

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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CONNIE KUEHN,

Claimant,

vs.

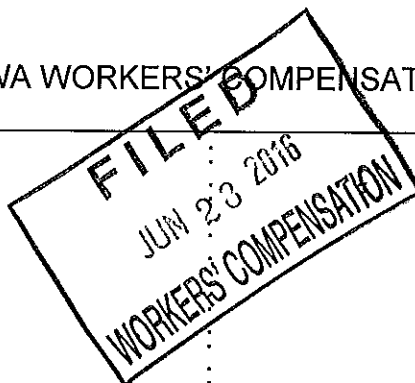
PFIZER ANIMAL HEALTH,

Employer,

and

CHARTIS CLAIMS, INC.,

Insurance Carrier,  
Defendants.



File No. 5048686

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

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STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapters 17A and 85. On April 29, 2010, the claimant, Connie Kuehn ("Kuehn") sustained a work-related injury to her right shoulder, while working for the defendant, Pfizer Animal Health ("Pfizer"). Kuehn filed a petition alleging she sustained the work-related injury on May 2, 2014. Kuehn later amended her petition alleging she also sustained a sequela injury to the left shoulder. An arbitration hearing was held on July 1, 2015. The deputy commissioner issued an arbitration decision on December 9, 2015, finding the defendants Pfizer, and its insurer, Chartis Claims, Inc. ("Chartis"), admitted a work injury to Kuehn's right shoulder occurred, and finding the claimant's left shoulder and arm conditions were sequela of her right shoulder and arm injury. The deputy commissioner awarded healing period benefits, permanent partial disability benefits, penalty benefits, and ordered the defendants to pay Kuehn's prior medical expenses submitted at hearing and future medical expenses necessitated by the work injury.

Following the hearing, but before the arbitration decision was issued, Kuehn underwent a left shoulder arthroplasty. On June 14, 2016, Kuehn filed a petition for alternate medical care under Iowa Code section 85.27 and rule 876 IAC 4.48. Kuehn is requesting the defendants be ordered to authorize a CT angiogram and vascular medicine consult recommended by Kuehn's authorized treating physician, Robert Spinner, M.D. of the Mayo Clinic.

On June 16, 2016, this division filed a notice of telephone hearing, scheduling a telephone hearing for June 28, 2016, at 8:30 a.m. A copy of the notice was mailed to the parties.

A telephone hearing was held on June 28, 2016 at 8:30 a.m. Prior to the hearing, the defendants' attorney, Abigail Wenninghoff sent an e-mail message to the deputy workers' compensation commissioner and to Kuehn's counsel indicating she was unable to attend the hearing due to an emergency. Wenninghoff requested that her answer, exhibits, and supplemental exhibits be admitted into the record. Attorney Jean Mauss represented Kuehn. Kuehn appeared and testified. Exhibits 1 through 8 and A through E were admitted. I took official notice of the pleadings. The proceeding was recorded by digital recorder and the digital recording is the official record of the proceeding.

The undersigned has been delegated with the authority to issue final agency action in this matter. Appeal of this decision, if any, is to the district court pursuant to Iowa Code section 17A.19.

#### FINDINGS OF FACT

On October 6, 2015, Kuehn underwent a left shoulder arthroplasty performed by James Crouse, M.D., an orthopedic surgeon in Waterloo, Iowa, and authorized treating physician. (Kuehn Testimony) Kuehn testified that when she awoke from anesthesia, she had pain in her left hand. (Kuehn Testimony) Kuehn reported that she could not use her left arm from the elbow down and her hand continued to be painful and swollen. (Kuehn Testimony) Dr. Crouse initially believed Kuehn's symptoms would resolve in six weeks, and then three months. (Kuehn Testimony) Kuehn's symptoms did not resolve and Dr. Crouse ordered an EMG and referred her to Russell Buchanan, M.D., a neurosurgeon in Waterloo. (Kuehn Testimony) Dr. Buchanan is an authorized treating physician. (Kuehn Testimony)

Dr. Buchanan recommended Kuehn be referred to Robert Spinner, M.D., with the Mayo Clinic, a specialist in orthopedics and neurosurgery. (Kuehn Testimony) Dr. Spinner is an authorized treating physician. (Kuehn Testimony) Dr. Spinner examined Kuehn on March 22, 2016 and April 21, 2016. (Exhibit 1) Dr. Spinner found that following Kuehn's left total shoulder arthroplasty, Kuehn developed left brachial plexopathy. (Ex. 1) Dr. Spinner recommended Kuehn see a physician in vascular medicine and undergo magnetic resonance imaging of her upper extremities to assess the vascular status of her arm. (Ex. 1) Defendants authorized the imaging. (Kuehn Testimony)

