

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SHANE W. ALLEN,

Claimant,

vs.

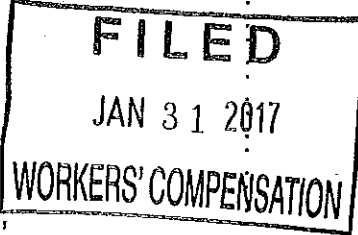
AG PROCESSING, INC.,

Employer,

and

ACE AMERICAN INSURANCE CO.,

Insurance Carrier,  
Defendants.



File No. 5040225

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, Shane Allen. Claimant appeared personally and through his attorney, Richard Maher. Defendants appeared through their attorney, Sarah Kleber.

The alternate medical care claim was scheduled for hearing on January 27, 2017. Due to an unavoidable scheduling conflict, this case was rescheduled by mutual consent of all parties and occurred on January 31, 2017.

The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's February 16, 2015 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 claimant's exhibits 1-5, which include a total of 10 pages. Defendants offered exhibits A through J, which contain 10 pages. Claimant objected to exhibits E, F, G, I and J, all of which were excluded. Defendants' exhibits A through D and H were received into the evidentiary record. Claimant testified on his own behalf. No other witnesses were called to testify.

## ISSUE

The issue presented for resolution is whether the claimant is entitled to a spinal cord stimulator, which has been recommended by Douglas E. Rennels, M.D. and John S. Treves, M.D.

## FINDINGS OF FACT

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

On May 11, 2007, Mr. Allen fell while climbing down a ladder on the side of a large steel soybean bin. He grabbed the ladder with his left arm and, as a result, sustained an admitted neck injury. Claimant had a neck surgery performed and an artificial disc was surgically placed. Claimant later had to have the artificial disc removed and a neck fusion was performed at C5-6. (Claimant's testimony)

Unfortunately, claimant continued to have symptoms even after the neck fusion. Claimant was referred by the treating surgeon to a pain specialist, Douglas E. Rennels, M.D. Claimant sees Dr. Rennels a few times per year and is on a pain contract, continuing to take numerous pain medications prescribed by Dr. Rennels. Despite taking these various medications, claimant continues to work as an auto mechanic. (Claimant's testimony; Ex. 1-5)

Obviously, Mr. Allen continues to experience symptoms as a result of this work injury. (Claimant's testimony; Ex. 1, p. 1) Claimant testified that his pain is now worse in his left arm, including shooting pain, as well as, numbness and tingling from the neck down the left arm to the fingers. Claimant also discussed having muscle spasms and dropping items. (Claimant's testimony)

Dr. Rennels recommends that claimant submit to a spinal cord stimulator trial. Dr. Rennels referred claimant to John S. Treves, M.D., a neurosurgeon, for performance of the surgical procedures necessary to place the spinal cord stimulator. In June 2015, claimant met with Dr. Treves on referral from Dr. Rennels. Claimant is comfortable with Dr. Treves. Claimant desires to submit to the spinal cord stimulator trial to help alleviate the pain symptoms he continues to experience. (Claimant's testimony; Ex. 1-5)

Defendants requested a psychiatric evaluation be performed by John Massey, M.D., in Lincoln, Nebraska, prior to any spinal cord stimulator trial being performed. Dr. Massey appears to have recommended neuropsychological evaluation be performed.

Claimant consented and submitted to the evaluation with Dr. Massey, which included some psychological testing, performed by or under the direction of Robert G. Arias, Ph.D. Dr. Arias opined that "[c]oncurrent cognitive-behavioral psychotherapy is recommended on a weekly basis throughout the spinal cord stimulator implantation process." (Ex. B)

Claimant would like to get off some of the medications he continues to use. He expressed a desire to pursue non-medication therapies, if available, to reduce his use of medications. However, Mr. Allen is not comfortable in proceeding with Dr. Arias or Dr. Guck as an authorized psychologist. Claimant has not been evaluated by Dr. Guck. However, claimant trusts Dr. Rennels and is willing to submit to neuropsychological therapy if recommended by Dr. Rennels and through a provider recommended by Dr. Rennels. (Claimant's testimony)

Claimant appears to understand the procedure for a trial stimulator and potential permanent implantation of a spinal cord stimulator. Claimant desires to proceed with this procedure, even if he is recommended to proceed with a neuropsychologist chosen and recommended by Dr. Rennels. (Claimant's testimony) Dr. Rennels appears to concur that psychiatric evaluation (such as that performed by Dr. Massey) may be reasonable and necessary but has not specifically weighed in on whether cognitive therapy or neuropsychological therapy is appropriate. (Ex. 4, p. 2)

Defendants offer to authorize the spinal cord stimulator trial but request that it be done in conjunction with neuropsychological therapy, which has been recommended by Dr. Arias. (Ex. A & B) Defendants contend that the neuropsychological therapy should be provided through Thomas Guck, Ph.D. a psychologist in Omaha, Nebraska. (Ex. A) Claimant lives approximately 20-30 minutes from Omaha, Nebraska. His pain specialist and surgeon are also both located in Omaha. (Claimant's testimony)

