BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DAVID REDMOND, Claimant, vs. KRAFT HEINZ CO., Employer, and INDEMNITY INS. CO. OF N. AMERICA, Insurance Carrier, Defendants.	File No. 5058147 ALTERNATE MEDICAL CARE DECISION Head Note No.: 2701

FILED
JUN 05 2017
WORKERS' COMPENSATION

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, David Redmond. Claimant filed a petition on May 22, 2017. He alleged at paragraph 5 of his petition:

> Reason for dissatisfaction and relief sought: Defendants refuse to authorize recommended spinal cord stimulator; claimant wishes to have spinal cord stimulator.

Defendants filed an answer on May 30, 2017. Defendants did not dispute liability for the work injury or the condition sought to be treated by the alternate care proceeding.

The alternative medical care claim came on for hearing on June 2, 2017. At the time of evidentiary hearing, the parties elected to submit the issue for consideration on the written records entered into evidence. The evidentiary record consists of claimant's exhibits 1 and 2 and defendants' exhibits A through C.

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.

ISSUE

The issue presented for resolution is whether claimant is entitled to alternate medical care in the form of authorization of a spinal cord stimulator.

FINDINGS OF FACT

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

Claimant suffered a stipulated work-related injury on April 20, 2016. On this date, claimant suffered a burn injury to his lower extremities which required skin grafting. In connection with the injury, defendants authorized treatment with the University of Iowa Hospitals & Clinics (UIHC) Chronic Pain Clinic (Pain Clinic). (Ex. 1, p. 1) Claimant's course of treatment also included psychotherapy sessions with psychologist, Katherine Hadlandsmyth, PhD. (Ex. 1, p. 2)

At an appointment at the Pain Clinic on April 24, 2017, anesthesiologist, Rahul Rastogi, M.D., opined claimant continued to experience neuropathic pain which limited his ability to work. Dr. Rastogi noted claimant was scheduled for a final appointment with Dr. Hadlandsmyth on May 3, 2017; claimant expressed hope he would be a candidate for a spinal cord stimulator. (Ex. 1, p. 1)

At the referral of defendants, on April 28, 2017, claimant presented to Joseph Chen, M.D., of the UIHC Work Recovery Center. Dr. Chen's notes indicate claimant was referred for a physical medicine and rehabilitation consultation and impairment rating calculation. Dr. Chen noted claimant reported continued symptoms and had continued to treat with Dr. Hadlandsmyth and Dr. Rastogi, with whom a follow up was scheduled. Claimant expressed hope he would be a candidate for a spinal cord stimulator. (Ex. A, pp. 1-2) Dr. Chen performed a physical examination. (Ex. A, pp. 2-3)

Following interview, records review and examination, Dr. Chen opined claimant had achieved maximum medical improvement. Due to the burn injuries, Dr. Chen assigned a 6 percent whole person impairment rating. He recommended no permanent restrictions. With respect to treatment opinions, Dr. Chen recommended a continued home exercise program, including stretching and massage of claimant's scars. He also recommended use of clothing, sunscreen and moisturizer to protect the scar sites. Dr. Chen recommended claimant also work "extensively" with Dr. Hadlandsmyth to learn cognitive behavioral techniques to manage chronic pain. Accordingly, he recommended authorization of up to an additional 10 sessions of pain psychology sessions with Dr. Hadlandsmyth. With respect to a potential spinal cord stimulator, Dr. Chen indicated he was "not optimistic" that the stimulator would help claimant's type of pain; he further expressed belief claimant possessed "unrealistic expectations about how much" relief would be provided by the stimulator. (Ex. A, p. 3)

Claimant presented to Dr. Hadlandsmyth for psychotherapy on May 3, 2017. Dr. Hadlandsmyth identified purpose of claimant's visit as chronic pain and trauma reaction to the work-related injury of April 20, 2016, which resulted in chronic pain and posttraumatic stress disorder. (Ex. 1, p. 2) Claimant expressed continued interest in a potential implantation of a spinal cord stimulator, which Dr. Hadlandsmyth noted he was scheduled to discuss in the Pain Clinic the following day. She and claimant discussed his expectations regarding this potential course of treatment, with claimant acknowledging the procedure does not guarantee success. He further expressed that "even a little relief would be amazing." (Ex. 1, p. 3)

