

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BENJAMIN MEDBERRY,

Claimant,

vs.

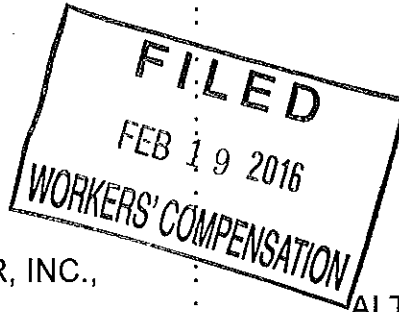
PROFESSIONAL MUFFLER, INC.,

Employer,

and

EMPLOYERS PREFERRED
INSURANCE COMPANY,

Insurance Carrier,
Defendants.



File No. 5048418

ALTERNATE MEDICAL
CARE DECISION

Head Note No.: 2701

STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapter 17A and 85. On August 29, 2012, the claimant, Benjamin Medberry (hereinafter "Medberry") sustained a work-related injury to his back and body as a whole, while working for the defendant, Professional Muffler, Inc. (hereinafter "Professional Muffler"). On February 8, 2016, Medberry filed a petition for alternate medical care under Iowa Code section 85.27 and rule 876 IAC 4.48. Medberry seeks an order requiring Professional Muffler, and its insurer, the defendant, Employers Preferred Insurance Company (hereinafter "EPIC"), to authorize a spinal cord stimulator trial recommended by the authorized treating physician.

On February 9, 2016, this agency filed a notice of telephone hearing, scheduling a telephone hearing for February 18, 2016. A copy of the notice was mailed to counsel for Medberry and counsel for Professional Muffler and EPIC. Pursuant to a request from counsel for Professional Muffler and EPIC, the hearing was rescheduled for February 17, 2016.

A telephone hearing was held on February 17, 2016, at 8:30 a.m. Attorney Todd Becker represented Medberry. Medberry appeared and testified. Medberry's wife, Laura Medberry, also appeared, but did not testify. Attorney Richard Book represented Professional Muffler and EPIC. Exhibits 1 through 8, and A through C were admitted into the record. The parties also submitted prehearing briefs. The proceeding was

recorded by digital recorder, and the digital recording is the official record of the proceeding.

FINDINGS OF FACT

At the time of the hearing Medberry was 38. Medberry is married and has two children living at home. (Medberry Testimony) Medberry is a high school graduate who has worked in the automotive repair industry for many years. (Medberry Testimony) Medberry has not received any post-secondary training. (Medberry Testimony)

On August 29, 2012, Medberry was working under a car that was supported by a hoist at Professional Muffler. (Exhibit A, page 1) A coworker bumped the car and the hoist was released, causing the car to come down on Medberry. (Ex. A, p. 1) Medberry was stunned by the incident, but stayed at work the remainder of the day. (Ex. A, p. 1) Medberry had a headache, severe neck pain, and back pain. (Ex. A, p. 1)

Medberry took the next day off work because he was in pain and he had difficulty moving his neck. (Ex. A, p. 1) Medberry initially sought treatment through Mercy Care. (Medberry Testimony) Mercy Care performed an x-ray and prescribed pain and anti-inflammatory medication. (Medberry Testimony) Medberry reported the incident to his employer. (Medberry Testimony)

Professional Muffler and EPIC referred Medberry to the Work Well Clinic at St. Luke's Hospital in Cedar Rapids where he received treatment from Jeffrey Westpheling, M.D. (Ex. A, p. 2; Medberry Testimony) Dr. Westpheling prescribed physical therapy and anti-inflammatory medication. (Medberry Testimony) Medberry's neck was very stiff and painful. (Medberry Testimony) After a few weeks his neck problems resolved, but he continued to have pain in his back and down his leg.

Dr. Westpheling referred Medberry to Ignatius Brady, M.D. Dr. Brady recommended epidural steroid injections. (Ex. A, p. 2; Medberry Testimony) Dr. Brady then referred Medberry to Mark Kline, M.D. (Ex. A, p. 2; Medberry Testimony) Dr. Kline first saw Medberry on November 21, 2012. (Ex. 6, p. 1) Drs. Brady and Kline are authorized treating physicians for Medberry.

