BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LEONARD D. JOHNSON,

Claimant,

vs.

GRAHAM MANUFACTURING,

Employer,

and

TRAVELERS INSURANCE CO.,

Insurance Carrier,
Defendants.

File No. 5036516

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

STATEMENT OF THE CASE

This case came before hearing on August 11, 2015, upon the petition of claimant Leonard D. Johnson, filed on June 30, 2015. The claimant alleges that he is entitled to certain durable goods recommended by Mercy Home Care staff members. For the purposes of the hearing, the defendants accepted responsibility for the underlying injury and did not raise any liability defense.

The record consists of the testimony of the claimant along with claimant's exhibits A through C and defendants' exhibits 1-5.

FINDINGS OF FACT

Having reviewed the written evidence before and during the telephonic hearing; having heard the testimony of the witnesses and the statements of counsel, I make the following Findings of Fact:

1. On or about March 14, 2011, claimant suffered an injury which arose out of and in the course of his employment with Graham Manufacturing. The injury involved insult to claimant's lungs. (Exhibit 1)

2. Claimant was hospitalized on June 9, 2015, for asthma exacerbation. After he was discharged, four individuals came to his home to provide in-home care approximately two to three times per week for a month and a half. In the process, two occupational therapists, a physical therapist and a nurse evaluated the suitability of

claimant's home for his condition. They had some reservations whether the home would be suitable for him.

3. On July 1, 2015, the Mercy Home Care staff issued a letter which the claimant asserts was not prompted by him in any way. The letter, contained in Exhibit B, states that the claimant has a history of isocyanates-induced bronchial asthma with chronic pain related to disease process.

4. According to the July 1, 2015, letter, claimant suffers from shortness of breath upon activity. He has some concerns about falling. One medical note records his falls at seven in the last year resulting in injuries. (Ex. 3, p. 6) His spouse works outside of the home. During testimony, claimant admitted he has tripped and fallen on more than one occasion.

5. Skilled nursing felt that the claimant would benefit from the following:

a. Lifeline

b. Lift chair

c. Chair rail to bedroom and bathroom upstairs

d. Downstairs bathroom.

6. The physical therapist noted that claimant has arthritis in hips and knees with occasional burning in the feet making climbing stairs and long distance walking difficult. The claimant reported shortness of breath of 4/10 after walking and stairs. He also exhibited shortness of breath when rising from the recliner. As a result, the physical therapist recommended the following:

a. Lifeline

b. Lift chair

c. Rolling walker

d. Chair rail to bedroom and bathroom upstairs

e. Downstairs bathroom

7. The occupational therapist noted that claimant has a ten-pound lifting restriction, fall history and fall risk. The OT recommended as follows:

a. Walk-in shower

b. Hand held shower

c. Grab bars in bathroom

d. Bath bench

e. Lifeline

f. Stair glide

g. Left [sic] chair

Claimant testified that he has a scooter which was paid for by the defendants along with a wheelchair lift. However, he installed a ramp and paid for it himself. He did not ask for reimbursement, not wanting to go through the hassle. He has also obtained Lifeline for which he pays $44.66 per month. This has not been reimbursed by the defendants as of yet.

In the medical records of Joseph Behr, M.D., it was noted that homecare would ". . . like to see pt get a lift chair due to them having to put pillows in the chair right now to raise him up; stair lift for the patient to get him up to the bedroom and bathroom . . . ." (Ex. 3, p. 4)

Defendants have not authorized the durable goods and home renovations recommended by Mercy Home Care and instead desire claimant to be seen by Dr. Rondinelli. Pranav Singh, M.D., the authorized treating pulmonologist, does not have any objection to claimant being seen by Dr. Rondinelli and will not be addressing claimant's needs for durable medical equipment. Claimant has expressed his dissatisfaction with the defendants' failure to provide:

1. Lifeline
2. Lift chair
3. Chair rail to bedroom and bathroom
4. Downstairs bathroom
5. Rolling walker
6. Walk-in shower
7. Hand held shower
8. Grab bars in bathroom
9. Bath bench
10. Stair glide

CONCLUSIONS OF LAW

As claimant is seeking relief in this case, claimant bears the burden of proof to show by a preponderance of the evidence that the offered medical treatment is not reasonably suited to treat the injury without undue inconvenience to the employee. See Lawyer and Higgs, Iowa Practice, Workers' Compensation, §15-4 and cases cited therein.

Under Iowa law, the employer is required to provide care to an injured employee and is permitted to choose the care. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997). Iowa Code section 85.27(4) provides, in relevant part:

> For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. . . . The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

The question of reasonable care is a question of fact. An application for alternate medical care is not granted simply because the employee is dissatisfied with the care the employer has chosen. Mere dissatisfaction with the care is not sufficient grounds to grant an application for alternate medical care. The employee has the burden of proving that the care chosen by the employer is unreasonable. Unreasonableness can be established by showing that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. West Side Transport v. Cordell, 601 N.W.2d 691 (Iowa 1999); Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). Unreasonableness can be established by showing that the care authorized by the employer has not been effective and is "inferior or less extensive" than other available care requested by the employee. Pirelli-Armstrong at 437.

