

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MELANIE LUDIN,

Claimant,

vs.

PARTY CITY,

Employer,

and

TRAVELERS,

Insurance Carrier,
Defendants.



File No. 5058864

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, Melanie Ludin.

The alternate medical care claim came on for hearing on June 16, 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 17A.

The record consists of Claimant's Exhibits 1, 2 and 3, as well as Defendants' Exhibits A and B. Defendants withdrew pages 4 and 5 of Exhibit A at the end of the hearing. Defendants, with agreement of claimant's counsel submitted treatment records which I have marked as Exhibit C.

No one testified at the hearing. The record consisted of the exhibits, administrative file, and argument of counsel.

ISSUE

Should defendants provide additional care with the authorized treating physician Meiyng Kuo, M.D.?

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 December 9, 2015. Defendants did not assert that the care being sought was unrelated to this injury.

Dr. Kuo is the authorized treating physician for the claimant for her work injury of December 9, 2015. On May 27, 2016, Dr. Kuo performed right wrist arthroscopy with an open TFCC repair. (Ex. A, p. 1)

Dr. Kuo recommended on October 18, 2016 that claimant may benefit with an injection and/or surgery consisting of a pisiform excision. (Exhibit 1, p. 3; Exhibit C, page 2) On January 30, 2017 Dr. Kuo wrote, "At this time, I would try an injection for Melanie. If she continues to have pain beyond injection surgery could be indicated." (Ex. 1, p. 4) Claimant requested care from the defendants consisting of a return to Dr. Kuo for treatment. (Ex. 2, p. 1) Defendants did not authorize this treatment and claimant sent a letter of dissatisfaction to defendants. (Ex. 3, p. 1) Dr. Kuo performed surgery on the claimant.

On March 20, 2017, defendants sent claimant for an independent medical examination to Teri Formanek, M.D. (Ex. A, pp. 1 – 3) Dr. Formanek wrote that he would not recommend a pisiform excision but would recommend a reevaluation for potential symptoms from her TFCC repair. (Ex. A, p. 3) Dr. Formanek did suggest that an injection might be an appropriate test. (Ex. A, p. 2)

On June 15, 2017, Dr. Formanek wrote that he did not believe that claimant would need any additional treatment for her work-related injury. (Ex. B, p. 3) Dr. Formanek did not believe the pisotriquetral joint symptoms were related to claimant's work injury of December 9, 2015. (Ex. B, p. 4)

Claimant is seeking additional care with the authorized treating physician Dr. Kuo. The defendants are not offering care at this time.

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 their own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening, June 17, 1986).

As the defendants have admitted that the condition which claimant is seeking treatment for is related to her work injury the opinions of Dr. Formanek are not material to causation. The authorized physician has recommended an injection, and possibly additional surgery. The defendants are not offering any additional care for the work injury. The authorized physician has recommended additional care

The defendants are interfering with the medical judgement of the physician they have authorized. The defendants by not following Dr. Kuo's recommendations are not providing reasonable care.

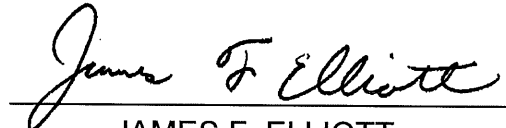
The defendants shall provide the care being recommended by Dr. Kuo.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is granted

Signed and filed this 19th day of June, 2017.



JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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