BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RHONDA ASHER,

Claimant,

vs.

DOLLAR TREE STORES,

Employer,

and

ARCH INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 5064780

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, Rhonda Asher. Claimant appeared telephonically and through her attorney, Aaron DeKock. Defendants appeared through their attorney, Lyndsey Canning.

The alternate medical care claim came on for hearing on September 5, 2018. 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 through 4 and Defendants' Exhibits A and B. Claimant provided testimony. No other witnesses were called. Counsel offered oral arguments to support their positions.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of a right L4-L5 posterior lumbar decompression and discectomy as recommended by Trevor Schmitz, M.D.

FINDINGS OF FACT

Claimant sustained a back injury on February 13, 2018, when she was unloading a truck for defendant-employer. Defendants admitted liability for this injury and the current back condition for which claimant seeks alternate medical care.

Defendants authorized treatment with Dr. Schmitz. However, after Dr. Schmitz mentioned the possibility of surgery, defendants sent claimant to William Boulden, M.D., for an independent medical examination on April 26, 2018. (Defendants' Exhibit A) Dr. Boulden questioned whether Dr. Schmitz reviewed claimant's past medical records or was aware of any of claimant's prior complaints of back and sciatica pain. (Def. Ex. A, pages 1-2) Dr. Boulden also stated he could not causally relate claimant's herniated disc to her work injury, though he acknowledged the work injury aggravated claimant's symptoms. (Def. Ex. A, p. 4) Finally, Dr. Boulden opined surgery "would be a failure" and would not improve claimant's symptoms. (Def. Ex. A, p. 4) He instead recommended conservative care in the form of injections and physical therapy. (Def. Ex. A, p. 4)

Claimant returned to Dr. Schmitz on July 10, 2018, apparently after pursuing epidural steroid injections (ESIs). (Claimant's Ex. 1, p. 1) Dr. Schmitz noted claimant experienced "short-lived but no long lasting relief" from the ESIs. Based on claimant's ongoing symptoms, Dr. Schmitz indicated claimant's "next option is likely surgery," specifically a right L4-L5 posterior lumbar decompression and discectomy. (Cl. Ex. 1, p. 1) Claimant told Dr. Schmitz she wished to proceed with the recommended surgery. (Cl. Ex. 1, p. 1)

On July 16, 2018, Dr. Boulden authored a letter to defendants' counsel regarding whether claimant complained of leg pain at her April 2018 examination, but the letter did not directly address Dr. Schmitz's July 10, 2018 surgery recommendation. (Def. Ex. B)

Then, on August 6, 2018, Dr. Schmitz authored a letter to claimant's counsel in which he confirmed his recommendation for a decompression and discectomy surgery at L4-L5 to repair claimant's extruded disc fragment. (Cl. Ex. 2) He also stated, "I do think that this disc fragment is likely causally-related to her work injury as she did not have any symptoms prior to the alleged incident in question." (Cl. Ex. 2)

It is this statement from Dr. Schmitz with which defendants take issue. Defendants argue Dr. Schmitz's recommendation regarding surgery need not be followed because Dr. Schmitz has not reviewed claimant's past medical records and is not aware of the fact that claimant had back complaints prior to her work injury.

There are several problems with defendants' position. First, it should be noted that defendants admitted liability for the current condition for which claimant is seeking alternate medical care, so Dr. Schmitz's opinion regarding causation, whether flawed or not, is moot for purposes of this proceeding.

More importantly, however, Dr. Schmitz was selected by defendants as the authorized treating physician and, per defendants' counsel, remains the authorized treating physician today. Further, defendants' counsel confirmed at the hearing that defendants never sent claimant's past medical records to Dr. Schmitz despite having the records in their possession, serving them on claimant's counsel, and sending them to Dr. Boulden more than four months ago. Defendants' criticism of Dr. Schmitz's recommendation for surgery—that it is based on an incorrect or incomplete history—is not well-taken in light of defendants' decision to not share claimant's past medical

records with Dr. Schmitz despite having them in their possession in April, if not before. Defendants should not be able to disregard their own physician's treatment recommendation based on an alleged shortfall they could have easily cured. For these reasons, I find defendants are interfering with the medical judgment of Dr. Schmitz.

Further, at hearing, defendants' counsel indicated defendants are willing to authorize additional conservative care as recommended by Dr. Boulden, including injections and physical therapy. However, I find conservative care has not been effective. Instead, the ESIs provided only a brief period of relief before claimant's symptoms returned, and claimant testified her back pain is now getting worse. (Cl. Ex. 1, p. 1; Cl. Testimony) Thus, I find the defendants' offer of additional injections and physical therapy is inferior and less extensive care than the decompression surgery recommended by Dr. Schmitz.

Considering these facts, I find the care being offered by defendants is unreasonable.

REASONING AND CONCLUSIONS OF LAW

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.

Iowa Code § 85.27(4).

Defendants' "obligation under the statute is confined to *reasonable* care for the diagnosis and treatment of work-related injuries." Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995) (emphasis in original). In other words, the "obligation under the statute turns on the question of reasonable necessity, not desirability." Id.

Similarly, 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. See Iowa Code § 85.27(4). Thus, 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, 528 N.W.2d at 124.

However, 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). Defendants are not entitled to interfere with the medical judgment of their own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening Decision June 17, 1986).

Additionally, 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. v. Reynolds; 562 N.W.2d 433, 437 (Iowa 1997).

Ultimately, determining whether care is reasonable under the statute is a question of fact. Long, 528 N.W.2d at 123.

I found defendants are interfering with the medical judgment of their selected treating physician, Dr. Schmitz. I further found the care being offered by defendants is inferior and less extensive than the surgery requested by claimant. For these reasons, I conclude the medical treatment offered by defendants is not reasonable or reasonably suited to treat claimant's back injury. I therefore conclude claimant has proven her claim for alternate medical care.

Defendants are ordered to authorize and pay for the L4-L5 posterior lumbar decompression and discectomy surgery as recommended by Dr. Schmitz.

ORDER

THEREFORE IT IS ORDERED:

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

Defendants shall immediately authorize and timely pay for the L4-L5 posterior lumbar decompression and discectomy surgery as recommended by Dr. Schmitz.

Signed and filed this 5th day of September, 2018.

STEPHANIE J. COPLEY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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