

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TERESA DELASANCHA-VENCES,

Claimant,

vs.

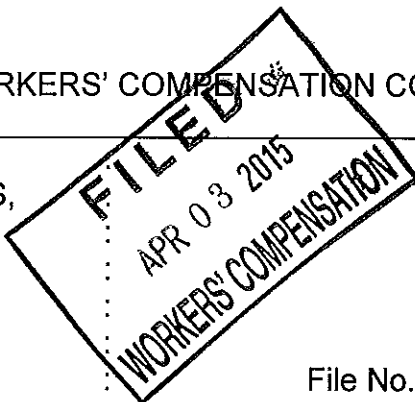
SHEFFIELD CARE CENTER
DEERFIELD ASSISTED LIVING,

Employer,

and

WEST BEND INSURANCE,

Insurance Carrier,
Defendants.



File No. 5051833

ALTERNATE MEDICAL
CARE DECISION

HEAD NOTE NO: 2701

STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapters 17A and 85. The expedited procedure of rule 876 IAC 4.48, the "alternate medical care" rule, is requested by claimant, Teresa Delasancha-Vences.

Claimant filed a petition on March 20, 2015. She alleged at paragraph 5 of her petition:

Reason for dissatisfaction and relief sought: Carrier unilaterally changed treatment provider. Claimant needs to return to care of Dr. Beck and this is recommended by her current provider, Joy Moretz, PA

Defendants filed an answer on March 24, 2015. Defendants admitted the occurrence of a work injury on April 14, 2014 and liability for the condition sought to be treated by this proceeding.

The alternative medical care claim came on for hearing on April 2, 2015. The proceedings were recorded digitally, and constitute the official record of the hearing. By an order filed February 16, 2015 by the workers' compensation commissioner, this decision is designated final agency action. Any appeal would be by petition for judicial review under Iowa Code section 17A.19.

The parties presented evidence for consideration. Claimant's exhibits 1 through 9 were offered and admitted as evidence. Defendants' exhibits A through C were also offered and admitted as evidence. Claimant testified on her own behalf.

ISSUE

The issue presented for resolution is whether claimant is entitled to alternate medical care in the form of designation of David Beck, M.D. as claimant's treating physician and authorization of his surgical recommendation.

FINDINGS OF FACT

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

Claimant sustained a stipulated work injury to her back on April 14, 2014. On that date, claimant was attempting to place a boot on the foot of a resident when that resident pushed off on claimant's legs, pulling her forward and down. She did not fall. (Claimant's testimony)

Defendants referred claimant for medical care with Joy Moretz, PA. On May 1, 2014, claimant underwent an MRI of her lumbar spine. The radiologist read the results as revealing multilevel disc abnormalities from L2-L3 inferiorly, including left-sided narrowing at L3-L4, L4-L5 and L5-S1 and right-sided narrowing at L2-L3, L3-L4 and L4-L5. The radiologist also opined the presence of central stenosis at L4-L5. (Exhibit 1, page 1)

On May 28, 2014, claimant presented to neurosurgeon, David Beck, M.D., with complaints of left leg and back pain. Dr. Beck opined the MRI revealed bulging discs at L4-L5 and L5-S1. He recommended conservative treatment, including removal of claimant from work, back exercises, and an epidural steroid injection. (Ex. 2, p. 1)

Claimant returned to Dr. Beck on July 16, 2014. Claimant reported worsened back pain and bilateral leg pain. Dr. Beck opined claimant failed conservative therapy and recommended L4 to S1 decompression and fusion. He tentatively scheduled claimant for surgery on August 7, 2014. (Ex. 3, p. 1)

On July 30, 2014, claimant returned to PA Moretz with reports of worsening and persistent lower back pain with radiation through the back, bilateral arms, and bilateral thighs, as well as numbness of the feet. PA Moretz noted the surgery recommended by Dr. Beck had been denied by defendants. Claimant requested refills of prescriptions for hydrocodone, tramadol and amitriptyline. (Ex. 4, p. 1)

