BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

PAMELA RICHARDSON,

Claimant,

vs.

HCR MANORCARE,

Employer,

and

INSURANCE COMPANY STATE OF PENNSYLVANIA,

Insurance Carrier,
Defendants.

File No. 5046023

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

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, Pamela Richardson.

Claimant filed a petition on March 26, 2015. She alleged at paragraph 5 of her petition:

> Reason for dissatisfaction and relief sought: Defendant's [*sic*] have failed to authorize surgery recommended by claimant's treating physician.

Defendants filed an answer on April 6, 2015. Defendants admitted the occurrence of a work injury on May 3, 2013 and liability for the condition sought to be treated by this proceeding.

The alternative medical care claim came on for hearing on April 8, 2015. The proceedings were recorded digitally, and constitute the official record of the hearing. By an order filed February 16, 2015 by the acting 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.

The parties presented evidence for consideration. Claimant's exhibit 1 was offered and admitted as evidence. Defendants' exhibits A and B were also offered and admitted as evidence. No witnesses were called by either party.

ISSUE

The issue presented for resolution is whether claimant is entitled to alternate medical care in the form of authorization of the arthroscopic surgery recommended by Erik Peterson, M.D.

FINDINGS OF FACT

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

Claimant suffered a stipulated work related injury to her right hip on May 3, 2013. Defendants authorized extensive medical care, including diagnostic imaging, physical therapy, intra-articular injection, and ultimately, arthroscopic surgery. Arthroscopic surgery performed by Erik Peterson, M.D. on December 18, 2013, consisted of right hip arthroscopy with labral repair, osteoplasty of superior acetabular rim, chondroplasty of acetabular rim with microfracture, and transcapular iliopsoas tenotomy. Following surgery, claimant continued to follow up with Dr. Peterson and underwent physical therapy. At claimant's one-year surgical follow-up on December 16, 2014, claimant reported worsened right hip pain and underwent a repeat intra-articular injection. A repeat right hip arthrogram was performed on January 2, 2015. (See Exhibit B, page 4)

On March 3, 2015, Dr. Peterson reviewed claimant's right hip MRI arthrogram report and opined the tests revealed a labral tear anteriorly. Dr. Peterson noted claimant reported severe hip pain which resolved entirely after the intraarticular injection. Based upon the radiographic findings and the severe nature of claimant's pain, Dr. Peterson recommended repeat arthroscopic hip surgery. (Ex. 1, p. 1)

On March 19, 2015, claimant's counsel authored an email to defendants' counsel inquiring as to the status of authorization of the surgery recommended by Dr. Peterson. Defendants' counsel promptly indicated defendants were in the process of arranging a second opinion/independent medical evaluation (IME). (Ex. A, p. 1)

Defendants obtained an IME appointment for claimant with orthopedic surgeon, John Hoffman, M.D., for April 14, 2015. (Ex. A, p. 3) Dr. Hoffman's opinions were solicited on, amongst other questions, claimant's diagnosis, causal relationship to the work injury, and the appropriate treatment of claimant's complaints. Defendants specifically inquired if the repeat right hip arthroscopy recommended by Dr. Peterson was appropriate and necessary in treatment of the stipulated work injury. (Ex. B, p. 5)

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

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.

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 1975).

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).

Claimant suffered a stipulated work injury to her right hip. Defendants have provided extensive treatment, including right hip arthroscopy, and continue to authorize medical treatment. On March 3, 2015, authorized surgeon, Dr. Peterson recommended a repeat right hip arthroscopy which has been tentatively scheduled to proceed on April 29, 2015.

Claimant contends this surgery should be authorized by defendants as the recommendation came from an authorized physician. Defendants agree the recommendation was made by an authorized physician, yet argue a second opinion should be allowed prior to the undersigned forcing authorization of the surgery recommended by Dr. Peterson. Defendants contend a second opinion is warranted as to the reasonableness and necessity of such a procedure. Defendants are further

reserved in authorizing repeat surgery with Dr. Peterson because the first arthroscopic procedure performed by Dr. Peterson failed to resolve claimant's symptoms.

At evidentiary hearing, claimant's counsel represented claimant is willing to attend the IME scheduled with Dr. Hoffman on April 14, 2015. Claimant maintains an award of alternate care is warranted, as waiting for the IME will delay claimant's surgery date and/or force a repeat alternate care hearing. Defendants' counsel indicated if Dr. Hoffman concurred with the treatment recommended by Dr. Peterson, it was likely claimant could proceed with surgery as scheduled on April 29, 2015. In the event Dr. Hoffman disagreed with the treatment modality recommended by Dr. Peterson, defendants' counsel indicated defendants would present that recommendation to Dr. Peterson for consideration.

The arguments presented by both parties are straight-forward and valid. Claimant's position is clear, an authorized physician recommended care and that care should be authorized. Defendants' position is also valid, in that extensive care has been offered, this care failed to relieve claimant's symptoms, and accordingly, defendants would like a second opinion prior to authorizing a repeat surgery.

Defendants are tasked with providing claimant with reasonable medical care. This care must be offered promptly, be reasonably suited to treat the injury, and must be without undue inconvenience to claimant. Defendants have provided extensive medical care reasonably suited to treat claimant's injury. There is no allegation the care has been unduly inconvenient to claimant. It cannot be said the care provided to date has been unreasonable in any fashion.

While it could be argued defendants' action in seeking a second opinion prior to authorizing surgery is not offering care promptly, the facts of the instant matter do not support this position. Defendants promptly arranged for a second opinion and the IME appointment is scheduled for before the tentative surgery date. This is the first IME sought by defendants in the nearly two years following the work injury, thus establishing defendants have not engaged in a pattern of second-guessing the authorized physician and causing unnecessary delay. Furthermore, the choice to seek a second opinion at this juncture is entirely reasonable, as Dr. Peterson seeks to perform a repeat arthroscopy when the first arthroscopy he performed failed to relieve claimant's symptoms.

It is determined the medical care offered by defendants to date has been reasonable and thus, claimant's application for alternate medical care is denied at this time. This denial is not to say claimant may not be found entitled to an award of alternate care for the surgery recommended by Dr. Peterson at some later date. The question of reasonableness has been found in defendants' favor at this juncture, but this question may be resolved differently in a future proceeding based upon additional or differing facts.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's application for alternate medical care is hereby, denied.

Signed and filed this 9th day of April, 2015.

ERICA J. FITCH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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