Magnetic resonance imaging from September 2012 revealed Medberry had a disc abnormality and he was referred to Chad Abernathy, M.D. (Ex. A, pp. 2-3) Dr. Abernathy performed a left L4-5 facetectomy and discectomy on December 28, 2012. (Ex. A, p. 2) Medberry initially received relief from the surgery, but within a few days or a week the pain returned. (Medberry Testimony)

Dr. Abernathy released Medberry to return to work without restrictions on February 25, 2013. (Ex. A, p. 2) In August 2013, Dr. Brady placed Medberry at maximum medical improvement and recommended permanent work restrictions of no more than 20 pounds. (Ex. A, p. 2)

Dr. Kline recommended repeat magnetic resonance imaging, which showed post-surgical changes and an annular tear at L4-5 and some other abnormalities. (Ex. A, p. 2) Dr. Kline performed medial branch blocks and radiofrequency ablation. (Ex. A, p. 2) Medberry reported the relief he received from the treatment was minimal and that his pain had returned to his prior baseline. (Ex. A, p. 2; Medberry Testimony)

In 2014, Dr. Kline recommended Medberry undergo a spinal cord stimulator trial due to his chronic pain and a lack of improvement with previous treatment. (Ex. 6, p. 2) Dr. Kline referred Medberry to a pain psychologist, who confirmed Medberry was a candidate for the spinal cord stimulator from a psychological perspective. (Ex. 6, p. 2)

In January 2015, Joseph Chen, M.D., the Medical Director of the University of Iowa Spine Center performed an independent medical examination of Medberry for Professional Muffler and EPIC. (Ex. A, p. 1) Dr. Chen reported during his examination of Medberry:

We further discussed that not everything that feels like a 'pinch' in the back and buttock represents a 'pinched nerve' and in fact 'pinched' muscles can mimic 'sciatica' or pain radiating down the leg. We discussed the concept of muscle inflexibility, weakness, and muscle fatigue which resemble his pain symptoms with activities. The majority of his pain is likely myofascial based upon it being quite easily reproduced on examination today with palpation, passive stretch of the piriformis, and activation of the gluteal attachment muscles.

I explained that his muscle inflexibility is the main reason for his ongoing low back and buttock pain and the muscle weakness and fatigue is the reason for his pain with prolonged standing. I told him that these are properties that we cannot fix with prescription medications or other interventions and that he has to work on by doing these exercises on a consistent basis.

(Ex. A, p. 3) Dr. Chen explained to Medberry and his wife "that I would not expect [his pain] to improve with spinal cord stimulation or any other treatment except **a functional restoration program with cognitive-behavioral therapy.**" (Ex. A, p. 4) Dr. Chen recommended Medberry complete an interdisciplinary pain rehabilitation program or a functional restoration program with a cognitive-behavioral approach through the program he runs at the University of Iowa, through the Mayo Clinic, or through the Rehabilitation Institute of Chicago.

At the request of Professional Muffler and EPIC, Medberry completed the three-week program recommended by Dr. Chen at the Mayo Clinic Pain Rehabilitation Center. While at the Pain Rehabilitation Center, Medberry discontinued taking Norco and stopped using a cane for ambulation. (Ex. B, p. 2; Medberry Testimony) According to Medberry's discharge summary, Medberry "noted a significant improvement in endurance, strength, flexibility and overall aerobic conditioning while in the PRC

program.” (Ex. B, p. 2) Medberry agreed to continue with a daily exercise program upon his return home to maintain his gains in physical status. (Ex. B, p. 2) During the hearing, Medberry denied that he had reported significant improvement in his endurance, strength, flexibility, and overall aerobic condition at the conclusion of the program. (Medberry Testimony) Medberry testified he agreed to maintain an exercise program at home.

Dr. Chen reviewed Medberry's discharge summary from the Pain Rehabilitation Center and prepared a letter, stating, in part:

It is still my opinion that a spinal cord stimulator is **NOT** reasonable medical treatment for Mr. Medberry. When I saw Mr. Medberry in January 2015, he was having back and buttock pain without substantial radiating leg pain or objective signs of weakness or nerve tension signs into his left leg. It was my opinion that he did not have objective evidence of a lumbar radiculopathy.

