

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MARKIEA THURMOND,	:	
	:	
Claimant,	:	File No. 5058893.01
	:	
vs.	:	ALTERNATE MEDICAL
	:	
JOHN DEERE WATERLOO WORKS,	:	CARE DECISION
	:	
Employer,	:	
Self-Insured,	:	
Defendant.	:	HEAD NOTE NO: 2701

Claimant Markiea Thurmond filed an Original Notice and Petition Concerning Application for Alternate Care (“Application for Alternate Care”) on October 30, 2019, alleging she sustained an injury to her right knee while working for Defendant John Deere Waterloo Works (“John Deere”) and reporting the authorized treating physician has recommended a total knee replacement, but will not perform the surgery unless Thurmond weighs 325 pounds or less and John Deere has refused to provide treatment for weight loss. Thurmond requests John Deere be ordered to provide evaluation and treatment for weight loss, such as a referral to a nutritionist or a surgeon for consideration of weight loss surgery, or locate an orthopedic surgeon willing to perform the surgery at her current weight. John Deere has accepted Thurmond’s right knee condition, but has refused to authorize the relief requested.

On November 12, 2019, a hearing was held on the Application for Alternate Care by telephone conference call. Attorney Benjamin Roth represented Thurmond. Thurmond appeared and testified. Attorney James Kalkhoff represented John Deere. Exhibits 1 through 3 and A through F were admitted into the record. 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

Thurmond has a long history of right knee problems. On August 30, 2016, Thurmond attended an appointment with Carolyn Hettrich, M.D., an orthopedic surgeon working at the University of Iowa Hospitals and Clinics (“UIHC”), reporting she had been

experiencing right knee pain for nine to ten months. (Exhibit C, page 1) Thurmond underwent a right knee arthroscopy with Thomas Gorsche, M.D., an orthopedic surgeon in Waterloo, Iowa, in December 2015. (Ex. C, p. 1) Dr. Hettrich documented Thurmond reported she received minimal relief from the procedure. (Ex. C, p. 1) Dr. Hettrich noted Thurmond's body mass index ("BMI") was 51. (Ex. C, p. 1) Dr. Hettrich reviewed Thurmond's magnetic resonance imaging and noted she discussed options with Thurmond and they had a "long conversation about weight loss, further corticosteroid injections, oral anti-inflammatories, and glucosamine chondroitin." (Ex. C, p. 2) Dr. Hettrich noted she offered Thurmond a dietary consultation and she recommended low impact aerobic exercise, and a future surgical consultation "pending patient's BMI. She was counseled that she may not be a candidate for TKR until this decreases." (Ex. C, p. 2)

On May 1, 2018, Thurmond attended an appointment with Nicolas Noiseux, M.D., an orthopedic surgeon at the UIHC. (Ex. D, p. 1) Dr. Noiseux noted Thurmond had undergone a right knee arthroscopy with Dr. Gorsche in 2015 following a work injury. (Ex. D, p. 1) Thurmond later injured her right ankle, which she reported was caused by her right knee giving out. (Ex. D, p. 1) Thurmond underwent surgery, reinjured her right ankle again, and underwent another surgery. (Ex. D, p. 1) Dr. Noiseux examined Thurmond and noted he "strongly encouraged" weight loss. (Ex. D, p. 2) Dr. Noiseux noted Thurmond was twenty-one years younger than the average age for a knee replacement and because of the increased risk of infection associated with obesity, "she would need to bring her BMI to less than 40 before being considered for knee replacement," and documented she would need to lose between eighty to eighty-five pounds before she would be a candidate for a total knee replacement at the UIHC. (Ex. D, p. 3) John Deere attached a BMI calculation. (Ex. F, p. 1) A BMI of forty for a person Thurmond's height is 279 pounds. (Ex. F, p. 1)

