

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOYCE MOORMAN,

Claimant,

vs.

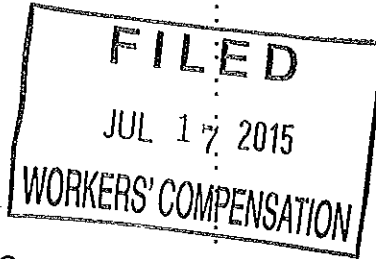
EAST PENN MFG CO., INC.,

Employer,

and

HARTFORD INSURANCE CO.,

Insurance Carrier,
Defendants.



File No. 5047994

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, Joyce Moorman. Claimant appeared personally and through his attorney, Rick Schmidt. Defendants appeared through their attorney, Tiernan Siems.

The alternate medical care claim came on for hearing on July 17, 2015. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's Order, the undersigned has been delegated authority to issue a final agency decision in this alternate medical care proceeding. Therefore, this ruling is designated final agency action and any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code section 17A.

The record consists of defendant's exhibits A through D, in addition to the sworn testimony of Joyce Moorman and Char Tarleton. All exhibits were offered without objection and received into evidence.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care. Claimant seeks an order compelling transferring care to Kurt Smith, M.D.

FINDINGS OF FACT

The undersigned having considered all the evidence in the record finds:

The claimant, Joyce Moorman, suffered an injury which arose out of and in the course of her employment with East Penn Manufacturing Company (East Penn) on or about March 28, 2014. She has had symptoms and resulting treatment for her back and right shoulder.

Steven Aviles, M.D., had been Joyce's authorized treating physician. In September 2014, he stated that he was worried "about complex regional pain syndrome" because of the swelling. He referred her to "a physical medicine rehabilitation specialist." (Defendant's Exhibit A) As a result, the case manager, Char Tarleton, arranged an appointment with Joseph J. Chen, M.D., a physiatrist at the University of Iowa Hospitals and Clinics. Joyce saw Dr. Chen on December 3, 2014. Joyce testified that Dr. Chen recommended physical therapy. Joyce testified that she has already tried physical therapy and it was awful. It made her sick.

I find that Joyce's memory is not entirely reliable. She stated she only spent a few moments with Dr. Chen whereas it is documented she spent over an hour with him. His note actually recommended a visit to the University of Iowa Spine Rehabilitation Team, which is different than just recommending some additional physical therapy. I find that Joyce may not have understood this. Overall, I find that Joyce's recollection of the course of treatment recommendations is not reliable. She is an unsophisticated witness.

Joyce could not specifically name any type of treatment that she believes will be helpful. She testified emphatically that she just wants a doctor to do something instead of saying that she needs to learn to live with the pain. She referenced the fact that she is too young for this type of pain and disability. I find Joyce credible that she is in pain and she sincerely wants to get better. Joyce would prefer to see Kurt Smith, M.D., a physiatrist in Des Moines. The defendants have agreed to send Joyce to Dr. Smith for a one time visit. Ms. Tarleton testified that she attempted to set such an appointment, however, Dr. Smith has declined to see her. Defendants, on the record, agreed that, if Joyce or her counsel could arrange such an evaluation, it would still be authorized (as a one-time visit which would be reviewed).

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. Iowa Code Section 85.27 (2013).

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See 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).

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).

An employer's statutory right is to select the providers of care and the employer may consider cost and other pertinent factors when exercising its choice. Long, at 124. An employer (typically) is not a licensed health care provider and does not possess medical expertise. Accordingly, an employer does not have the right to control the methods the providers choose to evaluate, diagnose and treat the injured employee. An employer is not entitled to control a licensed health care provider's exercise of professional judgment. Assman v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988). An employer's failure to follow recommendations of an authorized physician in matters of treatment is commonly a failure to provide reasonable treatment. Boggs v. Cargill, Inc., File No. 1050396 (Alt. Care Dec. January 31, 1994).

I find that the treatment offered by the defendants is reasonable. It is true that Joyce has not received any treatment for six months and she needs treatment.

I find, by a preponderance of evidence, that Joyce has misunderstood exactly what has been offered to her for treatment. Dr. Chen recommended an evaluation with the Spine Rehabilitation Team which is a multidisciplinary group of healthcare providers which can look at all of the aspects of her pain issues. (Def. Ex. B, p. 5) It is not merely physical therapy. The evaluation, if undertaken, may result in additional referrals or recommendations for treatment. It is strongly recommended that she consider this treatment. Joyce testified that previous physical therapy has made her ill and it is advisable to communicate those issues with the new provider, however, it is not a good reason for completely refusing to have an evaluation with the Spine Rehabilitation Team. It is not a valid basis to find the care offered to her has been unreasonable.

Based upon the record before me, it appears that Joyce is, quite reasonably, extremely unhappy with her limited treatment options. The physicians are not giving her a great deal of hope about her prognosis and she sincerely wants to get better. As an objective fact-finder, I encourage her to attempt the treatment she has been offered in good faith. At this point, I am quite concerned for Ms. Moorman. In my experience, it is critical to treat chronic pain issues aggressively and as early as possible.

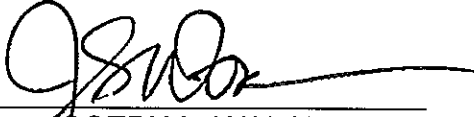
If Dr. Smith or another physiatrist agreeable to both parties is willing to see Joyce, the defendants should follow through with their assurance to provide a one-time evaluation. At this time, however, the care the defendants have offered appears to be perfectly reasonable.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is DENIED.

Signed and filed this 17th day of July, 2015.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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