BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOSHUA J. MURRAY,

Claimant,

vs.

PREMIER SERVICES, INC., d/b/a J & L ENTERPRISES,

Employer,

and

ZURICH AMERICAN INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 5057436

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, Joshua Murray.

The alternate medical care claim came on for hearing on January 11, 2018. 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 exhibit 1, defendants' exhibits A-E, and testimony of the claimant. Counsel for both parties were allowed to make argument during the hearing.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of authorization for treatment and care under Hillary A. Becker, M.D., an orthopedic doctor specializing in hand and wrist injuries.

FINDINGS OF FACT

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

On or about November 6, 2014, claimant sustained a fracture to his left wrist arising out of and in the course of his employment. Initially treatment was provided by authorized treating physician Walker Wynkoop, M.D. Claimant underwent surgical repair of the wrist on November 7, 2014. The wrist did not heal properly. According to the medical report of Bruce Watkins, M.D., the claimant suffered a collapse with malalignment and shortening of the radius. (Ex. A) A second surgery was recommended. Claimant sought out another opinion from Dr. Watkins, a hand surgeon, who agreed a second surgery would be advisable. Dr. Watkins noted that claimant was not happy with Dr. Wynkoop and offered to be involved, but claimant was unsure and "may continue with Dr. Wynkoop." (Ex. A, p. 2) Ultimately, Dr. Wynkoop did perform a second surgery, which was conducted on May 29, 2015. Unfortunately, claimant still has pain in his wrist. Claimant testified that it is weak and unusable in its current state and wishes to have additional care, including, but not limited to, a fusion.

Claimant expressed unhappiness with the second surgery wondering why the bone had to be cut before it was reset. (Ex. C:1)

Claimant was seen in follow up by Dr. Wynkoop on July 25, 2017. (Ex. B) Claimant reported "continuous pain and click and stabbing pain as well as dull pain and muscle cramping. He cannot hang sheets of drywall. He is talking about not being about to count change in his left hand and he talks about numbness in the fingers, especially the thumb, index, and long fingers." (Ex. B:1) Dr. Wynkoop believed claimant may have new symptoms of carpal tunnel syndrome. In the examination, Dr. Wynkoop noted claimant's wrist range of motion was 50 percent of normal and that this was "excellent for somebody with a fracture that was as comminuted as his and required 2 surgeries." (Ex. B:1-2) Dr. Wynkoop offered a cortisone shot to address tendinitis and possible carpal tunnel syndrome and claimant accepted. (Ex. B:2) Claimant testified at hearing that he was unhappy with this course of treatment.

Claimant testified that Dr. Wynkoop had originally recommended a fusion, but later changed his mind. When Dr. Wynkoop changed his mind regarding the appropriateness of a fusion, claimant refused to see Dr. Wynkoop again. (Ex. D) Claimant deliberately missed scheduled appointments with Dr. Wynkoop leading Dr. Wynkoop to discontinue care with the claimant. Claimant instead sought out treatment with Hillary A. Becker M.D., an orthopedic doctor specializing in hand and wrist injuries. Dr. Becker was closer to claimant's new home and, most importantly, she was not Dr. Wynkoop.

Dr. Becker concluded that claimant had several things contributing to his pain. He has a malunion of the radius which was limiting range of motion and altering the mechanics of the wrist. She also felt he suffered a posttraumatic degenerative changes in the radiocarpal joint. (Ex 1:2) Dr. Wynkoop diagnosed this as tendinitis and possible carpal tunnel syndrome. Additionally, Dr. Becker suggested that there might be hardware irritation contributing to the pain. She concluded, "We discussed there is not 1 simple surgical solution that will guarantee him an excellent result in this situation. We discussed options of a denervation to the wrist to try and help with some of his pain.

Otherwise, I do feel he is looking at a larger surgical procedure to include a wrist fusion, which could be a radial scapholunate fusion." (Ex. 1:2)

Claimant acknowledged during testimony that a fusion would limit his range of motion and usability of his wrist.

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 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., 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.

Dissatisfaction with treatment alone is not grounds for granting alternate medical care. In an evaluation, claimant must prove that the evaluation was not reasonably suited to assess symptoms. Long v Robert Dairy Company, No. 982297, (App., Filed February 5, 1993).

Alternate care includes alternate physicians when there is a breakdown in a physician/patient relationship. Seibert v State of Iowa, Alt. Care Dec. (Walshire) File No.

938579, September 14, 1994. Sumalee Neueone v. John Morrell & Co., Alt. Care Dec. (Walshire), File No. 1022976, January 27, 1994; Williams v. High Rise Const, Alt. Care Dec (McGovern), File No. 1025415, February 24, 1993, Wallech v F.D.L, Alt. Care Dec. (Trier), File No. 1020245, September 3, 1992 (Upheld by Dubuque County District Court on June 21, 1993).

Currently, the claimant is being offered no care from the defendants. Dr. Wynkoop has refused to see claimant again and the defendants have not been able to obtain a new provider.

However, the lack of care is of the claimant's own making. He decided to not return to Dr. Wynkoop because Dr. Wynkoop did not provide fusion as an alternative during the July 2017 visit. Claimant's deliberate avoidance of an employer-selected physician is not condoned by the undersigned. If injured workers are allowed to subvert the code by creating alienation between the authorized treating physician and the injured worker, the employer's statutory right to direct care becomes meaningless.

Claimant argues that Dr. Wynkoop's refusal to consider a fusion is essentially the same as no care, or, at least, inferior care. Dr. Wynkoop's initial diagnosis of claimant's condition was tendinitis and carpal tunnel syndrome while Dr. Becker believes the pain is from a constellation of different causes. Both agree claimant is in pain and in need of future treatment. Whether Dr. Wynkoop's diagnosis would have changed after the failure of the steroid injections is unknown because the claimant refused to return to Dr. Wynkoop.

The above facts do not qualify for a termination of the defendants' right to direct care, yet the claimant needs to be provided treatment. Therefore, the claimant is granted a limited right to alternate care. He is allowed to return to Dr. Becker until such time as defendants provide a different orthopedic specialist to care for claimant's ongoing left wrist problems. As claimant has moved, it is also advisable that the orthopedic specialist be reasonably close to claimant's new residence.

ORDER

THEREFORE IT IS ORDERED, claimant's petition for alternate care is granted in part. He is allowed to return to Dr. Becker until defendants can provide access to an orthopedic specialist of their choosing in a region that is within reasonable distance of claimant's residence.

Signed and filed this 16TH day of January, 2018.

JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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