

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RAYMOND ARROYO,

Claimant,

vs.

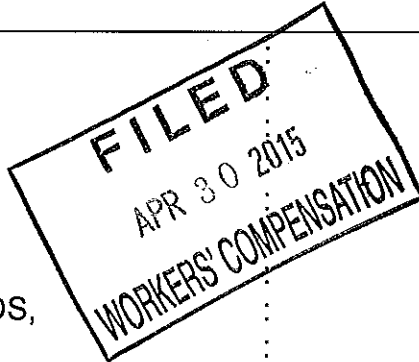
WEST LIBERTY FOODS,

Employer,

and

SENTRY INSURANCE,

Insurance Carrier,
Defendants.



File No. 5051980

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, Raymond Arroyo.

The alternate medical care claim came on for hearing on April 30, 2015. The proceedings were tape-recorded which constitutes the official record of this proceeding. By order filed February 16, 2015, this ruling is designated final agency action.

The record consists of claimant's exhibits 1-6 and defendants' exhibit A as well as the testimony of the claimant through interpreter.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of the Spine Rehabilitation Program at the University of Iowa-Work Injury Recovery Center, as recommended by the claimant's independent medical examiner, Robert Milas, M.D. At the hearing the claimant also requested that Dr. Milas become claimant's primary care physician.

FINDINGS OF FACT

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

Defendants admitted liability for an injury to claimant's low back occurring on June 4, 2014. Defendants provided care with Mercy Occupational Health initially. He underwent an MRI on July 22, 2014, which revealed mild predominately congenital spinal stenosis at L4/5 (otherwise unremarkable). See Exhibit 1. Defendants had claimant see Ernest M. Perea, M.D. on August 18, 2014. Dr. Perea recommended physical therapy and referral to Chad Abernathy, M.D. However, defendants then sent claimant to Michael Dolphin, D.O., an orthopedic surgeon.

On his own claimant saw Eleanor Lisa Lavadie-Gomez, M.D. at the Mercy Family Clinic on December 19, 2014. Dr. Gomez reported from this visit:

Discussed

I discussed potential for referral to orthopedics, but since this is a workman's comp case, he must get referral from work comp MD at Occupational Medicine. I offered referral back to PT.

I also discussed concern with excessive use of NSAIDs and risk of renal compromise. He may try tramadol PRN as directed.

If his back pain has no significant improvement, I have considered trying him on Cymbalta for musculoskeletal pain.

I wonder/consider that some of his strain is also related to his obesity, as centripetal fat can alter lumbar mechanics and provoke lumbar discomfort, lordosis/strain. I have previously encouraged weight loss/exercise which will also likely help with back pain.

He would like complete physical, which was reason for obtaining labwork today.

(Exhibit 3, page 2)

Claimant saw Dr. Milas for an independent medical evaluation on February 16, 2015 at claimant's attorney's request. Dr. Milas recommended a structured rehabilitation program for pain relief.

On April 29, 2015 the claimant went to an appointment with Dr. Dolphin that defendants had scheduled to have Dr. Dolphin evaluate that the care requested was appropriate and necessary. Unfortunately, a miscommunication resulted in Dr. Dolphin not seeing claimant. Defendants agree that this appointment will be rescheduled and that they will abide by Dr. Dolphin's recommendations, whatever they may be.

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 No. 694639 (review-reopening decision June 17, 1986).

The MRI findings are minimal and defendants have provided care consistent with those findings. Dr. Milas' recommendation is vague and not inconsistent with the care provided to claimant thus far. It is unfortunate that Dr. Dolphin did not see claimant on April 29th, as that may have resolved this issue. However, this error does not amount to an abandonment of care on this record. Defendants shall promptly reschedule an evaluation with Dr. Dolphin and abide by his recommendations for care. If this does not occur within 30 days claimant may file another alternate care petition at that time.

ORDER

Therefore it is ordered:

The claimant's petition for alternate medical care is denied. Defendants shall promptly reschedule an evaluation with Dr. Dolphin and abide by his recommendations for care. Defendants shall promptly reimburse claimant for the expenses incurred with the visit to Dr. Dolphin's office on April 29, 2015.

Signed and filed this 30th day of April, 2015.



RON POHLMAN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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