

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

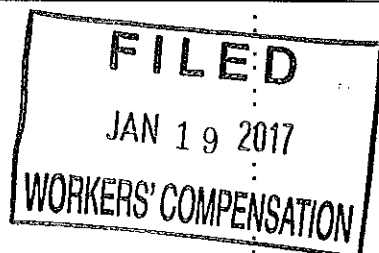
JONELLA MOORE,

Claimant,

vs.

ST. LUKE'S HOSPITAL,

Employer,
Self-Insured,
Defendants.



File No. 5018984

ARBITRATION

DECISION

Head Note Nos.: 1402.60, 2501

STATEMENT OF THE CASE

Jonella Moore, claimant, filed a petition for medical benefits against St. Luke's Hospital, as the self-insured employer. Claimant previously obtained a permanent total disability award from this agency filed April 11, 2007. Claimant now seeks an award of dental expenses and an order requiring defendant to pay for dental implants. Defendants acknowledge the underlying injury, diagnosis, and award, but deny there is a causal connection between the underlying injury and claimant's need for dental implants.

An in-person hearing occurred in Cedar Rapids, Iowa on October 6, 2016. The evidentiary record includes claimant's Exhibits 1 through 17 and defendant's Exhibits A through K. Claimant was the only witness to testify live.

Claimant requested an opportunity for potential rebuttal to a late report introduced by defendants. Ultimately, claimant elected not to file any rebuttal evidence. The evidentiary record closed upon claimant's election to forego additional evidence. However, counsel for the parties requested the opportunity to file post-hearing briefs. The parties were given until October 26, 2016 to file their post-hearing briefs, at which time the case was considered fully submitted to the undersigned.

The parties filed a hearing report at the commencement of the hearing. The hearing report contains numerous stipulations by the parties. Those stipulations were accepted and no factual or legal issues relative to the parties' stipulations will be made or discussed in either file. The parties are now bound by their stipulations.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether past dental treatment expenses are causally related to claimant's May 10, 2001 work injury.
2. Whether claimant is entitled to dental implants.
3. Whether claimant's costs should be awarded.

FINDINGS OF FACTS

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

Jonella Moore sustained a work-related left shoulder injury on May 10, 2001, when a piece of equipment weighing approximately 70 pounds fell onto her left shoulder. (Hearing Report; Exhibit 1 page 1; Ex. 6, p. 1) Claimant subsequently developed complex regional pain syndrome (CRPS) as a result of her May 10, 2001 injury. (Defendant's Post-Hearing Brief, p. 6)

Defendants accepted the left shoulder injury and resulting CRPS. The defendants authorized ongoing medical care through Michael W. Kane, M.D. (Ex. 3, p. 1) Dr. Kane, along with a pain specialist, prescribed numerous medications to control claimant's pain, anxiety and depression related to the May 10, 2001 injury. (Ex. 6; Ex. 8)

Ultimately, claimant developed very serious and progressive tooth decay. Claimant contends that the tooth decay is related to dry mouth. She further contends that the dry mouth is caused by her use of prescription medications with known side effects that include dry mouth. Claimant further contends that the dry mouth ultimately caused tooth decay, the need for significant dental work, including extractions, fillings, and dentures.

Claimant now contends that the dentures are not a reasonable treatment option or appliance. She asserts that she is unable to use the dentures effectively, that they cause significant symptoms in her mouth, prevent her from eating solid foods, and that she needs dental implants. Ms. Moore further asserts that she has CRPS inside her mouth and the CRPS symptoms effectively preclude her from using the dentures for any prolonged period of time or for eating.

Defendants challenge claimant's contentions. Instead, defendants contend that claimant lacked proper dental hygiene. They challenge her assertions that she has had regular dental checkups and cleanings. Instead, defendants contend that claimant cannot prove by a preponderance of the evidence that her tooth decay is causally

related to the May 10, 2001 work injury, the subsequent CRPS symptoms, or to dry mouth caused by specific medications used to treat the May 2001 work injury.

Claimant relies upon her own experience, her own testimony about her prior dental hygiene and dental care, as well as the opinions of her treating dentist, Barbara LaMere Heck, D.D.S. Claimant testified that she performs and has performed regular dental hygiene and that she has obtained regular dental checkups and cleanings twice per year. However, none of the dental records she produces specifically confirms this testimony. Claimant testified that a dental hygienist at her regular doctor's office took all her dental records when she left the practice.

