

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TAMMY NEYENS,

Claimant,

vs.

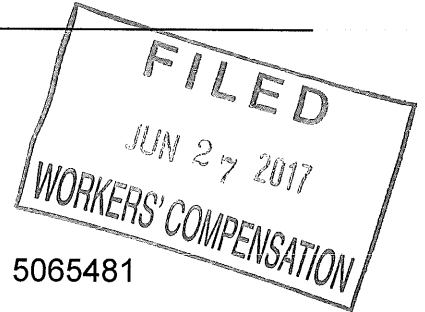
NORDSTROM DISTRIBUTION
CENTER,

Employer,

and

RISK MANAGEMENT SERVICES,

Insurance Carrier,
Defendants.



File No. 5065481

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. Claimant appeared through her attorney. Defendant appeared through its attorney.

The alternate medical care claim came on for hearing on June 23, 2017. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Iowa Workers' Compensation 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 and 2 and defendant's exhibits A and B. The parties elected not to call any witnesses. The attorneys made oral arguments on the record.

FINDINGS OF FACT

The parties admit claimant sustained a work injury on February 15, 2017 which included an injury to the cervical spine. Defendant authorized treatment with Tri-State Occupational Health, including Michael P. Chapman, M.D., an orthopedic surgeon in

Dubuque, Iowa. In his report of May 3, 2017, Dr. Chapman made the following recommendations for treating claimant:

MRI scan shows a disc herniation into the foramen on the left at C6-7.

Assessment/Plan

1. Herniated cervical disc, M50.20
2. Herniated nucleus pulposus, C6-7 left M50.223

We discussed treatment options. We discussed posterior surgery and anterior surgery. I discussed why I would favor an anterior approach for this problem. We discussed fusion versus disc replacement. I told her I [had] done disc replacement in the past, but not used this new implant. We discussed the controversy of fusion versus disc replacement. After lengthy discussion the plan is to proceed with a C6-7 disc replacement.

Orders: Lyrica 75 mg oral capsule, 1 cap(s), Oral, BID, #60 cap(s), 1 Refill(s), wk Comp City of Dubuque [sic]

(Exhibit A)

Claimant was satisfied with the treatment she had been receiving from Dr. Chapman. Claimant desired to proceed with the treatment recommended.

Counsel for claimant requested the disk replacement surgery. Defendant denied the request for surgery with Dr. Chapman. The basis for the denial was detailed in a letter to claimant's counsel from defense counsel and dated June 9, 2017. The letter stated:

I received your voice message and letter regarding the request that surgery with Dr. Chapman be authorized, and have discussed this with the adjuster. He wants to have your client's care transferred to Dr. Chad Abernathey. As you know, the adjuster had scheduled an appointment with Dr. Chad Abernathey to evaluate your client and perform surgery as he deemed appropriate. Your client agreed to attend this appointment until just before the day it was set. As I have discussed with you, Dr. Chapman has not performed the type of surgery he has proposed. It is my understanding that this was part of the reason Nordstrom's adjuster wanted your client to be seen by Dr. Abernathey and have her care transferred to him.

Dr. Abernathey is a highly experienced neurosurgeon and I believe the Agency will find that the offer of care with Dr. Abernathey is reasonable. Therefore Nordstrom will not be authorizing surgery with Dr. Chapman.

The June 9, 2017 letter was not quite factually accurate. Dr. Chapman performed disk replacement surgery in the past. He had not performed disk replacement surgery using a new type of implant.

CONCLUSIONS OF LAW AND RATIONALE

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).

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).

The employee bears the burden to establish what care is reasonable and it is a question of fact. Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995). The determination will be based on what is reasonably necessary. Long, at 124.

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).

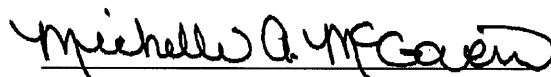
Dr. Chapman is the authorized treating orthopedic surgeon. He is board certified in orthopedic surgery. Given the nature of claimant's cervical injury, Dr. Chapman's treatment recommendation is reasonable. He has performed disk replacements on prior occasions. The employer does not have the right to determine how the injured worker should be diagnosed, evaluated, treated, or make other matters of professional medical judgment. Id. Claimant is satisfied with the care she is receiving from Dr. Chapman. From all appearances, there is a good doctor/patient relationship.

ORDER

THEREFORE, IT IS ORDERED:

Within ten (10) days of the filing of this order, defendant will schedule surgery with Michael P. Chapman, M.D.

Signed and filed this 27th day of June, 2017.



MICHELLE A. MCGOVERN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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