

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JACKIE TRENT,

Claimant,

vs.

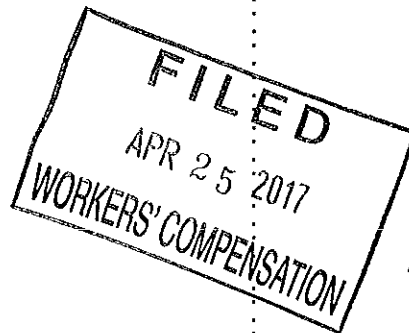
THL CLEANING, LLC,

Employer,

and

CONTINENTAL INDEMNITY
COMPANY,

Insurance Carrier,
Defendants.



File No. 5058667

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, Jackie Trent.

The alternate medical care claim came on for hearing on April 25, 2017. The proceedings were digitally recorded which constitutes the official record of this proceeding. 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' Exhibit A. No testimony was taken of any witness. The attorneys made arguments and relied upon the exhibits, as such, the hearing was not recorded.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of a left L5-S1 transforaminal epidural injection follow-up appointment with Michael Longley, M.D.¹

¹ Claimant's request for alternate care originally requested the defendants be ordered to authorize an EMG study, a L5- S1 injection, as well as the follow up appointment with Dr. Longley. Defendants authorized an EMG for bilateral lower extremities as well as a left L5-S1 transforaminal epidural injection if warranted by the EMG. (Exhibit A, pages 1, 2)

FINDINGS OF FACT

The undersigned having considered all of the testimony and evidence in the record finds:

Defendants admitted liability for an injury occurring on October 19, 2016 and the request for care is related to the injury. The record shows claimant has communicated dissatisfaction of the care offered by the defendants. (Ex. 4, p. 1)

On February 17, 2017, Todd Harbach, M.D., examined claimant. He noted that claimant had not had an injection for her back pain due to concerns from claimant's primary care physician about how such injections may affect her diabetes. (Ex. 1, p. 1) Dr. Harbach noted claimant was going to obtain a second opinion. Defendants authorized a second opinion with Dr. Longley. (Ex. 4. p.3)

On March 20, 2017, Dr. Longley examined claimant for low back pain and left leg pain. Dr. Longley reviewed x-rays and MRI of the lumbar spine. Dr. Longley noted: "Severe collapse of L5 on S1." (Ex. 2, p. 2) Dr. Longley noted that a possible fusion at L5-S1 might be needed. He recommended a transforaminal lumbar interbody fusion at L5-S1. He also recommended a left L5-S1 transforaminal epidural steroid injection and also to obtain an EMG of her lower extremity before surgery. (Ex. 2, p. 3) Surgery to the claimant was made pending negative nicotine. (Ex. 2, pp. 3, 4)

Defendants on April 24, 2017 authorized an EMG. (Ex. A, pp. 1, 2) The defendants have conditionally approved the left L5-S1 transforaminal epidural steroid injection. Defendants have imposed a condition that the injection will be scheduled based upon the outcome of the EMG. (Ex. A. pp. 1, 2)

REASONING AND CONCLUSIONS OF LAW

The employer shall 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. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 16, 1975).

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. Id. The employer's obligation turns on the question of reasonable necessity, not desirability. Id.; Harned v. Farmland Foods, Inc., 331 N.W.2d 98 (Iowa 1983). In Pirelli-Armstrong Tire Co. v.

Reynolds, 562 N.W.2d 433 (Iowa 1997), the court approvingly quoted Bowles v. Los Lunas Schools, 109 N.M. 100, 781 P.2d 1178 (App. 1989):

[T]he words "reasonable" and "adequate" appear to describe the same standard.

[The New Mexico rule] requires the employer to provide a certain standard of care and excuses the employer from any obligation to provide other services only if that standard is met. We construe the terms "reasonable" and "adequate" as describing care that is both appropriate to the injury and sufficient to bring the worker to maximum recovery.

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.; 562 N.W.2d at 437.

Reasonable care includes care necessary to diagnose the condition and defendants are not entitled to interfere with the medical judgment of its own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening June 17, 1986).

In this case an authorized treating physician has recommended an EMG of the lower extremity, a left L5-S1 transforaminal epidural steroid injection and if claimant is nicotine free, fusion surgery. Defendants have only authorized the EMG.

I see no medical evidence in the record that the left L5-S1 transforaminal epidural steroid injection was conditioned on the results of the EMG. The letter from a claims adjuster conditions the left L5-S1 transforaminal epidural steroid injection on the results of the EMG (Ex. A, p.2), but there is a notable lack of medical evidence supporting this sequence.

Dr. Longley did not condition the injection based upon the results of the EMG. If that is what Dr. Longley wants to do it is certainly within his medical judgment, but it is his judgment not the defendants that sets the parameters of reasonable medical care based upon the evidence presented in this case.

Defendants pointed out that there is some concern considering claimant's diabetic condition about receiving injections. Certainly that appears to be a valid medical concern that should be resolved by the authorized physician and claimant's primary care physician. Dr. Longley, if not already apprised of claimant's diabetic condition, should be provided with that information. The record was not clear as to how much information Dr. Longley had or communication he had with claimant's primary care physician. Certainly a nurse case manager can provide that information. Indeed, it would seem that that is exactly one of the roles a nurse case manager can properly perform in a claim like this.

Dr. Longley, as an authorized physician, has made recommendation for treatment. It is not up to the defendants to second guess the medical judgement of the physical they have authorized. By failing to follow the recommendation of Dr. Longley the defendants have failed to provide reasonable care.

The defendants have agreed to provide an EMG. The defendants shall promptly refer claimant back to Dr. Longley for the left L5-S1 transforaminal epidural steroid injection and other care that he may recommend.

ORDER

THEREFORE IT IS ORDERED:

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

Signed and filed this 25th day of April, 2017.



JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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