Claimant presented as a credible witness from all outward observations. Realistically, however, I cannot determine claimant's precise dental hygiene practices or the regularity or irregularity of her dental checkups and cleanings without specific records or corroborating testimony. Ultimately, however, this factual dispute does not make a large or definitive difference in my analysis of this case.

Claimant's authorized treating physician, Dr. Kane, prescribed several medications for her pain, anxiety and depression, which are all clearly related to the May 2011 work injury. Claimant's treating dentist, Dr. LaMere Heck opines that claimant's medications caused dry mouth and as a result developed progressive tooth decay. (Ex. 5, pp. 5, 7)

Defendants produce the opinion of Christopher Tyler, D.D.S. Dr. Tyler performed a records review. He did not evaluate claimant. Dr. Tyler concedes that claimant's treating dentist would be in a superior position to assess the diagnosis of dry mouth and to evaluate any signs or symptoms of smoking and its effects. (Ex. 10, p. 38) I concur with Dr. Tyler that Dr. LaMere Heck is in a superior position, having personally evaluated and treated claimant, to evaluate and diagnose her dry mouth condition.

Dr. Tyler opines that "the use of the medications alone would not be enough to cause this type and extent of tooth decay as is soon with Ms. Moore." (Ex. F) Similarly, he opines, "that the medication alone is not the cause of her current oral status. Her long term smoking habit is a major contributing factor to her tooth decay and need for treatment." (Ex. F)

However, in his deposition, Dr. Tyler acknowledged that taking more than one medication with dry mouth as a potential side-effect can worsen the effects of the dry mouth. (Ex. 10, p. 34) He also acknowledges that it is possible that the medications used to treat claimant's work injury did cause dry mouth and that they did play a role in causing claimant's tooth decay. (Ex. 10, p. 39) At the very least, Dr. Tyler acknowledged that claimant's medication usage was a contributing factor in the cause of her tooth decay. (Ex. 10, p. 51) Dr. Tyler is simply unable to determine which medication or medications caused the dry mouth and he believes that other causes also played a part, such as poor dental hygiene, lack of routine care, and chronic smoking.

Dr. LaMere Heck contradicts Dr. Tyler's opinions, asserting, "Smoking does not cause decay." She also opines that she does "not see any evidence of a long term smoking habit upon personally viewing Janelle's mouth. She has never smelled of tobacco nor does she have tobacco stain on her teeth." (Ex. 5, p. 7) I accept this opinion and find that claimant is not currently a smoker and that she does not demonstrate any signs or symptoms of a long-term smoking habit.

Comparing and considering the competing opinions of Dr. Tyler and Dr. LaMere Heck regarding the cause of claimant's tooth decay, I find the opinions of the treating dentist, Dr. LaMere Heck, to be the most convincing. Therefore, I also find that claimant's use of medications for pain related to her 2001 work injury caused her chronic dry mouth. I find that the chronic dry mouth caused significant, progressive tooth decay.

Claimant ultimately required extractions of the majority of her teeth. Claimant required and obtained dentures as a result of these extractions. However, claimant's authorized physician, Dr. Kane, opines that claimant's CRPS involves at least part of her mouth. Dr. Kane further opines that "Ms. Moore is unable to wear her dentures for more than an hour or so at a time because of the intense pain and irritation they cause to the left side of her mouth. This is not a matter of denture quality or fit. The blisters and painful irritation provoked by dentures is a consequence of CRPS." (Ex. 6, p. 7)

As a result of these CRPS symptoms and the inability to use her dentures, claimant testified that she eats only soft foods. (Ex. H, pp. 61-62) Claimant's testimony in this regard is accepted as credible and consistent with Dr. Kane's opinions. I find that claimant is unable to effectively use dentures as a direct result of the CRPS she developed following her 2001 work injury.

I found that claimant's tooth decay is caused by her medication usage. However, even if her tooth decay was found not related to medication usage, I would find that claimant's request for dental implants is reasonable, necessary, and causally related to the 2001 work injury. The CRPS precludes claimant from using dentures. She requires dental implants, per the authorized treating physician, as a result of her CRPS. Therefore, her need for dental implants is reasonable, necessary, and causally related to her CRPS and the May 2001 work injury.

Dental implants have been recommended by the authorized physician, Dr. Kane. Defendant declines to authorize the care recommended by their authorized physician. Defendant is not authorizing any alternate medical care. Instead, they challenge causation for the claimant's tooth decay and need for dental implants. Defendant offers no contrary opinions pertaining to the effects of claimant's CRPS. I find that defendants are not offering reasonable care for the treatment of claimant's CRPS. I find that the dental implants recommended by Dr. Kane is a reasonable treatment option and superior to the lack of care being offered by defendant.