Thurmond attended an independent medical examination with Arnold Delbridge, M.D., an orthopedic surgeon, on May 6, 2019. (Ex. 3) Dr. Delbridge examined Thurmond, reviewed her medical records, and ordered and reviewed an x-ray of her right knee. (Ex. 3, p. 1) Dr. Delbridge noted Thurmond has severe degenerative arthritis of the medial compartment of her right knee and "while she is able to walk, she is not able to walk very far, probably ½ block or so without stopping and she has rather severe pain in her right knee." (Ex. 3, p. 1) Dr. Delbridge noted he agreed with Dr. Noiseux that Thurmond is considerably younger than most individuals who are candidates for total knee replacement by twenty years, and that replacing her knee at her current weight of 362 pounds "is a gamble." (Ex. 3, p. 2) Dr. Delbridge documented he would consider doing a total knee replacement in someone Thurmond's age and weight "if the alternative was continued use of a walker or wheelchair," noting he had performed total knee arthroplasties on individuals who have a similar BMI, but the pool was small enough that he could not determine whether that is advisable. (Ex. 3, p. 2) Dr. Delbridge opined, "if she made a good faith effort to lose weight, which she is currently during [*sic*] and we agreed that losing weight would be something she would pursue after her total knee arthroplasty when she could exercise more, I would go

ahead and do [a total knee arthroplasty] under those circumstances.” (Ex. 3, p. 3) Dr. Delbridge also noted that while it would take a while for Thurmond to achieve a BMI of forty, “that is certainly not an impossibility either.” (Ex. 3, p. 3) Dr. Delbridge further noted that in his experience some orthopedic surgeons would still perform a knee replacement even in the presence of a higher BMI, “[m]y personal view is presented above with a couple of caveats which I would want in place before actually doing the surgery. Once the surgery is done, however, I have no way of enforcing my recommendations.” (Ex. 3, p. 3)

On May 14, 2019, Thurmond attended an appointment with Dr. Gorsche, who had previously performed surgery on her right knee. (Ex. 1, p. 1) Dr. Gorsche noted with a BMI of fifty-four, Dr. Noiseux would not perform knee replacement surgery on Thurmond and he recommended she lose weight. (Ex. 1, p. 1) Dr. Gorsche noted Thurmond currently weighed 368 pounds and had recently lost eleven pounds. (Ex. 1, p. 1) Dr. Noiseux assessed Thurmond with right knee primary osteoarthritis, imposed restrictions of no squatting or kneeling, documented John Deere had not found a job for Thurmond within her restrictions, opined he believed “she would need to get down to a weight of 325 pounds before [he] would feel comfortable replacing her knee,” and noted Thurmond would need “to lose weight before any further care to the knee and the care would be a knee replacement.” (Ex. 1, p. 3) Dr. Gorsche did not have a copy of Dr. Delbridge’s report at the time he examined Thurmond. (Ex. 1, p. 1)

Sarvenaz Jabbari, M.D. is an occupational medicine physician who works for John Deere. (Ex. A; Thurmond Testimony) Thurmond testified after she attended her appointment with Dr. Gorsche she asked Dr. Jabbari if John Deere would approve weight loss evaluation and treatment. (Thurmond Testimony) Thurmond reported Dr. Jabbari responded her weight condition was a personal issue. (Thurmond Testimony)

Thurmond testified after she spoke with Dr. Jabbari she purchased a membership with Planet Fitness. (Thurmond Testimony) Thurmond testified every other day she works out in the morning and again in the evening with her trainer, Hannah. (Thurmond Testimony) Thurmond reported her knee limits her ability to walk and to perform leg curls. (Thurmond Testimony) Thurmond reported she has made changes to her diet with intermittent fasting. (Thurmond Testimony)

On September 3, 2019, Thurmond attended an appointment Dr. Jabbari. (Ex. A, p. 1) Dr. Jabbari noted Thurmond was walking twenty-five minutes per day and going to Planet Fitness every day since her last appointment and working out with a trainer. (Ex. A, p. 1) Dr. Jabbari documented Thurmond weighed 365.4 pounds that day and Dr. Gorsche had advised her weight should be 325 pounds before surgery would be performed, noting she weighed 378 pounds on April 12, 2019, and 368 pounds on May 14, 2019. (Ex. A, p. 1)

Thurmond testified at hearing she currently weighs 353.7 pounds, and at her largest she weighed 396 pounds. (Thurmond Testimony) Thurmond reported her

weight increased after her ankle surgery. (Thurmond Testimony) Thurmond testified she tried to lose weight on her own and she sought assistance from her family practitioner. (Thurmond Testimony) Thurmond relayed her physician prescribed medication for weight loss and recommended changes to her diet. (Thurmond Testimony) Thurmond testified the medication was discontinued because it caused her to have a problem with her blood pressure. (Thurmond Testimony)

John Deere obtained a one sentence letter from Dr. Gorsche dated October 30, 2019. (Ex. E, p. 1) In the letter Dr. Gorsche stated he would “recommend Ms. Thurmond to lose weight to get down to a BMI close to 40 before [he] would feel comfortable doing a total knee replacement.” (Ex. E, p. 1)

CONCLUSIONS OF LAW

Under Iowa Code section 85.27 (2015), 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 Iowa Code chapters 85 and 85A. 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.

