injection. He recommended claimant undergo an ulnar osteotomy and shortening procedure. (Exhibit 1, page 4) Dr. Castaneda scheduled the procedure.

During the course of Dr. Castaneda's treatment, claimant localized her pain to the outside of her left wrist. (Claimant's testimony)

At defendants' referral, claimant presented for evaluation with orthopedic surgeon, Abdul Foad, M.D. Following records review and examination, Dr. Foad opined claimant demonstrated possible flexor tenosynovitis of the left wrist/hand with triangular fibrocartilage complex (TFCC) injury and/or ulnar impaction syndrome. Dr. Foad opined unloading of the ulnar column should assist with objective findings, yet cautioned claimant showed significant subjective findings and pain behaviors that could result in suboptimal outcomes. (Ex. 1, p. 7) Dr. Foad indicated that as a result of claimant's presentation with significant pain behaviors, he would exercise caution with respect to surgery and instead place claimant at maximum medical improvement (MMI) with restrictions. He indicated that if claimant's presentation to Dr. Castaneda had been different, proceeding with ulnar shortening osteotomy would be a reasonable approach. (Ex. 1, pp. 7-8)

Following review of Dr. Foad's report, Dr. Castaneda cancelled the scheduled surgical procedure. On June 29, 2015, Dr. Castaneda indicated further care should be handled "in Iowa City." (Ex. 1, p. 6)

Defendants then authorized claimant to receive treatment with Suleman Hussain, M.D., of ORA Orthopaedics. (See Ex. B) Claimant testified she underwent surgery with Dr. Hussain; the procedure was performed upon the inner side of her left wrist. Claimant testified the pain along the outside of her wrist persisted. (Claimant's testimony)

At the arranging of claimant's counsel, claimant presented to Mark Taylor, M.D. for independent medical evaluation (IME) on or about October 12, 2017. Dr. Taylor opined claimant had not yet achieved MMI and recommended additional medical referrals and treatment. Dr. Taylor noted Dr. Castaneda had recommended a different procedure than had been performed by Dr. Hussain. He expressed agreement with Dr. Castaneda's recommendation that claimant be seen in a tertiary care center for what he described as now chronic left wrist issues. Dr. Taylor opined a hand specialist at such a tertiary care center could offer recommendations with respect to surgical

options for ulnar-sided pain and trigger finger. Dr. Taylor suggested Ericka Lawler, M.D. at UIHC. (Ex. 1, p. 10)

On October 24, 2017, claimant's counsel authored correspondence to defendants' counsel, expressing dissatisfaction with claimant's care to date. Thereby, claimant requested referral to a tertiary care center. (Ex. 1, p. 1)

Following claimant's request for additional care, defendants' third party administrator authored correspondence to Dr. Hussain, dated November 27, 2017. The representative provided a copy of Dr. Taylor's IME for review and requested Dr. Hussain offer opinions on claimant's permanent impairment, need for restrictions, achievement of MMI, and further medical treatment. (Ex. A, pp. 1-2)

Dr. Hussain authored a responsive letter on January 19, 2018. He opined claimant received extensive treatment and achieved MMI as of April 14, 2017. Dr. Hussain indicated no further treatment of the work injury was planned. He noted claimant suffered with underlying arthritis of the wrist which could require further treatment. Dr. Hussain also opined claimant's arthritic changes had not been accelerated or lit up by the work injury. (Ex. B, p. 1)

Given the presence of contradictory medical opinions on causation and treatment options, defendants scheduled claimant for return evaluation by Dr. Hussain on March 19, 2018 at 3:00 p.m. Claimant expressed willingness to participate in the scheduled evaluation. (Claimant's testimony; Ex. C, p. 1) As of the date of telephonic hearing, defendants did not deny liability for claimant's medical condition.

Claimant testified she continues to suffer with left wrist pain which impacts her employment. Claimant has not worked for defendant-employer since September 2016; she is currently employed part time at both Party City and TJ Maxx. Claimant testified she wears a brace upon her left hand/wrist while working. She denied any formal work restrictions, but testified she discussed Dr. Taylor's recommended restrictions with each of her current employers. She is permitted to rest her left hand if necessary; during these periods, she performs her work using her right hand. Claimant is left-hand dominant. (Claimant's testimony)

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).

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 application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

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 1975).

"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).

Claimant requests an order directing defendants to refer claimant's care to a tertiary care center and suggested Dr. Lawler of UIHC to provide such services. In support of her request, claimant highlights the recommendations of Drs. Castaneda and Taylor.

Dr. Castaneda served as one of claimant's treating physicians and suggested claimant's care be handled in Iowa City. However, Dr. Castaneda's orders were not specific and were issued in 2015. Thereafter, claimant pursued an authorized course of treatment with Dr. Hussain, including undergoing surgical intervention. I find Dr. Castaneda's orders are not current and are not a proper basis for a referral to a tertiary care center.

Dr. Taylor performed an IME at claimant's request in approximately October 2017. At that time, Dr. Taylor recommended claimant be seen in a tertiary care center for what he described as now chronic left wrist issues; he suggested Dr. Lawler of UIHC. Claimant thereafter expressed dissatisfaction with her care to date and requested authorization of care consistent with Dr. Taylor's recommendations. Defendants then sought additional opinions from Dr. Hussain. Dr. Hussain's opinions raised new issues with respect to causation and appropriateness of further treatment. As a result and given the notable passage of time since Dr. Hussain last examined claimant, defendants arranged repeat evaluation by Dr. Hussain, scheduled for March 19, 2018, less than one week following hearing.

Despite the pending evaluation, claimant requests authorization of a tertiary care center. Dr. Castaneda made a similar recommendation, yet that recommendation is outdated as it was issued more than 2 ½ years prior to hearing. Dr. Taylor also made such a recommendation; however, prior to his recommendation in October 2017, the record lacks any evidence claimant sought further evaluation or treatment following her release by Dr. Hussain in April 2017. Claimant contends the referral is appropriate and warranted given the persistence of her symptoms and the fact Dr. Hussain performed surgery on the opposite side of claimant's wrist. Claimant stops short, however, of expressing doubt in or objecting to Dr. Hussain's care and in fact, agreed to return to Dr. Hussain for further evaluation.

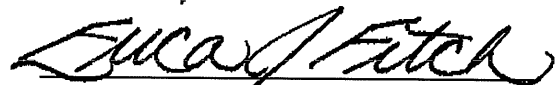
Given the pending referral to Dr. Hussain, I find claimant's request for an additional referral to a tertiary care center to be premature. It is possible claimant's evaluation with Dr. Hussain will not satisfy her desire for further care; I acknowledge that claimant may ultimately file a repeat alternate care petition requesting referral to a tertiary care center. Under the facts present at a future date, such a request may be appropriate. However, at this time, defendants are offering prompt and reasonable care. As such, an award of alternate care is unwarranted.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's application for alternate medical care is denied.

Signed and filed this 16th day of March, 2018.



ERICA J. FITCH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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