

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MICHAEL T. SIZEMORE,

Claimant,

vs.

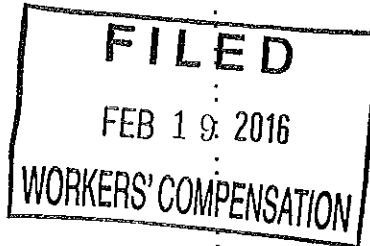
BLACKHAWK FOUNDRY,

Employer,

and

AIG,

Insurance Carrier,
Defendants.



File No. 1167901

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, Michael Sizemore. Claimant appeared personally and represented himself at this alternate medical care hearing. Defendants appeared through their attorney, Jordan Kaplan. Defendants also had representatives of AIG insurance present for the telephonic hearing. Specifically, Kristin Sargeant and Jean Wagganer were both participating in the telephonic hearing.

The alternate medical care claim came on for a telephone hearing on February 18, 2016. 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.

Claimant sent 31 pages of proposed exhibits to this agency before the scheduled hearing. Agency rule 876 IAC 4.48(9) provides, "Written evidence shall be limited to ten pages per party" in an alternate medical care proceeding. Therefore, the undersigned went through claimant's proposed exhibits with claimant on the record and numbered the pages claimant ultimately selected to be introduced into the evidentiary record.

Defendants objected to certain records identified and offered by claimant. The undersigned overruled defendants' objections and admitted pages 1-10, as numbered in the agency file. Defendants did not offer a separate set of exhibits.

Claimant was sworn and offered testimony at the time of hearing. No other witnesses were called to testify.

ISSUE

The issues presented for resolution are whether the claimant is entitled to a sock for a prosthetic liner and whether claimant is entitled to an order for alternate medical care establishing Maruti R. Kari, M.D., as the authorized treating physician for claimant's low back and hip symptoms.

FINDINGS OF FACT

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

Claimant, Michael Sizemore, sustained a traumatic left foot injury on August 17, 1995. Defendants admit that claimant sustained the alleged left foot injury on the alleged date of injury. As a result of that work related injury, claimant suffered an amputation.

Mr. Sizemore requires a prosthetic limb. Defendants admit that the prosthetic limb and recent recommendations for that artificial limb are causally related to the 1995 work injury.

Claimant seeks an order from this agency compelling defendants to authorize and pay for a sock needed for his prosthetic limb liner. Defendants contend that they have not received any such recommendation for a sock. However, defendants concede that Kenneth G. Meier, a certified prosthetist, remains claimant authorized prosthetic expert and provider. Defendants consent to the entry of an order compelling them to provide the requested sock, if Mr. Meier deems the sock to be medically reasonable and necessary. Claimant agreed that entry of such an order would resolve his concerns and this dispute.

Mr. Sizemore also seeks an order compelling defendants to authorize treatment of back and hip symptoms through his selected physician, Maruti R. Kari, M.D., at Trinity Pain Management Center in Bettendorf, Iowa. Claimant testified to the current excruciating symptoms he experiences and that Dr. Kari has opined the back and hip symptoms are causally related to the 1995 left foot injury. Claimant believes he needs extensive medical care for his back and hip moving forward and expresses his frustration and perhaps anger because this care is not being provided by defendants.

However, defendants deny liability for the alleged back and hip injuries or conditions. Specifically, defendants dispute causal connection between the alleged back and hip symptoms and the 1995 left foot injury.

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).

Defendants admit liability for claimant's left foot injury, as well as for medical treatment, appliances, and items necessary for claimant's left foot amputation and prosthesis. Defendants specifically authorized and continue to authorize treatment through Kenneth Meier, a certified prosthetist, near claimant's home. Defendants agree that they are responsible for any necessary medical items related to claimant's prosthetic, including the socks claimant needs for his liner, if such socks are deemed reasonable and necessary by Mr. Meier.