Having found claimant's dry mouth was causally related to her medication usage resulting from the May 2001 work injury, I find that the medical and dental expenses summarized in exhibit 12 and contained in Exhibits 13 through 17 are causally related to the admitted May 2001 work injury.

CONCLUSIONS OF LAW

The parties stipulate that claimant sustained a compensable work injury on May 10, 2001. (Hearing Report) Defendants concede that claimant's CRPS is causally related to the May 10, 2001 work injury. (Defendants' Post-Hearing Brief, p. 6) The parties also stipulate that the disputed past medical expenses are causally related to the medical conditions upon which the injury claim is based. (Hearing Report) In essence, the only disputed issue the parties submit for determination is whether the past medical expenses are causally related to the claimant's CRPS and medication usage resulting from that diagnosis.

Having found that the numerous medications utilized by claimant to treat the symptoms of her CRPS caused dry mouth and having found that the dry mouth condition was a substantial contributing factor to claimant's tooth decay, I conclude that claimant has established by a preponderance of the evidence that her tooth decay and the resulting dental expenses in dispute are causally related to the May 10, 2001 work injury. I conclude that defendants are responsible for payment of the disputed medical expenses as summarized on the medical expense chart attached to the hearing report and as detailed in the medical expenses contained in Exhibits 12-17. Iowa Code section 85.27.

Claimant also requests an order directing defendant to authorize dental implants. Defendant defends this claim and asserts that claimant has not established the dental implants are causally related to the May 10, 2001 work injury or that they are reasonable and necessary.

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show 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. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). Dental treatment is specifically included in Iowa Code section 85.27, as are necessary appliances such as dental implants. Iowa Code section 85.27(1); 876 IAC 8.5.

"Determining what care is reasonable under the statute is a question of fact."
Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995).

In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997), the supreme court held that "when evidence is presented to the commissioner that the employer-authorized medical care has not been effective and that such care is 'inferior or less extensive' than other available care requested by the employee, . . . the commissioner is justified by section 85.27 to order the alternate care."

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). Defendant is not entitled to interfere with the medical judgment of its own treating physician. Pote v. Mickow Corp., File No. 695639 (Review-Reopening June 17, 1986).

I found that defendant offers no treatment and deny causation for claimant's needed dental implants. Defendant's offered lack of treatment for the CRPS related to claimant's dental issues is not reasonable. Having found the dental implants to be causally related as a result of the tooth decay, inability to use dentures, and the needs caused by claimant's CRPS, I conclude that claimant proved by a preponderance of the evidence that claimant's request for dental implants is causally related to the May 10, 2001 work injury and that the treatment is both reasonable and necessary under the circumstances of this case. Therefore, I conclude that claimant has proven entitlement to an order directing defendant to provide the requested dental implants. Iowa Code section 85.27(4).

Finally, claimant seeks assessment of her costs. Claimant seeks reimbursement for charges incurred for the transcription of the deposition of Dr. Tyler, as a cost of this litigation. Costs are assessed at the discretion of the agency. Iowa Code section 85.40. Exercising the agency's discretion and recognizing that claimant has prevailed on all disputed issues, the transcription fee for Dr. Tyler's deposition totaling \$298.50 is assessed pursuant to 876 IAC 4.33(2).

ORDER

THEREFORE, IT IS ORDERED:

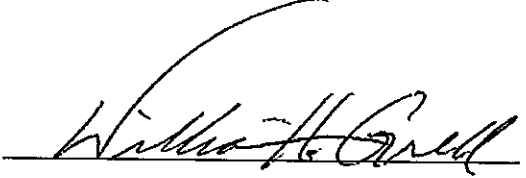
Defendant shall pay directly to the medical providers, reimburse claimant for any out-of-pocket, or otherwise hold claimant harmless for any and all medical and dental expenses contained in the medical expense summary and/or in Exhibits 12-17.

Defendant shall authorize and pay for dental implants as recommended by Dr. Kane.

Defendants shall reimburse claimant's costs totaling two hundred ninety-eight and 50/100 dollars (\$298.50).

Defendants shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

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


WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Thomas J. Currie
Attorney at Law
1853 51st Street NE, Suite 1
Cedar Rapids, IA 52402
tcurrie@currieliabo.com

John M. Bickel
Attorney at Law
PO Box 2107
Cedar Rapids, IA 52406-2107
jmb@shuttleworthlaw.com

WHG/kjw

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.