

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

WILLIAM RANDY FINK,

Claimant,

vs.

JENDRO SANTITATION
SERVICES, INC.,

Employer,

and

ACCIDENT FUND,

Insurance Carrier,
Defendants.

FILED

MAY 03 2019

WORKERS COMPENSATION

File No. 5064659

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, William Fink. Claimant appeared through his attorney, Gary Nelson. Defendants appeared through their attorney, Laura Ostrander.

The alternate medical care claim came on for hearing on May 3, 2019. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the 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 1-3, which include a total of eight pages. The record also contains defendants' exhibits A and B, which contain six pages. All exhibits were received without objection. Claimant testified on his own behalf and did not call any additional witnesses. The undersigned offered to contact witnesses for the defendants prior to the commencement of hearing. Defendants' counsel notified the undersigned that defendants did not desire to have any other individual on the call or testify. Therefore, no other witnesses were called to testify. The evidentiary record closed at the conclusion of the alternate medical care hearing.

ISSUE

The issue presented for resolution is whether the claimant is entitled to a myoelectric prosthetic arm.

FINDINGS OF FACT

The undersigned having considered all the evidence in the record finds:

Claimant, William Fink, sustained a work related injury on October 17, 2017, resulting in an amputation of his left arm. Claimant has received extensive treatment for his left arm. (Claimant's Exhibit 1) Ericka Lawler, M.D., is an orthopaedic surgeon at the University of Iowa Hospitals and Clinics. Dr. Lawler has provided ongoing medical care for Mr. Fink's injuries. (Claimant's testimony; Claimant's Exhibits 1-2)

During the course of his treatment, Mr. Fink has been fitted with and provided a ratchet-style prosthetic arm. This arm functions through the use of a cable. However, claimant must manually adjust and position the arm with this right hand. The current ratchet-style prosthetic arm does not provide as good of function as a myoelectric arm would provide claimant. Claimant would benefit and be more functional with his left arm if he had a myoelectric arm. (Claimant's testimony)

Dr. Lawler has recommended that Mr. Fink be fitted with and provided a myoelectric prosthetic left arm. (Claimant's testimony; Claimant's Ex. 2) Mr. Fink testified that the medical plan has always been that he would be fitted with a ratchet-style prosthetic arm as a means of preparing him for ultimately receiving a myoelectric prosthetic arm. (Claimant's testimony) There exists no contrary evidence. Therefore, I find that the authorized physician, Dr. Lawler, recommended the myoelectric arm and that the medical plan has always been to transition claimant from the ratchet-style prosthetic arm into the myoelectric prosthetic arm.

Defendants have denied claimant's request for the myoelectric prosthetic arm. At hearing, defendants argued that claimant already has a fully functional prosthetic arm and that they are not required to provide a second prosthetic arm. Defendants do not rebut or provide any contrary evidence to refute claimant's testimony that it was always the medical plan to transition him to a myoelectric prosthetic arm. I specifically reject defendants' argument.

Defendants' offer of medical care is contrary to the recommendations of the authorized treating physician, Dr. Lawler. Defendants offer of care leaves claimant with less function in his left arm than he is medically capable of being provided. Defendants' offer of medical care, and specifically the offer to leave claimant in the ratchet-style prosthetic arm, is not reasonable.

Claimant has identified and requests medical care, a myoelectric prosthetic arm, which is superior to and provides greater function than the medical care currently being offered by defendants. The ratchet-style arm is unduly inconvenient for claimant and, given that it provides lesser function for claimant, is not reasonably suited to treat his injury. Claimant's request is medically recommended by the authorized medical provider and is reasonable and necessary. Ultimately, the myoelectric arm is the permanent prosthetic device that is recommended by the authorized medical provider.

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); Bell Bros. Heating v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); 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. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). 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).

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).

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."

In this case, defendants are offering medical care that is less extensive and inferior to the care requested by Mr. Fink. The myoelectric prosthetic arm will provide Mr. Fink greater function and is clearly superior to the ratchet-style arm the defendants authorize. For this reason alone, claimant's petition for alternate medical care should be granted.

However, I also note that the defendants are contradicting their own authorized medical provider, Dr. Lawler. Dr. Lawler established a medical plan that ultimately would transition claimant to a myoelectric prosthetic arm. Defendants refuse to authorize the medical care recommended by Dr. Lawler.

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).

Defendants are clearly interfering with the recommendations of the authorized treating physician. Therefore, the petition for alternate medical care clearly should be granted.

Having found that the care being offered by defendants is not reasonable and that the care being sought by claimant is superior and provides him more function, I conclude for this reason as well that the petition for alternate medical care should be granted. I also found that the ratchet-style prosthetic arm is not reasonably suited to treat claimant's injury and provide him as much function as possible. Having reached that finding, I also found that the ratchet-style prosthetic arm is also unduly inconvenient for claimant. For each of these reasons, I also conclude that the petition for alternate medical care should be granted.

In their brief and again at hearing, defendants argued that claimant is entitled to only one permanent prosthetic device. See Iowa Code section 85.27(1). Defendants' argument has been considered in a factually similar case and rejected by the Iowa Court of Appeals. Nestle USA v. Conell, 913 N.W.2d 273 (Iowa App. 2018).

This case presents an even stronger case for awarding the myoelectric arm than was presented in Conell. In Conell, claimant sought a second prosthetic hand to permit him different types of function. The Court of Appeals held:

Because the two prosthetic hands worked in tandem, the commissioner's reliance on the "one set" language was misplaced. Conell did not ask for two fully functional artificial left hands; he asked for one hand that would allow him to manipulate his finger and thumb on a limited basis and another hand that would allow him to look like a "normal" person the rest of the day—in other words, two devices which, together, formed a single, fully-functional hand.

Nestle USA v. Conell, 913 N.W.2d 273, at *3 (Iowa App. 2018) (Table of Unpublished Decisions).

In Mr. Fink's case, he is asking for a myoelectric arm, which simply provides greater function than the ratchet-style arm he is offered by defendants. I conclude that Mr. Fink is entitled to the myoelectric prosthetic arm he requests.

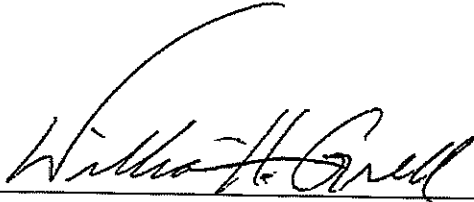
ORDER

THEREFORE, IT IS ORDERED:

Claimant's petition for alternate medical care is granted.

Defendants shall immediately authorize, purchase, and pay for all related parts and services necessary to provide claimant a myoelectric prosthetic left arm.

Signed and filed this 3rd day of May, 2019.



WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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