

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RONALD BURBACH,

Claimant,

vs.

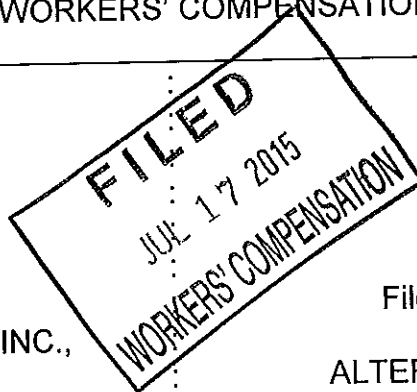
AREA RESIDENTIAL CARE, INC.,

Employer,

and

ARGENTWEST BEND INS.,

Insurance Carrier,
Defendants.



File No. 5054222

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, Ronald Burbach.

The alternate medical care claim came on for hearing on July 17, 2015. 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 claimants exhibits 1 – 6 and defendants' exhibits A – D and affidavit of Melissa Altheimer. The claimant testified at the hearing. No other witness appeared.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of a referral to the University of Iowa Hospitals and Clinics Ortho Department for evaluation of his left shoulder and an evaluation by a shoulder specialist for consideration of biological enhancement.

FINDINGS OF FACT

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

Ronald Burbach, claimant, injured his left shoulder on November 12, 2012. This injury has been accepted by Area Residential Care, Inc. and Argent/West Bend Insurance, defendants. Mr. Burbach lives in Dubuque, Iowa.

Claimant's attorney sent Melissa Altheimer, claims representative, a fax on July 3, 2015 requesting that the claimant be scheduled an appointment in Iowa City and if one was not done immediately an alternate care petition would be filed on July 6, 2015. (Exhibit D, page 1) An alternate care petition was filed on July 6, 2015. July 3, 2013, the day before the national holiday, was a day that most businesses and government offices took off. Claimant's filing the petition on the Monday following a holiday on the preceding Friday is questionable as to whether the claimant properly expressed dissatisfaction to the defendants before filing the petition. As defendants did not raise this as an issue and it appears that the positions of the parties would not have changed with additional notice, I find in this case that claimant has expressed dissatisfaction to the employer before filing the alternate care petition¹.

Defendants authorized Scott Schemmel, M.D. to provide care. (Affidavit, p. 1) Dr. Schemmel performed surgery on claimant's left shoulder in February 2013. Claimant continued to have problems with his left shoulder. He saw Dr. Schemmel on April 7, 2015. Dr. Schemmel wrote,

The patient may conceivably be improved with revision surgery, although I think the likelihood of that is low, it is by no means zero. It might be that revision surgery combined with biologic enhancement could prove to be even more efficacious. Based on all of the above I think this patient should be seen by a shoulder specialist for consideration to biological enhancement with revision rotator cuff surgery. The patient understands my recommendation and we will see if his work comp carrier will agree to that plan.

(Ex. A, p. 1; Ex. 2, p. 4)

Defendants authorized claimant to see David Field, M.D. Dr. Field is an orthopedic surgeon practicing in Dubuque, Iowa. (Ex. C, p. 1) Dr. Field reviewed a March 12, 2015 MRI. He wrote,

I agree with the report suggesting evidence of an apparent full thickness tear of upper portion, i.e., the rotator between the supraspinatus and infraspinatus. Some damage also has taken place to the long head of the biceps with the suggestion it has been torn. There is some subchondral edema seen in the shoulder joint and also the AC joint.

¹ Claimant's counsel would be advised in the future to provide a reasonable time from expressing dissatisfaction to filing an alternate care petition or face having the petition dismissed.

(Ex. B, p. 1) Dr. Field told claimant he could accept his condition as is or have a diagnostic arthroscopy then followed by a possible open reinforced repair of the rotator cuff again. (Ex. C, p. 2)

Both Dr. Schemmel and Dr. Field agree that a referral to Dr. Nepola or other physician at the University of Iowa Hospitals and Clinics is reasonable. (Ex. 1. p. 2; Ex. 5, p. 7)

Claimant did not find that Dr. Field answered his questions about the outcome of surgery that Dr. Field suggested in a satisfactory manor or respond to the question about blood enhancement (biological enhancement). Claimant testified that no physician has told him that the care offered by Dr. Field is unreasonable.

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-reopen 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); 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. v. Reynolds, 562 N.W.2d 433 (Iowa 1997), 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" 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.

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).

In this case Dr. Schemmel recommended claimant be referred to a shoulder specialist to consider biological enhancement. From the record provided it does not appear that Dr. Field considered whether biological enhancement are appropriate for the claimant. Dr. Field's statement that he is not sure does not seem to answer the question. Dr. Schemmel, as the authorized treating physician, made a recommendation that claimant "should be seen by a shoulder specialist for consideration to biological enhancement with revision rotator cuff surgery." (Ex. A, p. 1) This is not a specific referral to the University of Iowa Hospitals and Clinics, but rather a referral to a specialist who can evaluate whether biological enhancement are appropriate for claimant's left shoulder condition. The record does not show that this was done by Dr. Field.

The defendants did refer claimant for a second opinion, but did not get an opinion about biological enhancement. By not following the recommendations of the authorized treating physician they have interfered with the care of the claimant and have not promptly provided authorized care. Because Dr. Schemmel was an authorized physician defendants are not free to choose another doctor and ignore Dr. Schemmel's advice.

By not providing an evaluation that considered biological enhancement the defendants have not provided reasonable care.

ORDER

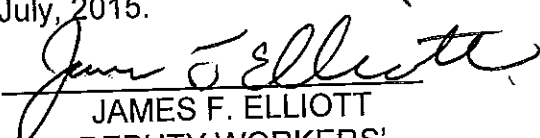
Therefore it is ordered:

The claimant's petition for alternate medical care is affirmed in part and denied in part.

Defendants shall have claimant evaluated by a qualified shoulder specialist who will consider biological enhancement.

Defendants are free to choose any qualified orthopedic specialist to perform this evaluation and may or may not choose the University of Iowa Hospitals and Clinics.

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


JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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