Claimant returned to PA Moretz on August 25, 2014 and reported low back pain radiating down the bilateral legs, as well as tingling in the legs, urinary urgency, and bilateral arm numbness and tingling. PA Moretz assessed lumbar back pain and

bulging discs. PA Moretz indicated she was uncertain of a path for treatment to lessen claimant's pain and wean her from narcotics; she elected not to increase claimant's pain medications at that time. PA Moretz also noted a second opinion was pending with Chad Abernathey, M.D. In the event claimant's condition proved nonsurgical, PA Moretz questioned a course of action which included a repeat course of physical therapy and/or referral to a pain clinic. She also assessed chronic, continuous use of opioids. (Ex. 5, pp. 1-2)

On September 12, 2014, claimant presented to neurosurgeon, Dr. Abernathey. Dr. Abernathey noted he had been requested to provide a second neurosurgical opinion following Dr. Beck's recommendation of a two level lumbar fusion for "modest degenerative changes" at L4-L5 and L5-S1. He opined claimant's lumbar spine MRI demonstrated moderate degenerative changes throughout the lumbar spine, most prominent at L4-L5 and L5-S1. Dr. Abernathey also opined claimant presented with subjective low back pain following a "minimal work incident." Following discussion of various treatment options, claimant indicated she desired to undergo a reconstructive operation. (Ex. A, p. 1) Dr. Abernathey indicated he would not recommend this approach:

Her MRI findings clearly pre-existed the date of her work incident and I would consider her current symptomatology to be related to her pre-existing condition. The work incident described simply does not explain her current symptomatology and I would consider it to be a temporary aggravation of her pre-existing underlying condition. Additionally, I advised the patient that I would not recommend any neurosurgical intervention with a 2 level lumbar fusion in my practice for these very modest degenerative changes on MRI.

(Ex. A, pp. 1-2)

Due to Dr. Abernathey's disagreement with Dr. Beck's surgical recommendation, Dr. Abernathey recommended consideration of additional medical opinions on claimant's options. (Ex. A, p. 2)

On November 26, 2014, claimant's attorney authored an email to defendant-insurance carrier. Counsel objected to defendants' reliance upon Dr. Abernathey's report in denying surgery, as claimant had an established physician-patient relationship with Dr. Beck, and defendants unilaterally changed claimant's provider without proving the care provided by Dr. Beck had been ineffective. Counsel requested authorization for return to Dr. Beck and for the surgery Dr. Beck had recommended. (Ex. 6, p. 1)

At claimant's request, PA Moretz authored a letter dated February 6, 2015. (Claimant's testimony) PA Moretz recommended a follow-up neurosurgery consultation to address chronic low back and leg pain, as well as new concerns of paresthesias, weakness and bladder incontinence. PA Moretz indicated she strongly supported a return to Dr. Beck to discuss surgical options. She noted claimant had been seen for a

second opinion, but claimant's pain had not alleviated and new symptoms had since developed. (Ex. 7, p. 1)

On March 6, 2015, claimant's attorney authored an email to defendants' attorney requesting clarification on the status of claimant's care. (Ex. 8, p. 1)

On March 16, 2015, claimant presented to Burt Bottjen, M.D., a physician in the same practice as PA Moretz. Dr. Bottjen assessed low back pain with sciatica. He opined an epidural injection was not a good option for claimant and recommended a repeat lumbar spine MRI. Dr. Bottjen also assessed urinary incontinence and recommended a pelvic ultrasound to determine if the source of the symptom was claimant's back or pelvis. (Ex. 9, p. 1)

