

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MARIA ULLOA,
Claimant,

vs.

HNI CORPORATION,
Employer,
Self-Insured,
Defendant.

FILED
MAR 04 2015
WORKERS' COMPENSATION

File No. 5041244
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, Maria Ulloa.

The alternate medical care claim came on for hearing on March 4, 2015. The proceedings were tape-recorded, which constitutes the official record of this proceeding. By order filed February 16, 2015, this ruling is designated final agency action.

The record consists of claimant's exhibits 1-4; defendant's exhibits A-D as well as the testimony of the claimant.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of diclofenac gel paid for by defendant; authorization and payment for medical care from a pain clinic specifically with Brett C. Lockman, D.O., and transportation to his office; and therapy from a Spanish-speaking therapist who treats psychological effects of chronic pain.

FINDINGS OF FACT

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

Defendant admitted liability for an injury to claimant's right shoulder occurring on July 7, 2011. Defendant has provided care for this injury with Michael Durkee, M.D. and Rhea Allen, M.D.

Dr. Durkee performed surgery on claimant's shoulder. He last saw claimant on December 17, 2014. Dr. Durkee recorded this history at that visit:

The patient is a 57 year old female seen today for the right shoulder and left elbow. She originally injured her right shoulder in 2011 and I did a right rotator cuff repair on December 16, 2011. She works at Allsteel Panel Plant, and was referred to me by Dr. Rhea Allen who is the plant doctor there, and I have reviewed her notes. She has not had a new injury since 2011 and has been working with restrictions since then. She has been on light duty for over three years. Maria states that she is relying on her left arm to do everything because she is unable to use her right arm very well, and her left elbow has started to bother her. Her lawyer had sent her to a primary care provider in Davenport because of her complaints, and that doctor tried injecting her elbow. She states that the injection made it feel worse. She has continued on Celebrex and she has been using a TENS unit for her pain. She has gotten a new TENS unit in the last few days. She has also tried Diclofenac gel on her left elbow. She states that the diclofenac gel is helping, however, her last refill was denied. She has been taking hydrocodone, however, she has recently run out of the hydrocodone. She takes 1-2 ibuprofen a day. She states that she wears a tennis elbow strap at work, and she feels that the strap helps her. She has tried physical therapy, but has not benefited from any of their interventions. The therapist has noted that she usually is in tears by the time she gets there. Dr. Allen noted that Maria has a lot of psychological issues at play, and extensive labs checking for any underlying rheumatologic issues were all normal. She was tested for autoimmune disease as well as even Lyme disease, and these tests were all normal.

In the last 2 weeks her job was changed, and she has been working on an ergonomically low risk job. She is doing less repetitious work and has very light lifting. Her daughter has moved here, mainly to help provide emotional support. Her daughter has been massaging and helping her work with her left elbow.

(Exhibit 3, page 1)

Dr. Durkee recommended continuing the diclofenac gel and noted that claimant had just received a new TENS unit. He noted that a previous injection had made claimant worse so that he would not repeat that injection. He opined that claimant remained at maximum medical improvement for the right shoulder but could return if pain or symptoms arise.

Claimant last saw Dr. Allen on November 7, 2014. Dr. Allen's plan at that time was:

Will have an orthopedic consult to see if Dr. Durkee recommends any intervention, such as further imaging. I don't think there has been any change with the right shoulder, it remains at MMI. The left shoulder and elbow are not likely to benefit from injection, she hasn't benefitted from injections previously, often complains that she feels worse. I don't think she is likely to have any internal derangement of either the left shoulder or elbow or or [sic] of the wrists. If Dr. Durkee doesn't recommend any any [sic] other testing, I think the reasonable thing to do is treat conservatively with TENS, medications, home exercises. She is not getting any benefit from PT. Seems to have a lot of depression/anxiety symptoms. It is unclear to me whether she is actually on the Cymbalta yet or not (from her PCP). She is working within her permanent restrictions. If she plateaus out and has ongoing subjective complaints, it would be reasonable to get an FCE. There is a strong degree of psychological overlay to her complaints.

(Ex. B, p. 2)

Claimant sees Colette Hostetler, M.D. as her personal physician for a variety of conditions including depression. She recommends claimant have treatment for her depression and that the depression is related to the work injury or activities. Further, she recommended on January 14, 2015:

It is my medical opinion that Maria would benefit from an evaluation by a pain clinic. She would also benefit from therapy for the psychological effects of chronic pain. This may be found either at a comprehensive pain clinic, or with a Spanish-speaking therapist who treats the psychological effects of chronic pain.

(Ex. 4, p. 2)

Claimant on her own sought care with Dr. Lockman in August and September 2014. Dr. Lockman provided injections and made recommendations for additional care. The claimant reported to Dr. Allen and Dr. Durkee that the injections were not helpful and made her condition worse.

Claimant's counsel wrote to defense counsel on January 21, 2015 requesting defendant provide care:

Claimant now makes a final request for the following medical care and treatment:

Defendant pay for diclofenac gel prescribed to Claimant

Defendant authorize Claimant to receive medical care from a pain clinic

Defendant authorize Claimant to receive therapy from a Spanish-speaking therapist who treats psychological effects of chronic pain

(Ex. 1, p. 1)

Defendant offered in response to this alternate care petition an appointment with Joseph Chen, M.D., a specialist in physical medicine and rehabilitation at the University of Iowa for pain management and any recommendations he may make for psychological treatment. The appointment with Dr. Chen is scheduled for April 6, 2015. In the interim claimant can see Dr. Allen.

The defendant is authorizing and will pay for diclofenac gel as prescribed. The failure to have the gel refilled at the Hy-Vee pharmacy in Muscatine was not known or directed by the defendant.

REASONING AND CONCLUSIONS OF LAW

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.

Reasonable care includes care necessary to diagnose the condition, and defendant is 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).

It appears that the failure to fill the gel prescription was simply a pharmacy error and not a design or direction of the defendant. The defendant has provided care for the claimant consistently. When claimant demanded a pain clinic and psychological care the defendant arranged for care at the University of Iowa, which is noted to be a premier care provider in Iowa. The defendant has not abandoned claimant's care and offered care that is reasonable to treat the claimant's condition. The care claimant received on her own from Dr. Lockman by her own report to Dr. Allen and Dr. Durkee was ineffective (she confirmed this on cross examination).

Claimant's request for alternate care is denied.

ORDER

Therefore is ordered:

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

Signed and filed this 4th day of March, 2015.



RON POHLMAN
DEPUTY WORKERS'
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