Therefore, I conclude that defendants remain liable for treatment of claimant's left foot amputation, including his need for prosthetic related items. Defendants should clarify with Mr. Meier whether the requested socks are medically reasonable and necessary. If Mr. Meier deems those socks medically reasonable and necessary, defendants shall authorize and pay for those socks promptly.

Claimant also seeks alternate medical care for treatment of back and hip symptoms. Claimant testified about various symptoms he experiences and the reason that he desires to have care authorized through Maruti R. Kari, M.D.

Before any benefits can be ordered, including medical benefits, compensability of the claim must be established, either by admission of liability or by adjudication. The summary provisions of Iowa Code section 85.27, as more particularly described in rule 876 IAC 4.48, are not designed to adjudicate disputed compensability of claim. The Iowa Supreme Court has held:

We emphasize that the commissioner's ability to decide the merits of a section 85.27(4) alternate medical care claim is limited to situations where the compensability of an injury is conceded, but the reasonableness of a particular course of treatment for the compensable injury is disputed.

Thus, the commissioner cannot decide the reasonableness of the alternate care claim without also necessarily deciding the ultimate disputed issue in the case: whether or not the medical condition Barnett was suffering at the time of the request was a work-related injury.

Once an employer takes the position in response to a claim for alternate medical care that the care sought is for a noncompensatory injury, the employer cannot assert an authorization defense in response to a subsequent claim by the employee for the expenses of the alternate medical care.

R. R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 197-198 (Iowa 2003).

Given the denial of liability for the claimant's low back and hip conditions, claimant's original notice and petition for alternate medical care must be dismissed with respect to those conditions and his request for treatment through Dr. Kari. Given their denial of liability for the low back and hip conditions, defendants lose their right to control the medical care claimant seeks during their period of denial and the claimant is free to choose that care. Bell Bros. Heating v. Gwinn, 779 N.W.2d 193 (Iowa 2010).

As a result of the denial of liability for the condition sought to be treated in this proceeding, claimant may obtain reasonable medical care from any provider for this treatment but at claimant's expense and seek reimbursement for such care using regular claim proceedings before this agency. Haack v. Von Hoffman Graphics, File No. 1268172 (App. July 31, 2002); Kindhart v. Fort Des Moines Hotel, Iowa Industrial Comm'r Decisions No. 3, 611 (App. March 27, 1985). "[T]he employer has no right to choose the medical care when compensability is contested." Bell Bros. Heating v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010). Therefore, defendants are precluded from asserting an authorization defense as to any future treatment during their period of denial for the low back and hip conditions.

As the undersigned explained to Mr. Sizemore at the time of the alternate medical care hearing, this agency does not have jurisdiction to hear and decide whether an injury arises out of and in the course of employment or is causally related to a work injury in this cursory alternate medical care procedure. As noted above, the Iowa Supreme Court has specifically concluded that the undersigned cannot take action on claimant's request for treatment of his back and hip conditions because defendants have denied liability for those conditions. Claimant remains free to consult the agency's website and to file an original notice and petition for arbitration, seeking an award of medical benefits. However, the summary procedures of an alternate medical care proceeding are not appropriate to pursue that claim.

ORDER

IT IS, THEREFORE, ORDERED:

Claimant's petition for alternate medical care is granted in part and dismissed in part.

Defendants shall promptly inquire of Mr. Meier about the medical reasonableness and necessity of the sock claimant seeks for his prosthetic liner.

If Mr. Meier opines that the requested sock is reasonable and necessary, defendants shall promptly authorize and pay for the requested sock.

Claimant's request for alternate medical care for his back and hip symptoms is dismissed for lack of subject matter jurisdiction in this alternate medical care proceeding.

If claimant seeks to recover the charges incurred in obtaining care for the low back and/or hip conditions for which defendants denied liability, defendants are barred from asserting lack of authorization as a defense to those charges during the period of their denial.

Claimant remains entitled to pursue a medical benefit claim through an arbitration proceeding and full arbitration hearing.

Signed and filed this 19th day of February, 2016.



WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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