Defendants arranged for claimant to be evaluated by orthopedic spinal surgeon, Cassim Igram, M.D. Claimant presented for said evaluation on March 18, 2015. At that time, Dr. Igram ordered x-rays of claimant's lumbar spine which he opined revealed moderate degenerative joint disease from L3 to S1. He noted the lumbar spine MRI findings were also consistent with disc degeneration. (Ex. B, p. 3) Dr. Igram assessed a history of back strain with chronic low back pain. Dr. Igram indicated he did not recommend surgery, as surgery would not improve "degenerated discs." He recommended claimant see what work she was capable of performing. (Ex. B, p. 3) Dr. Igram opined he had no further treatment to offer claimant. He placed claimant at MMI effective October 24, 2014, imposed no permanent restrictions, and assigned no permanent impairment rating. (Ex. B, p. 4)

Defendants' attorney authored a response to claimant's counsel dated March 25, 2015. By this letter, defendants' counsel indicated both Drs. Abernathey and Igram opined claimant was not a surgical candidate and furthermore, that claimant achieved MMI effective October 24, 2014, without permanent impairment and with no need for permanent restrictions. Due to these facts, counsel expressed defendants' belief that the greater weight of medical evidence did not support surgical intervention as recommended by Dr. Beck. Counsel also noted medical care remained authorized with PA Moretz. He advised that PA Moretz may be leaving her current practice and in the event she does so, defendants will advise who in that same practice will assume claimant's care. (Ex. C, pp. 1-2)

Claimant testified she remains in pain and desires to undergo the surgery recommended by Dr. Beck. (Claimant's testimony)

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

Iowa Code section 85.27(4) provides, in relevant part:

For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. . . . The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

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).

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 1975).

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).

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 Decision June 17, 1986).

"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).

Following claimant's stipulated work injury, defendants promptly provided claimant medical care. This authorized care led claimant to Dr. Beck, who initially recommended conservative treatment to treat bulging discs at L4-L5 and L5-S1. When these conservative measures failed to alleviate claimant's symptoms, Dr. Beck recommended a two level decompression and fusion. This recommendation came on July 16, 2014.

Dr. Beck's recommendation for a two level fusion to treat moderate degenerative changes after only approximately three months of conservative care and after an

epidural injection failed to provide relief, raised questions for defendants. Defendants continued to provide claimant care with PA Moretz, while arranging for a second opinion. This second opinion was undergone with Dr. Abernathey on September 12, 2014. Dr. Abernathey opined claimant was not a surgical candidate. Defendants thereafter continued to provide medical care with PA Moretz and Dr. Bottjen. Due to continued symptoms, defendants arranged for another surgical opinion with Dr. Igram. Dr. Igram, too, opined claimant was non-surgical. While defendants denied surgery, defendants have continued to provide authorization for medical treatment with PA Moretz's practice.

It cannot be said defendants have acted unreasonably in offering and procuring medical treatment for claimant. Defendants have at all times continued to authorize a medical provider to treat claimant. Such care was available promptly and without undue inconvenience to claimant; defendants have not abandoned care. Although a then-authorized physician recommended surgical intervention, defendants were justified in seeking a second surgical opinion based upon the facts of this case. Both the second and third surgical opinions found claimant did not represent a surgical candidate, lending credence to defendants' questions regarding Dr. Beck's proposed method of treatment. Furthermore, Dr. Beck's surgical recommendation was made in July 2014, while the opinions of Drs. Abernathey and Igram followed visits in September 2014 and March 2015, respectively. Therefore, these opinions better reflect claimant's current condition and it is unknown if Dr. Beck would continue to recommend surgery at this time.

Given the above, it is determined claimant's application for alternate medical care is denied.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's application for alternate medical care is denied.

Signed and filed this 3rd day of April, 2015.



ERICA J. FITCH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

DELASANCHA-VENCES V. SHEFFIELD CARE CENTER DEERFIELD ASSISTED
LIVING

Page 7

Copies to:

Timothy L. Lapointe
Attorney at Law
23 - 3rd St. N.W.
Mason City, IA 50401
lapointelaw@mchsi.com

Mark A. Bosscher
Attorney at Law
6800 Lake Dr., Ste. 125
West Des Moines, IA 50266-2504
Mark.bosscher@peddicord-law.com

EJF/sam