Dr. Spinner documented he observed Kuehn had a grade 4 elbow extension and her hand remained swollen. (Ex. 1) Dr. Spinner noted that Kuehn's vascular studies raised a concern of the arterial flow. (Ex. 1) Dr. Spinner noted "[v]ascular studies show that there is discordant upper extremity blood pressure values consistent with left upper extremity arterial occlusive disease." (Ex. 1) Dr. Spinner further noted he had spoken

with Dr. Froehling who performed the noninvasive study and he recommended a CT angiogram. (Ex. 1) Dr. Spinner also recommended Kuehn receive a consultation with a vascular medicine physician and that a CT angiogram of the arch to the axilla be performed to assess for further vascular compromise. (Ex. 1) Dr. Spinner diagnosed Kuehn with left periprosthetic brachial plexopathy with some degree of recovery. (Ex. 1)

Pfizer and Chartis have refused to authorize the consult and the CT angiogram to date. Dr. Spinner has opined that the arterial occlusive disease is related to the shoulder arthroplasty performed in October 2015. (Ex. D)

Kuehn testified that Dr. Spinner informed her there is a set of nerves in the shoulder and in the center of the set of nerves is a vein that often has problems with shoulder surgery. (Kuehn Testimony) Kuehn reported that Dr. Spinner told her that he believes that may be the source of the problems she has with her left upper extremity and that was why he was referring her to a vascular medicine physician and for a CT angiogram. (Kuehn Testimony)

#### REASONING AND CONCLUSIONS OF LAW

An employer is required to 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. Iowa Code § 85.27(1) (2015). The employer has the right to choose the provider of care, except when the employer has denied liability for the injury. Id.

"The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." Id. § 85.27(4). If the employee is dissatisfied with the care, the employee should communicate the basis for the dissatisfaction to the employer. Id. If the employer and employee cannot agree on alternate care, the commissioner "may, upon application and reasonable proofs of necessity therefore, allow and order other care." Id.

The employee bears the burden of proving the care authorized by the employer is unreasonable. R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 196 (Iowa 2003). "The employer's obligation under the statute turns on the question of reasonable necessity, not desirability." Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995). The care authorized by the employer is unreasonable if it is ineffective, inferior, or less extensive than the care requested by the employee. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997). The determination of whether care is reasonable is a question of fact. Long, 528 N.W.2d at 123.

Pfizer and Chartis have acted unreasonably in this case by failing to authorize the CT arthrogram and consult with a vascular medicine specialist recommended by Dr. Spinner, the authorized treating physician. Kuehn argues the care Pfizer and Chartis have authorized is unreasonable because they are interfering with the medical judgment of their own treating physician. For many years this agency has held that


reasonable care includes care necessary to diagnose the condition, and that a defendant may not interfere with the medical judgment of its own treating physician. Berns v. CRST, File No. 5034602 (Alt. Care Dec. Aug. 27, 2012) (citing Cahill v. S & H Fabricating & Engineering, File No. 1138063, (Alt Care May 30, 1997); Hawxby v. Hallett Materials, File No. 1112821 (Alt Care Feb. 20, 1996); Leitzen v. Collis, Inc., File No. 1084677, (Alt Care Sept. 9, 1996)).

Pfizer and Chartis have not proposed any alternate care. The care offered by Pfizer and Chartis has not been effective in alleviating Kuehn's symptoms. Her left hand remains swollen and she is unable to use her arm from the elbow down. (Kuehn Testimony). The evidence presented at hearing supports the care offered by Pfizer and Chartis is unreasonable, ineffective, and inferior. See Pirelli-Armstrong Tire Co., 562 N.W.2d at 437 (finding the care authorized by the employer was ineffective, inferior and less extensive than the care requested because the claimant's pain had increased and his leg had atrophied during the year he had been treated by the company-approved physician). Kuehn's petition for alternate care should be granted.

ORDER

Claimant's petition for alternate care is GRANTED. Defendants are liable for the treatment and associated costs.

Signed and filed this 28<sup>th</sup> day of June, 2016.

  
HEATHER L. PALMER  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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