Claimant is aware that Dr. Treves concurred neuropsychological therapy is an appropriate treatment recommendation with or without the spinal cord stimulator. Dr. Treves has recommended that neuropsychological therapy be provided by defendants. Claimant admits that he trusts Dr. Treves' opinions. Claimant is willing to submit to neuropsychological therapy as recommended by Dr. Treves. (Claimant's testimony)

However, claimant does not wish to proceed with neuropsychological therapy through the psychologist, Dr. Guck, selected by defendants. Instead, claimant urges that the selection of a psychologist be done through Dr. Rennels and only if Dr. Rennels deems it necessary. (Claimant's testimony)

I find that neuropsychological therapy is a reasonable treatment option. It has been recommended after a neuropsychological evaluation and the treating surgeon, Dr. Treves, has concurred that it is a reasonable treatment option. Given that the authorized surgeon concurs it is an appropriate treatment option, I conclude that it should be performed in conjunction with the spinal cord stimulator trial and potential permanent implantation of the stimulator, if appropriate.

I certainly understand claimant's position. He trusts Dr. Rennels, who has provided him care for a significant period of time. Dr. Rennels appears to have provided claimant beneficial care such that he can manage his symptoms and continue to be gainfully employed as an auto mechanic. Dr. Rennels appears to be a qualified and competent pain specialist and it seems appropriate that claimant trusts his opinions.

In this instance, Dr. Rennels has not opined either way on the neuropsychological therapy recommendation. However, as it stands, the evidentiary record before me demonstrates that neuropsychological therapy is a reasonable and appropriate medical treatment option under the circumstances of this case. It has been recommended by a qualified neuropsychologist and by the treating neurosurgeon. I find that the recommended neuropsychological therapy is appropriate and reasonable medical treatment for Mr. Allen under the facts of this case.

Mr. Allen testified that he would like to find ways to control his symptoms in ways that do not involve medications. Neuropsychological therapy may provide him some coping skills that could reduce his dependence on medications. It is certainly worth a try.

While I understand Mr. Allen's concerns about using a psychologist selected by defendants and his desire to have Dr. Rennels select the provider, review of Dr. Guck's credentials demonstrates that he obtained his doctoral degree in counseling psychology and performed an internship in clinical psychology. Dr. Guck is a professor and the Director of Behavior Sciences practicing at Psychiatric Associates in Omaha, Nebraska. Dr. Guck appears to be a qualified psychologist to provide the recommended neuropsychological counseling or therapy. While claimant does not prefer to obtain his care through Dr. Guck, I find that the defendants' offer of neuropsychological counseling or therapy through Dr. Guck is reasonable.

#### 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 16, 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); Bell Bros. Heating v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); 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. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). 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).

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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).

Reasonable care includes care necessary to diagnose the condition and defendants are not entitled to interfere with the medical judgment of its own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening Decision June 17, 1986).

Having found that the requested spinal cord stimulator trial is reasonable and necessary, I conclude that claimant has proven entitlement to this procedure. Defendants concede that the spinal cord stimulator trial should be performed, but contend that it should be done in conjunction with cognitive, or neuropsychological, therapy. Having found that the evidentiary record before me demonstrates the cognitive, or neuropsychological, therapy is appropriate and reasonable, I conclude that such therapy should be provided concurrently with the spinal cord stimulator and potential permanent implantation of a spinal cord stimulator.

The primary remaining fighting issue is who should select the psychologist to provide claimant's care. Defendants offer care through Dr. Guck. Claimant desires not to have care through a provider selected by defendants. Instead, claimant prefers to have Dr. Rennels select a psychologist, if he deems one appropriate and necessary. As noted above, mere dissatisfaction with the care or provider offered by defendants is not ample grounds for a transfer of care.

In this instance, I found that Dr. Guck is a qualified psychologist. Claimant has not been evaluated by Dr. Guck and there is no reason to believe that Dr. Guck cannot provide competent and reasonable cognitive therapy for Mr. Allen. Claimant's

dissatisfaction is based upon nothing but a resistance to treatment through a provider selected by defendants.

However, Iowa Code section 85.27 grants the employer a statutory right to select the provider unless there are specific grounds to transfer that care. Claimant has not established any of the bases for a transfer of care from Dr. Guck, particularly since he has not even been evaluated by Dr. Guck to date. I conclude that defendants' offer of care through Dr. Guck is reasonable and legally permissible under Iowa Code section 85.27. Claimant's request for an award of the spinal cord stimulator trial will be granted provided he simultaneously submits to and pursues behavioral therapy through Dr. Guck.

ORDER

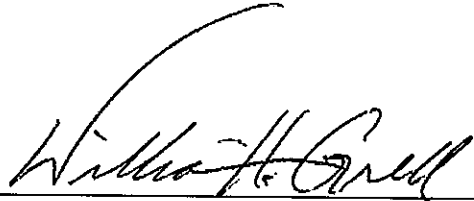
THEREFORE IT IS ORDERED:

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

Defendants shall authorize and pay for the recommended spinal cord stimulator through Dr. Treves.

Claimant shall submit to concurrent cognitive, or neuropsychological, therapy with Dr. Guck.

Signed and filed this 31<sup>st</sup> day of January, 2017.

  
WILLIAM H. GRELL  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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