Dr. Hadlandsmyth opined her evaluation demonstrated no contraindications to proceeding with such a procedure, should the Pain Clinic make such a recommendation. Given what Dr. Hadlandsmyth described as significant improvement of psychological distress symptoms and claimant's use of self-management skills, she released claimant from psychotherapy. She welcomed claimant to return for follow up if his situation were to change or he desired Dr. Hadlandsmyth to review additional materials. (Ex. 1, p. 3)

On May 4, 2017, claimant returned to the Pain Clinic and was examined by anesthesiologist, Justin Wikle, M.D. Dr. Wikle noted claimant had completed pain psychology sessions with Dr. Hadlandsmyth. Claimant expressed hope he would be a candidate for spinal cord stimulator "as he is tired of living with the pain." (Ex. 1, p. 4) Following examination, Dr. Wikle opined:

> Considering the neuropathic nature of the pain, with wounds completely healed and localized to the [right lower extremity], he will be a good candidate for [spinal cord stimulation]. We will proceed with the trial at the next visit after insurance approval.

(Ex. 1, p. 5)

On May 17, 2017, claimant's counsel authored correspondence to defendants' counsel regarding the spinal cord stimulator implant. Specifically, counsel noted claimant had received word from the Pain Clinic that the procedure had not been authorized. Counsel requested immediate authorization of the procedure as recommended by the authorized treatment provider. (Ex. 2, p. 1)

As defendants believed conflict existed as to the medical necessity of a spinal cord stimulator, defendants secured Dr. Timothy Miller of IA/IL Pain Consultants to perform an independent medical examination (IME) on May 30, 2017. (Ex. 2, p. 2; Ex. B, pp. 1-2; Ex. C, p. 1)

Claimant declined to present for the scheduled IME with Dr. Miller, pending ruling on the pending alternate care petition. (Ex. 2, p. 3)

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 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 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).

"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).

The agency will ordinarily grant a petition for alternate medical care when it appears that defendants are interfering with the recommendations of an authorized medical provider. Bursell v. Lynch Livestock, Inc., File No. 5032265 (Remand Aug. 2, 2016)

Claimant requests authorization of the spinal cord stimulator recommended by his authorized treatment providers at UIHC Pain Clinic, specifically Dr. Wikle. On May 4, 2017, Dr. Wikle opined claimant was a good candidate for a spinal cord stimulator and ordered a trial to begin at the next appointment, following approval by defendants. Dr. Wikle is an anesthesiologist, practicing with the UIHC Pain Clinic, the provider chosen by defendants to treat claimant's chronic pain complaints.

Absent a compelling reason, the undersigned does not believe it appropriate for defendants to second-guess the treatment recommendations of the chosen, authorized treatment provider. In this case, defendants rely upon the April 28, 2017 notes of Dr. Chen. Dr. Chen, also of UIHC, evaluated claimant on one occasion and thereafter opined claimant had achieved maximum medical improvement; he opined claimant sustained permanent impairment, but did not require permanent restrictions. In addition, Dr. Chen recommended general conservative measures and ongoing pain psychology sessions. He indicated he was not optimistic regarding the potential relief offered by a spinal cord stimulator and further expressed belief claimant possessed unrealistic expectations.

Following this evaluation, claimant returned to his authorized psychologist, Dr. Hadlandsmyth, and pain management physician, Dr. Wikle. Dr. Hadlandsmyth discontinued further psychotherapy sessions and Dr. Wikle recommended proceeding with a spinal cord stimulator trial. Dr. Chen's recommendation for further psychotherapy as a means to pain control is not consistent with the release authored by the treating psychologist. With respect to the spinal cord stimulator, Dr. Chen did not state such treatment was inappropriate; he simply stated he was not optimistic about prospects of relief. Claimant's treating physician in the Pain Clinic is in a better position than Dr. Chen to assess claimant's candidacy for a spinal cord stimulator and the appropriateness of such a treatment.

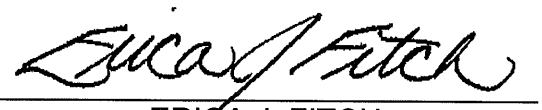
Given these facts, I do not find a compelling reason to disregard the treatment recommendation of claimant's authorized treating physician, Dr. Wikle. As this agency ordinarily grants alternate care petitions requesting treatment recommendations of authorized physicians and I find no inherent flaw or inadequacy in the treatment or plan of care recommended by Dr. Wikle, claimant's petition for alternate medical care shall be granted.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's request for alternate medical care is granted. Defendants shall authorize the spinal cord stimulator as recommended by Dr. Wikle.

Signed and filed this 5th day of June, 2017.



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