An employer's statutory right is to select the providers of care and the employer may consider cost and other pertinent factors when exercising its choice. Long, at 124. An employer (typically) is not a licensed health care provider and does not possess medical expertise. Accordingly, an employer does not have the right to control the methods the providers choose to evaluate, diagnose and treat the injured employee. An employer is not entitled to control a licensed health care provider's exercise of professional judgment. Assman v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988). An employer's failure to follow recommendations of an

authorized physician in matters of treatment is commonly a failure to provide reasonable treatment. Boggs v. Cargill, Inc., File No. 1050396 (Alt. Care Dec. January 31, 1994).

The evidence supports findings that claimant sustained a pulmonary injury that leaves him with shortness of breath and tiredness as a result of physical exertion. The registered nurse and occupational therapist recommended that claimant's home be fitted with a lifeline, lift chair, chair rail to the bedroom and bathroom upstairs, a downstairs bathroom, walk-in shower, hand held shower, grab bars in bathroom, bath bench, and stair glide. The physical therapist recommended a number of items, many of them duplicative of the other two but premised the finding on hip and knee arthritis as well as burning in the feet. Those injuries are not part of the case at bar and therefore cannot be the basis for any grant of alternate care.

The claimant's burden is to prove that the care profferred by the defendants is not reasonably suited to treat the injury. Dr. Singh has no objections to claimant's referral to Dr. Rondinelli and Dr. Singh acknowledged that he would not be in charge of claimant's need for durable goods. Thus, a referral to Dr. Rondinelli is not unreasonable nor is it unduly burdensome for the claimant, who acknowledged he could travel to Des Moines for medical visits.

However, the question of whether claimant is entitled to durable goods recommended by Mercy Home Care is separate from that of claimant being ordered to be seen by Dr. Rondinelli. There is no evidence in the record that would contradict the Mercy Home Care recommendations. It should be noted that the recommendations do not say that the durable goods are a necessity but that claimant would "benefit" from them.

A second opinion as to a course of treatment is most certainly a part of treatment. The agency commonly orders evaluations for a second opinion in alternate care proceedings, especially if recommended by the authorized physician. Burr v. Bridgestone/Firestone Inc., File No. 1049010 (Alt Care Dec., September 20, 1993); Tansel v. Umthun Trucking, File No. 1179887 (Alt Care Dec., June 12, 1998); Morris v. Lortex, Inc., File No. 1009285 (Alt Care Dec., April 28, 1998); Dorothy v. Rockwell International, File No. 1045450 (Alt Care Dec., August 20, 1993). The decision on whether or not to pursue a second opinion is a matter of medical judgment. Doctors, lawyers and for that matter, car mechanics, can reasonably, professionally disagree on a course of action. A failure to pursue a course of treatment that is not recommended by an authorized physician is neither an abandonment of care, nor is it necessarily a failure to provide care reasonably suited to treat the injury. Haack v. Von Hoffman Graphics, File No. 1268172, p. 9 (App. July 31, 2002).

In Lynch Livestock, Inc. v. Bursell, No. 14-1133 (Iowa, May 20, 2015), the appellate court instructed the agency to determine whether the authorized treatment was reasonable, not just whether the employee's requested care was reasonable.

> The employee's desire for a different "reasonable" treatment plan does not make the employer-authorized care unreasonable. Contrary to Bursell's

> assertions on appeal, the agency's finding that the treatment requested is reasonable does not result in an "implicit" finding that the authorized treatment was unreasonable. See Long, 528 N.W.2d at 124 (concluding the employee did not satisfy his burden to prove the employer-authorized care was unreasonable where the treating physician recommended several treatment options, the employer selected one of those options but the employee requested care under one of the other options). "[T]he employer's obligation [to provide medical care] under the statute turns on the question of reasonable necessity, not desirability." Id.

Id. at pp. 7-8. The employee must prove that the care offered is unreasonable to treat the work injury and not that another treatment plan is reasonable. The Mercy Home Care letter states that the "client would benefit from the following." Further, despite expressing concerns about claimant's home, the condition of his home must not be unsafe as it currently exists or the Mercy Home Care staff would not, or should not have, allowed him to remain in the home. The language in the letter combined with the fact that claimant is currently in his home, unsupervised, is not sufficient to satisfy the reasonable necessity standard.

Under the facts presented to the undersigned, the claimant has not carried his burden that the recommendations of the Mercy Home Care staff are a reasonable necessity. The claimant can certainly file another petition with additional evidence should the circumstances change.

ORDER

THEREFORE, the following is ordered:

Claimant's petition for alternate care is denied.

Signed and filed this 14th day of August, 2015.

JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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