BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JAMES HORNE,

Claimant,

vs.

ARAMARK,

Employer,

and

INDEMNITY INS. CO. NA,
c/o SEDGWICK,

Insurance Carrier,
Defendants.

File No. 5052409

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, James Horne

The alternate medical care claim came on for hearing on April 10, 2015. The proceedings were digitally recorded which 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 and 2 and Defendants' Exhibit A. Claimant testified on his behalf.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care.

FINDINGS OF FACT

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

Claimant filed a petition for alternate medical care on March 30, 2015. The claimant asserted injury to his right knee which is accepted by the defendants. Claimant requests surgery recommended by the authorized treating physician.

Defendants filed an answer on April 9, 2015, accepting responsibility and requesting a phone hearing.

Claimant was performing janitorial duties when his right foot became entangled in a clothing rack. His knee twisted and became injured. Since the injury claimant has undergone physical therapy and injections but his pain has not abated. On October 24, 2014, claimant was seen by Jonathan D. Burns, PA-C, regarding his right knee pain.

In the past, claimant has had an ACL repair as well as meniscal repair surgeries. (Exhibit 1, page 1) The diagnosis of claimant's right knee is degenerative joint disease. Because claimant's current surgeon was not performing surgeries due to changes within his orthopaedic department, claimant was referred to Dr. Nartartez. (Ex. 1, p. 1) Ultimately claimant was seen by Christopher McClellan, D.O., on January 19, 2015. Dr. McClellan recommended a scope and a possible repair of the medial meniscus tear. (Ex. 2, p. 5)

On April 9, 2015, defendants requested a causation opinion from Dr. McClellan but at the time of the hearing, no response was received. At the start of the hearing, defendants were given an opportunity to deny liability but did not.

CONCLUSIONS OF LAW

Having admitted the knee injury at the time of the hearing, the employer is required to furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance and hospital services and supplies for that injury. 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.

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).

Claimant's treating physician has recommended a scope and possible surgical repair of a meniscus tear. Defendants offer no alternative treatment.

ORDER

THEREFORE IT IS ORDERED, claimant's petition for medical care is granted.

Signed and filed this 13th day of April, 2015.

JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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