

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

WILLIAM KAUFFMAN,

Claimant,

vs.

ARCHER-DANIELS-MIDLAND CO.,

Employer,
Self-Insured,
Defendant.

File No. 20008612.02

ALTERNATE MEDICAL CARE
DECISION

Headnote: 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 Kauffman.

The alternate medical care claim came on for hearing on August 10, 2023. The proceedings were digitally recorded which constitutes the official record of this proceeding. By order filed by the Commissioner, this ruling is designated final agency action.

The record consists of Claimant's Exhibits 1-5, Defendant's Exhibits A-B and testimony of the claimant. Claimant's exhibits are unnumbered and lack discrete, individual identification, which is required by the rules, and for the purpose of this record are referred to solely as Exhibit 1 with counted pagination, pages 1-9

ISSUE

The issue presented for resolution is whether the claimant can continue with care from Dr. Switzer without interference from defendant employer.

FINDINGS OF FACT

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

Defendant admitted liability for an injury occurring on April 29, 2020, to claimant's left knee. Claimant testified that he first saw Dr. Kyle Switzer, D.O., on May 20, 2020; however the medical report of William C. Jacobson, M.D., identifies the date of the first visit as June 3, 2020. (CE 1:6) Dr. Switzer recommended claimant undergo surgical repair to the knee. This surgery was not completed until February 5, 2021. (CE 1:1)

Preceding the February 5, 2021, surgery, was the opinion report of Dr. Jacobson, an IME doctor selected by defendant. (CE 1:7) In the report, Dr. Jacobson wrote that claimant's medial meniscus tear showed a root tear which was a significant injury to the knee joint. Id. This was more severe than a typical meniscus tear. Id. A significant percentage of patients with a root tear have ongoing knee pain issues and can progress to degenerative arthritis in accelerated fashion. Id. Dr. Jacobson went on to opine that claimant would need additional treatment including injections, bracing, possible repeat arthroscopy and even a knee replacement surgery in the future. (JE 1:8)

Claimant returned to Dr. Switzer on July 13, 2023 with continued pain and instability in the left knee. (CE 1:2) Dr. Switzer noted that he had tried extensive conservative treatment including physical therapy and injections without resolution. (CE 1:2) Dr. Switzer wrote that "at this point I have failed all conservative options with the patient. I do not have really any reason for why he continues to have pain other than a possible small recurrent medial meniscus tear. I discussed arthroscopic evaluation of this with partial medial meniscectomy. . . Discussed that if this does not alleviate his pain I do not know that I have anything else to offer him." (CE 1:3) Claimant wanted to proceed with the surgery.

On July 14, 2023, Dr. Switzer's office sent a request for authorization of surgery to defendant. (DE A:1) Authorization was given by Angela Reed but not until August 4, 2023. (DE A:1, 2)

On July 26, 2023 counsel for the claimant wrote to counsel for the defendant inquiring as to why no date for the surgery had been set. Claimant testified that he had called Dr. Switzer's office three times. One time the nurse, Ann Brause, was not available, but on one occasion Ms. Brause informed claimant that the request for approval of the surgery had been made, and the second time the nurse said that she would reach out to the adjuster.

On July 31, 2023, the alternate care petition was filed.

On August 4, 2023, Ms. Reed emailed Ms. Brause asking "Ann, is there anything pending for approval on the left knee injury? If so, can you please provide me request for authorization." (DE A:2) Ms. Brause replied back at 1:43 PM with the authorization request. Id. At 1:48 PM, Ms. Reed returned the form with the authorization. (DE A:2) On August 9, 2023, counsel for defendant wrote to counsel for the claimant to pass along that the knee surgery will take place on September 1, 2023 and the postop appointment will take place on September 12, 2023. (DE B:3,4)

Claimant would like to proceed with care from Dr. Switzer without the need for prior authorization from defendant due to the defendant's alleged repeated delays.

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-reopen 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 its own treating physician. Pote v. Mickow Corp., File Number 694639 (Review-Reopening Decision June 17, 1986).

It appears that the defendant's process requires authorization for procedures before they can be scheduled and conducted. There was a significant delay between the first suggestion of knee surgery in June 2020 and the actual surgery in February 2021. In January of 2021, the defendant was on notice that claimant sustained a serious injury to his left knee that would require ongoing care, including injections, future surgery, and possibly a knee replacement. In order for claimant to be put on the schedule for a second surgery, claimant made several phone calls and had to resort to assistance from the agency through the filing of the alternate care petition. From the timeline, the defendant was either not aware or ignored the previous authorization request made by Dr. Switzer's office on July 14, 2023, and did not take action until the alternate care was filed.

Care delayed is not reasonable care. It is inferior and less extensive. Claimant should not have to wait for authorization from the defendant employer when the care recommended is from an authorized treating physician.

While the delay between the request for surgery on July 14, 2023, and the actual surgery of September 1, 2023, is under 60 days, no action was taken until the filing of this present action. Claimant is seeking to continue treatment under Dr. Switzer without interference from defendant. That request is reasonable, and to refuse the request would violate the well-established case law that employers are not entitled to interfere with the medical judgment of its own treating physician.

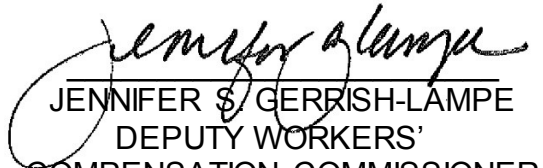
Claimant's request to continue with care under the authorized treating physician, Dr. Switzer, without interference is granted.

ORDER

Therefore is ordered:

The claimant's petition for alternate medical care is granted.

Signed and filed this 14th day of August, 2023.


JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Dennis Currell (via WCES)

Peter Thill (via WCES)