

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOHN THIELKING,

Claimant,

vs.

GLAZER'S DISTRIBUTORS
OF IOWA,

Employer,

and

NEW HAMPSHIRE INSURANCE CO.,

Insurance Carrier,
Defendants.

File No. 5053369.01

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE: 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, John Thielking.

The alternate medical care claim came on for hearing on February 24, 2020. The proceedings were digitally recorded which constitutes the official record of this proceeding. This ruling is designated final agency action and any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code 17A.

The record consists of Claimant's Exhibits 1 – 4, the alternative medical care petition and notice of hearing. The claimant testified and Pat Thielking, claimant's mother, testified. Attorney Cory Abbas appeared on behalf of claimant. Attorney Patrick Mack, appeared on behalf of defendants.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of the trial and implanting of a Dorsal Root Ganglion Stimulator (DRG April 2, 2014) by Andrzej Szczepanek, M.D. to lessen claimant's pain due to his hernia and hernia surgery.

FINDINGS OF FACT

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

Defendants admitted liability for an injury occurring on April 2, 2014. A commissioner's decision found the claimant's hernia of April 2, 2014 arose out of and in the course of his employment. Claimant has expressed dissatisfaction with the care being provided by defendants. (Exhibits 3, 4)

Claimant was injured at work and had a hernia. Claimant had a number of surgeries for his hernia and pain that followed his surgery. Claimant had surgery performed by Eric Williams, M.D. in Baltimore, Maryland.

On November 13, 2019 claimant was examined by Robert Fitzgibbons, M.D. at CHI in Omaha, Nebraska. Dr. Fitzgibbons was chosen by claimant with the assistance of his mother. Dr. Fitzgibbons noted,

The patient is s/p bilateral open groin hernia repair with mesh. He had multiple operations for his chronic inguinodynia, including an open approach for what sounds like a triple neurectomy. And additional laparoscopic surgery with open cutdown for repeat neurectomies. Furthermore, the patient describes a third bilateral groin procedure for a spermatic cord cut-down.

He has tried physical therapy, pain medications, and groin and scrotal injections without any success. He describes his pain as debilitating. He contributes other psychological problems, including depression, "brain fog", and memory problems to his groin issues.

(Ex. 1, p. 7) Dr. Fitzgibbons recommended claimant make an appointment with a pain specialist to consider a nerve stimulator trial. Dr. Fitzgibbons noted that claimant's request to have surgery to remove the mesh that was implanted was unrealistic due to the complexity of the procedures and likely results. (Ex. 1, p. 8; Claimant's testimony; Pat Thielking's testimony)

Claimant, with the help of his mother, located a pain specialist, Central States Pain Clinic in Central Iowa. Claimant was examined by Dr. Szczepanek. Claimant and Ms. Thielking testified that Dr. Szczepanek recommended a DRG to try to relieve some of his pain. Claimant has undergone a psychological evaluation as a condition precedent before the DRG can be utilized for a trial and later implantation. The results of the exam were not complete at the time of the alternate care hearing.

Ms. Thielking testified that she had spoken to Dr. Williams about the DRG and he was in agreement that it could be helpful to reduce claimant's pain.

There was no evidence that defendants were offering claimant any care to alleviate his pain symptoms at the time of the hearing.

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).

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.

As defendants are not offering any care to the claimant for his pain I find the defendants are not offering reasonable care. Defendants asserted that the ordering of the DRG is not appropriate, as the psychological evaluation results are not completed. The psychological evaluation is part of the process before a trial and implantation of nerve stimulator in the spine. If the psychological testing or other medical testing showed that the DRG should not be implanted, Dr. Szczepanek would not go through with this procedure.

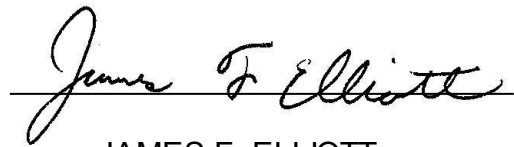
I also find that the care being offered by Dr. Szczepanek is reasonable. Defendants shall promptly authorize and pay for the care being recommended by Dr. Szczepanek including a trial and implantation of the DRG and such other care related to management of claimant's pain due to his work injury.

ORDER

THEREFORE, IT IS ORDERED:

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

Signed and filed this 24th day of February, 2020.

A handwritten signature in cursive script, reading "James F. Elliott", written over a horizontal line.

JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Cory Abbas (via WCES)
Patrick Mack (via WCES)