(Ex. C, p. 1)

On December 28, 2015, Dr. Kline saw Medberry and noted Medberry “has had persistent low back pain as well as lower extremity radicular pain since [December 2012] in spite of physical therapy, medication trials, and injection therapy.” (Ex. 7, p. 1) Dr. Kline acknowledged Medberry had discontinued opioid analgesics and using a cane while he was at the Pain Rehabilitation Center and that the notes indicated Medberry “had noted significant improvement in endurance, strength, flexibility, and overall conditioning during the program.” (Ex. 7, p. 1) Dr. Kline further noted Medberry reported “his pain levels did not improve significantly during the rehabilitation course. He feels that they worsened somewhat due to the discontinuation of the hydrocodone.” (Ex. 7, p. 1) Dr. Kline reported:

He is rating his pain intensity at 5/10 with range between 4 and 7/10. He describes low back pain that radiates to the posterior and lateral aspect of his left thigh as well as into the left calf in the lateral aspect of the left leg. He describes the pain as burning and cramping in quality. . . .”

(Ex. 7, p. 1) As of January 20, 2016, Dr. Kline continues to recommend a spinal cord stimulator trial to treat Medberry's chronic pain. (Ex. 8, p. 2)

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.

Professional Muffler and EPIC have acted unreasonably in this case by failing to authorize the spinal cord stimulator trial recommended by Dr. Kline, the authorized treating physician. Dr. Kline requested Professional Muffler and EPIC authorize a spinal cord stimulator trial over a year ago. Professional Muffler and EPIC responded to the request by sending Medberry to Dr. Chen for an independent medical examination. Dr. Chen opined a spinal cord stimulator is not reasonable because Medberry’s symptoms are consistent with myofascial pain. Instead, Dr. Chen recommended Medberry participate in a functional restoration program with a cognitive-behavioral approach. Medberry complied and attended the Mayo Clinic Pain Rehabilitation Center for three weeks.

Medberry argues Professional Muffler and EPIC have authorized is unreasonable because Professional Muffler and EPIC 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 August 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 February 20, 1996); Leitzen v. Collis, Inc., File No. 1084677, (Alt Care September 9, 1996)).

Professional Muffler and EPIC aver the prior rulings of this agency are not controlling, and that Medberry must prove the authorized care is unreasonable under Long. Long does not address the prior rulings of this agency holding a defendant may not interfere with the medical judgment of its own treating physician. The Iowa appellate courts have not issued a published opinion affirming or rejecting this agency’s determination. In a recent unpublished case, the Iowa Court of Appeals held the agency “applied the incorrect legal standard to the facts of the case” when the agency found the care offered by the treating physician was reasonable and necessary because the agency failed to make a finding “that the care offered by the employer was unreasonable, had not been effective, or was inferior or less extensive.” Lynch

Livestock, Inc. v. Bursell, No. 14-1133, 2015 WL 2394143 *3 (Iowa Ct. App. May 20, 2015). The evidence presented at hearing supports the care authorized Professional Muffler and EPIC is unreasonable because it has been ineffective.


Both Drs. Kline and Chen have extensive experience working with patients with back pain. Dr. Chen saw Medberry on one occasion for purposes of conducting an independent medical examination. Dr. Kline is the authorized treating physician who has worked with Medberry since November 2012. I find Dr. Kline's opinion more persuasive than Dr. Chen's. Dr. Kline disagrees Medberry's pain is largely myofascial in nature. (Ex. 6, p. 2) Dr. Kline believes Medberry is a good candidate for a spinal cord stimulator trial because his pain is neuropathic in nature. (Ex. 6, p. 2) Dr. Kline has worked with at least 150 patients who have received spinal cord stimulator trials since 1992. (Ex. 6, p. 1) Fifty (50) percent of his patients who have undergone spinal cord stimulator trials have had good results, and between 70 percent and 80 percent of his patients that have had good results with the trials have success with permanent spinal cord implants. (Ex. 6, p. 1)

Professional Muffler and EPIC contend the care provided, including cognitive behavioral therapy and an exercise program, is reasonable, and Medberry has not met his burden of proof. While it is true Medberry stopped using a cane and taking Norco while he was at the Pain Rehabilitation Center, Medberry credibly testified his pain has not improved since he attended the Pain Rehabilitation Center and he continues to have pain that interferes with his ability to work. Dr. Kline has recommended a spinal cord stimulator trial because other treatment has been ineffective in alleviating Medberry's pain. I conclude the care provided by Professional Muffler and EPIC is unreasonable because it has been ineffective in alleviating Medberry's pain. 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). Medberry'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 19th day of February, 2016.


HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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