BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BIANCA CASAS,

Claimant,

vs.

HY-LINE INTERNATIONAL,

Employer,

and

UNITED STATES FIRE INSURANCE,

Insurance Carrier,
Defendants.

FILED

MAY 30 2018

WORKERS COMPENSATION

File Nos. 5061701, 5061702

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. The undersigned has been delegated final agency action in this decision. Iowa Code section 17A.15(1); Order of Delegation, February 15, 2015. Any appeal of the decision will be to the Iowa District Court.

Claimant appeared through her attorney, Matthew R. Denning. Defendants appeared through their attorney, Lindsey E. Mills.

The alternate medical care claim came on for hearing on May 30, 2018 at 8:30 a.m. The proceedings were digitally recorded. The recording constitutes the official record of this proceeding.

The record consists of Claimant's Exhibits 1 through 4. Claimant testified on her own behalf.

The parties admitted claimant sustained a work-related injury to her bilateral shoulders on August 1, 2016.

Claimant is requesting treatment at a different orthopedic specialist's office. She would prefer Capital Orthopedics.

Claimant has undergone extensive treatment to date, including physical therapy, pain medications, and diagnostic examinations. Defendants accommodated the restrictions imposed by claimant's various treating physicians.

Claimant treated with Concentra from January of 2018 through March 29, 2018. She attended 16 physical therapy sessions. Hydrotherapy was proposed but claimant did not participate in it.

The nurse case manager assigned to claimant's case, suggested claimant see a specialist in physical medicine and rehabilitation. Defendants sent claimant to Kurt Smith, D.O., at Iowa Ortho. Dr. Smith is board certified by the American Board of Physical Medicine and Rehabilitation. The initial appointment occurred on April 6, 2018. Claimant was provided with three additional weeks of physical therapy but no hydrotherapy. (It should be noted claimant is pregnant so certain treatment modalities may not be available to her.)

Dr. Smith assigned work restrictions for claimant's bilateral shoulders. Claimant was precluded from pushing and pulling certain weights. She was precluded from reaching above her shoulders or over her head.

On April 27, 2018, claimant returned for a follow up visit with Dr. Smith. Claimant informed the physician, the therapy was not helpful. Dr. Smith continued the work restrictions. However, Dr. Smith referred claimant to Steven A. Aviles, M.D., an orthopedic surgeon at Iowa Ortho.

Dr. Aviles examined claimant on May 9, 2018. He specializes in shoulder conditions and is a graduate of the Columbia Medical School in New York City. Dr. Aviles opined claimant's bilateral shoulders were normal and she could return to full duty work. All work restrictions were removed.

Claimant returned to full duty work for approximately one week. She reported to various supervisors at work that she could not perform her duties due to bilateral shoulder issues. Several supervisors suggested she visit with her personal physician.

On April 11, 2018, claimant presented to Mercy Adel Medical Clinic. Susan Donahue, D.O., examined claimant for:

1. Impingement syndrome of both shoulders.

2. Adhesive capsulitis.

(Exhibit 2, page 2)

Dr. Donohue prescribed a Medrol Dosepak. (Ex. 2, p. 2) Claimant could not take NSAIDs since she is pregnant. Dr. Donohue suggested possible subacromial injections. (Ex. 2, p. 3)

Claimant returned to the Mercy Adel Medical Clinic on May 22, 2018. She requested additional work restrictions in order to perform her job duties. Dr. Donohue issued the following opinions in a letter of the same date. She wrote:

> To Whom It May Concern:
>
> I am Bianca's PCP and I understand I have been asked to perform an evaluation pertaining to her bilateral shoulder pain and reduced Range [o]f Motion. I believe Bianca has classic bilateral shoulder impingement syndrome and would likely benefit greatly from subacromial bursa injections. She tells me she has had shoulder problems doing her current job for quite some time, but could take ibuprofen intermittently to help with pain and function, and this actually worked well. Unfortunately, due to her being pregnant, she cannot take any NSAIDs which is likely why this problem has gone on for so long without resolution. She responded well to a [M]edrol dosepak (which is safe in pregnancy) which supports my diagnosis of bilateral impingement syndrome. In my opinion she would benefit greatly from bilateral injections and it is bewildering to me why this has not been done.
>
> At this time, she still has inability to forward flex > 90 degrees and has + impingement signs in both shoulders.
>
> She is currently unable to work at shoulder level or above, she is unable to push/pull > 20 pounds, she is unable to perform repetitive bending and squatting due to her current pregnancy.
>
> Bianca wants to work. She wants her shoulder problem fixed if possible. At this time she is unable to perform the job duties being asked of her. I feel it would be in BOTH parties best interest to have a separate orthopedic evaluation and injections if they deem that appropriate. I would certainly be willing to arrange that, as there is little else to offer while she is pregnant, not to mention she has already failed months and months of conservative therapy.

(Ex. 4)

In lieu of sending claimant to a different orthopedic specialist, defendants have scheduled an appointment for claimant with Dr. Smith on May 31, 2018, at 1:30 p.m. Claimant testified she will attend the appointment. Defense counsel, Ms. Mills, assured the undersigned, the records from Dr. Donohue and Mercy Adel Medical Clinic have been forwarded to Dr. Smith for his review prior to his examination of claimant.

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).

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 employee bears the burden to establish what care is reasonable and it is a question of fact. Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995). The determination will be based on what is reasonably necessary. Long, at 124.

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).

In the case at hand, claimant bears the burden to establish the care she has been receiving is unreasonable or inadequate. There was no evidence at hearing to show the care offered was less than adequate or unreasonable. It is true claimant was not provided hydrotherapy. The undersigned is uncertain why that treatment modality was not furnished. Because claimant is pregnant, this deputy does not know if hydrotherapy is possible.

Defendants have and continue to provide claimant treatment with Dr. Smith. He is board certified in physical medicine and rehabilitation by the American Board of Physical Medicine and Rehabilitation. Claimant has another appointment scheduled with him on May 31, 2018 at 1:30 p.m.

Claimant has seen Dr. Aviles. He, too, is board certified in orthopedic surgery. He specializes in the treatment of the shoulder. He attended a very prestigious medical school. He is eminently qualified to treat claimant's bilateral shoulder condition.

Defendants have been providing reasonable treatment to claimant since August 1, 2016. Claimant has not met her burden of proof that she is entitled to alternate medical care.

ORDER

IT IS THEREFORE ORDERED:

Claimant's petition for alternate medical care is denied.

Signed and filed this 30th day of May, 2018.

Michelle A. McGovern

MICHELLE A. MCGOVERN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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