Thurmond did not testify about the pain she experiences as a result of her knee condition or how her knee condition impacts her activities of daily living. The medical records provided by the parties document Thurmond has right knee pain. Dr. Delbridge documented he observed Thurmond was “able to walk across [his] exam room without visible pain.” (Ex. 3, pp. 2-3) Thurmond’s records document she reported she could walk one-half block without stopping and she could stand for thirty minutes. (Ex. 3, p. 3)

Thurmond reported she has weighed over 300 pounds for many years, and that she gained weight after her ankle surgery. Thurmond stated she currently weighs 353.7 pounds. Thurmond testified she first learned she needed to lose weight to have a knee replacement when she saw Dr. Gorsche in May 2019. During an appointment on May 1, 2018, Dr. Noiseux, a recognized expert in orthopedic surgery at the UIHC specializing in work-related injuries related to hip and knee dysfunction, documented he informed Thurmond she would not be a candidate for a total knee replacement at the UIHC unless she had a BMI of forty, which is the equivalent of 279 pounds. (Ex. 3) Dr. Hettrich with the UIHC also documented in 2016 she had a "long conversation about weight loss" with Thurmond. (Ex. C, p. 2) Dr. Hettrich offered Thurmond a dietary consultation; the record is void of evidence Thurmond accepted the offer.

Thurmond did not produce any medical records from her treatment with her personal physician concerning weight loss. Thurmond joined Planet Fitness after her May 14, 2019 appointment with Dr. Gorsche and she is working with a trainer.

Dr. Noiseux will not perform surgery on Thurmond until she achieves a BMI of forty due to the increased risk of infection associated with obesity. (Ex. D, p. 3) Dr. Gorsche, who previously operated on Thurmond, first opined Thurmond would need to weigh 325 pounds before he would operate on her. In a recent brief opinion Dr. Gorsche indicated he agreed with Dr. Noiseux she would need to have a BMI of forty before he would be comfortable performing a total knee replacement. (Ex. E, p. 1) Dr. Delbridge, who Thurmond retained for an independent medical exam, also opined performing a total knee replacement at Thurmond's then current weight of 362 pounds "is a gamble," noting he would perform a total knee replacement on someone Thurmond's age and weight "if the alternative was continued use of a walker or wheelchair." (Ex. 3, p. 2) There is no evidence Thurmond requires the use of a wheelchair or walker at this time.

Authorized treating physician Drs. Noiseux and Gorsche, and Dr. Delbridge, who Thurmond retained, have not recommended a specific weight loss program for Thurmond, whether that be nutritional counseling with a dietitian, exercise therapy, or physical therapy, or some other service. No physician has indicated Thurmond's weight increased because of her work-related injury. No treating or examining physician has recommended Thurmond undergo bariatric surgery.

Dr. Noiseux is willing to perform a total knee replacement if Thurmond achieves a BMI of forty. Dr. Gorsche initially stated he was willing to perform surgery if she would reduce her weight to 325 pounds. According to her testimony Thurmond weighs currently weighs 353.7 pounds. Thurmond would need to lose an additional 28.7 pounds to achieve the desired weight Dr. Gorsche initially noted would be required before he would perform surgery.

Dr. Delbridge's opinion concerning surgery is equivocal. He notes the risks with obesity and indicated surgery would be appropriate if the patient were using a wheelchair or walker.

Thurmond's obesity is a personal condition unrelated to her work injury. No treating physician has identified a specific service or program Thurmond could benefit from before surgery.

While it is difficult to lose weight, Thurmond should be motivated to lose weight so she can have the surgery recommended by Drs. Noiseux and Gorsche. Thurmond has not established the care offered by John Deere is unreasonable.

ORDER

Claimant's Application for Alternate Care is DENIED.

Signed and filed this 13th day of November, 2019.



HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Benjamin Roth (via WCES)
James Kalkhoff (via WCES)