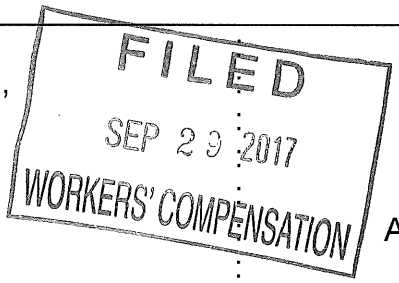
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



KATHLEEN LYNN JOHN, Claimant, vs. LOWE'S HOME IMPROVEMENT, Employer, Self-Insured, Defendants.	:	File No. 5063734 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, Kathleen John.

The alternate medical care claim came on for hearing on September 27, 2017. The proceedings were digitally recorded, which constitutes the official record of this proceeding. By order filed February 16, 2015, this ruling is designated final agency action.

The record consists of claimant's exhibits A-D; defendants' exhibits A. Claimant alleges a date of injury of March 6, 2017. During the course of hearing, defendants admitted the occurrence of a work injury on March 6, 2017, and liability for the conditions sought to be treated by this proceeding. Counsel offered oral arguments to support their positions. Claimant was the sole witness to testify at the hearing.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care.

FINDINGS OF FACT

Claimant, Kathleen John, sustained an injury arising out of and in the course of her employment with Lowe's Home Centers, Inc., on March 6, 2017. The relief claimant is seeking through her alternate medical care petition is, "surgical procedure as recommended by the authorized treating physician, Dr. Theron Jameson. (Alt. Care Petition Attachment)

Claimant, Kathleen John, sustained a work injury to her right shoulder on March 6, 2017. An MRI was performed on March 22, 2017, which showed a "partial intrasubstance tear of the proximal biceps tendon and biceps labral complex with avulsion injury of the anterior superior labrum consistent with pull injury." (Cl. Ex. A) Defendant authorized treatment with Theron Q. Jameson, D.O. On April 13, 2017, Dr. Jameson requested authorization for right shoulder arthroscopy labral debridement and biceps tenotomy. (Cl. Ex. B)

At this alternate care hearing Ms. John testified that at the time Dr. Jameson made the recommendation for surgery she had concerns about undergoing surgery and wanted to know what other options were available to her. As a result, the defendant sent Ms. John for a second opinion with another orthopedic surgery, Kyle S. Galles, M.D., at Des Moines Orthopedic Surgeons. (Testimony)

Defendant had Kathleen John evaluated on June 15, 2017 by Dr. Galles. Dr. Galles set forth his opinions in a letter to defendant dated July 10, 2017. Dr. Galles felt that she may have aggravated her acromioclavicular joint arthritis and did not recommend surgery. He felt that she had received reasonable treatment thus far but she was still missing any injections into her shoulder to try to confirm an appropriate diagnosis. In his opinion, further treatment would include an injection into her acromioclavicular joint. (Def. Ex. A)

On August 24, 2017, claimant returned to Dr. Jameson with continued limited motion and severe pain in her right shoulder which wakes her at night. Dr. Jameson again recommended right shoulder arthroscopy. (Cl. Ex. C) At the alternate care hearing, Ms. John testified that she has not discussed the possibility of an injection with Dr. Jameson. Based on the record it is not clear whether Dr. Jameson is aware of the opinions of Dr. Galles.

On August 25, 2017, the third party administrator for Lowe's sent a letter to Dr. Jameson advising that an injection would be authorized but the requested surgical procedure would not be authorized. (Cl. Ex. D)

After seeing both orthopedic surgeons and considering all of her options Ms. John desires to undergo the recommended surgery with Dr. Jameson. However, it is not known whether Dr. Jameson is aware of Dr. Galles' opinions and if he was aware whether he would still recommend surgery at this juncture.

Furthermore, after receiving Dr. Jameson's recommendation for surgical treatment claimant requested a second opinion. Defendants scheduled a second opinion for Ms. John to see another orthopedic surgeon. The second opinion sets forth treatment plan which also aids in the diagnostic process; the defendants have authorized this treatment plan. I find that the treatment authorized by the defendants is reasonable.

REASONING AND CONCLUSIONS OF LAW

Under Iowa law, the employer is required to provide care to an injured employee and is permitted to choose the care. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

> [T]he 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., 562 N.W.2d at 433, 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" care 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.

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).

Based on the above findings of fact, I conclude that claimant has failed to carry her burden of proof to establish by a preponderance of the evidence that the authorized care is unreasonable. While claimant may now find the surgical procedure to be more desirable than the injections, the Iowa Supreme Court has stated that an employer's obligation turns on the question of reasonable necessity, not desirability. At this juncture there has been no showing that the treatment authorized by the defendants is ineffective or unreasonable.

ORDER

THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care is denied.

Signed and filed this 29th day of September, 2017.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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