BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MICHAEL MAHON, Claimant, vs. DOLLAR GENERAL CORPORATION, Employer, Self-Insured, Defendant.	File No. 5033045 ALTERNATE MEDICAL CARE DECISION HEAD NOTE NO: 2701

This is a contested case proceeding under Iowa Code chapters 85 and 17A. The expedited procedures of rule 876 IAC 4.48, the "alternate medical care" rule, are invoked by claimant, Michael Mahon.

This alternate medical care claim came on for hearing on March 17, 2016. The proceedings were recorded digitally and constitute the official record of the hearing. By an order filed by the workers' compensation commissioner, this decision is designated final agency action. Any appeal would be a petition for judicial review under Iowa Code section 17A.19.

The record in this case consists of claimant's Exhibits 1-2, defendant's Exhibits A-B, and the testimony of claimant.

ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of treatment and surgery recommended by David Beck, M.D.

FINDINGS OF FACT

Claimant sustained a work-related injury on September 14, 2008.

In an August 6, 2011 arbitration decision, defendant was ordered to provide surgery recommended by David Beck, M.D. Dr. Beck was also designated claimant's treating physician. (Arbitration decision, page 7)

In December of 2011 claimant underwent a C4 through C7 anterior fusion. Surgery was performed by Dr. Beck. (Exhibit B, p. 1)

On March 19, 2013 claimant underwent a C3-C7 cervical laminectomy and foraminotomies. Surgery was performed by Dr. Beck. (Ex. B, p. 1)

In January of 2014 claimant was evaluated by Sergio Mendoza, M.D. Claimant was assessed as having a fallen head syndrome with the inability to hold his head up. Dr. Mendoza did not believe a one-level fusion would help claimant's condition. (Ex. B, p. 1)

On April 1, 2014 claimant underwent a C3-4 anterior fusion with PEEK lordotic spacer. Surgery was again performed by Dr. Beck. (Ex. B, p. 1)

Claimant testified at hearing he has numbness, tingling and pain in both arms. Claimant said he had neck pain. Dr. Beck has recommended claimant undergo a C7-T1 laminectomy and foraminotomy. (Ex. 2)

On January 6, 2016 claimant underwent an independent medical evaluation (IME) with Cassim Igram, M.D. at The University of Iowa Hospitals and Clinics. Claimant was assessed as having chronic neck pain and bilateral arm pain. His symptoms were found to be causally connected to the underlying work injury. (Ex. B)

In a February 15, 2016 letter, written by defendant's counsel, Dr. Igram opined claimant was not a good candidate for the surgery recommended by Dr. Beck given, in part, to claimant's continued symptoms after each cervical surgery by Dr. Beck. Dr. Igram did not expect the recommended surgery would improve claimant's condition. He indicated the surgery, proposed by Dr. Beck, was not necessary or reasonable to treat claimant's current complaints. (Ex. B)

Claimant testified he had a C4 through C7 fusion done by Dr. Beck in December of 2011. He had C3 through C7 laminectomy and foraminotomies done by Dr. Beck in March of 2013. He said he had a C3-4 fusion done by Dr. Beck in April of 2014. Claimant testified that following all three cervical surgeries he had neck pain and other symptoms. Claimant testified he believed all three surgeries helped his symptoms to some degree.

Claimant testified he wants to have the most recent surgery recommended by Dr. Beck.

CONCLUSION 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.

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.

An employer does not have the right to control the methods the providers choose to evaluate, diagnose and treat the injured employee. An employer is not entitled to control a licensed health care provider's exercise of professional judgment. Assman v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988).

Offering no care is the same as offering no care reasonably suited to treat the injury. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 436 (Iowa 1997).

Claimant has had three cervical surgeries with Dr. Beck. They include a C3 through C7 fusion in December of 2011; a C3 through C7 laminectomy and foraminotomies in March of 2013; and a C3-C4 fusion in April of 2014. Claimant testified he believes he has gotten some degree of relief from all three surgeries. He also testified that after all three surgeries he has had continued neck pain and other symptoms.

Dr. Igram, an orthopedic surgeon, opined the most recent surgery recommended by Dr. Beck is not reasonable or necessary. He also opined he did not believe the most recent surgery recommended by Dr. Beck would improve claimant's condition.

I appreciate defendant's position. Claimant has had three cervical surgeries with Dr. Beck. After each surgery claimant continued to have neck pain and other symptoms. Dr. Beck believes a fourth surgery is necessary. Dr. Igram does not believe the recommended surgery will improve claimant's symptoms. This opinion is based, in part, on the fact claimant has had continued problems after each surgery performed by Dr. Beck.

However, Dr. Beck is the authorized provider. More importantly, defendant has not offered any expert opinion for an alternative course of treatment other than the fourth surgery recommended by Dr. Beck. No alternative care has been offered. Because no alternate care has been offered, I do not believe the denial of Dr. Beck's recommendation for surgery is reasonable care.

Given this record claimant has carried his burden of proof he is entitled to alternate medical care.

ORDER

Claimant's petition is granted. Defendant is ordered to authorize the care recommended by Dr. Beck.

Signed and filed this 17th day of March, 2016.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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