BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

PAUL BERTSCH, Claimant, vs. JOHN DEERE DUBUQUE WORKS, Employer, Self-Insured, Defendant.	File No. 5063359 ALTERNATE MEDICAL CARE DECISION HEAD NOTE NO: 2701

This is a contested case proceeding under Iowa Code chapters 85 and 17A. The expedited procedures of rule 876 IAC 4.48, the "alternate medical care" rule, are invoked by claimant, Paul Bertsch.

This alternate medical care claim came on for hearing on March 21, 2017. The proceedings were recorded digitally and constitute the official record of the hearing. By an order filed by the workers' compensation commissioner, this decision is designated final agency action. Any appeal would be a petition for judicial review under Iowa Code section 17A.19.

The record in this case consists of claimant's Exhibits 1-2, defendant's Exhibit A, and the testimony of claimant.

ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of treatment for his shoulder at the Mayo Clinic.

FINDINGS OF FACT

Defendant admits liability for a date of injury to claimant's left hand occurring on January 29, 2015. Defendant also admits liability for the same date of injury to the left shoulder but only as it relates to claimant's adhesive capsulitis. Defendant denies liability to the extent it applies to all other shoulder injuries.

Claimant testified the accident occurred when a vacuum hoist he used to pick up steel, accidentally picked up two pieces of steel instead of one. When claimant was writing on the steel, the second piece of steel on the hoist dropped crushing claimant's hand. Claimant said he quickly pulled his left hand out from between the sheets of steel.

Claimant testified he had no prior shoulder problems before the January 2015 injury.

On February 25, 2016, claimant was seen by Christopher Palmer, M.D. Claimant indicated that, in August or September of 2015, he began having shoulder pain. Claimant had physical therapy (PT) for a frozen shoulder with no significant improvement. Claimant was assessed as having a left shoulder adhesive capsulitis. He was given an injection. An MRI was recommended. (Exhibit 2, pages 1-2)

On April 12, 2016 claimant was evaluated by David Dennison, M.D. at the Mayo Clinic for a crush injury to the left hand. Claimant had a frozen shoulder. Claimant had approximately 30 PT sessions for the left shoulder with little improvement. Claimant was assessed as having a left hand crush injury. (Ex. 1, p. 3)

Claimant testified Dr. Dennison treated his hand condition. He said Dr. Dennison told him his shoulder problems could have potentially occurred when he jerked his hand out from between the pieces of steel.

On April 25, 2016, claimant underwent an MRI of the left shoulder. It showed a SLAP tear, findings consistent with adhesive capsulitis, and findings consistent with a possible superior labral tear. (Ex. 2, pp 3-4)

On April 26, 2016, claimant was evaluated by Dr. Palmer. Claimant was assessed as having adhesive capsulitis, a possible SLAP tear and a partial impingement syndrome with possible rotator cuff repair. Claimant's work injury was not the cause of the AC arthrosis or fraying of the rotator cuff. Claimant was given a left shoulder injection. (Ex. 2, pp. 5-6)

Claimant returned to Dr. Palmer on May 31, 2016. Claimant had some improvement with his left shoulder. Claimant was restricted in use of the left shoulder. (Ex. 2, pp. 6-7)

Claimant returned to Dr. Palmer on October 20, 2016. Claimant had continued shoulder pain. Claimant was given a left shoulder injection. Claimant was told if the shoulder failed to improve, then surgery was an option. (Ex. 2, p. 8)

On February 21, 2017, claimant was evaluated by Timothy Miller, M.D. Claimant had a crush injury to the left hand. Dr. Miller saw changes in claimant's left shoulder as per the MRI. He did not see the changes related to "Workmen's [*sic*] Compensation" (Ex. A) Dr. Miler indicated claimant might have a SLAP lesion. He was unsure if surgery was a reasonable choice "outside of the workmens [*sic*] compensation." (Ex. A)

Claimant testified he has had approximately 110 PT sessions for his shoulder. Claimant said he has no future appointments for his shoulder condition. He said he approached John Deere medical staff regarding future shoulder treatment, but that staff denied his request for further care for the shoulder. Claimant testified he has a five pound weight restriction of his left upper extremity.

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 Rule of Appellate Procedure 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.

Under Iowa law, the employer is required to provide care to an injured employee and is permitted to choose the care. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

> [T]he 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.

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., 562 N.W.2d at 433, 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" care 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.

Defendant accepts liability for claimant's shoulder condition only as it relates to claimant's adhesive capsulitis condition in the left shoulder. Claimant still has symptoms in his left shoulder. He has restrictions on his ability to lift. The record indicates that defendant has given care for the left shoulder in the past, but is not providing further care for the left shoulder. Based on this record defendant is not providing reasonable care for claimant's left shoulder as it relates to the adhesive capsulitis condition. Claimant has carried his burden of proof he should receive alternate medical care as it relates only to the adhesive capsulitis in the left shoulder.

What makes this case difficult, is that while defendant has accepted liability for the adhesive capsulitis condition in claimant's shoulder, they have denied liability for the potential SLAP tear, any fraying of the rotator cuff, or any other condition in the left shoulder.

For that reason, claimant's petition is dismissed, in part, as it relates to any other treatment at Mayo other than treatment for the adhesive capsulitis. 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. However, defendant is barred from asserting a "lack of authorization" defense to any medical expenses accrued by claimant, for treatment for other shoulder conditions other than the adhesive capsulitis, if they are otherwise compensable. Defendant cannot deny liability and simultaneously direct the course of treatment. Barnhart v. MAQ Incorporated, I Iowa Industrial Comm'r Report 16 (App. March 9, 1981).

As a result of their denial of liability for the condition sought to be treated in this proceeding, claimant may obtain reasonable medical care from any provider for any condition to the shoulder, other than the adhesive capsulitis, 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, I Iowa Industrial Comm'r Decisions No. 3, 611 (App. March 27, 1985).

In brief, claimant has carried his burden of proof he is entitled to alternate medical care at the Mayo Clinic, but only for his adhesive capsulitis. Claimant's petition is dismissed, in part, as it relates to treatment at Mayo for all other shoulder conditions, other than the adhesive capsulitis.

I recognize this ruling may not be entirely practicable for medical providers or for claimant. However, as noted, defendant has accepted liability only for the adhesive capsulitis. Claimant is not receiving any treatment at present for that condition. This is all that can be ordered, given the facts in this matter and the law concerning alternative medical are.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's petition is granted, in part, and dismissed, in part. Defendant is to provide claimant with alternate medical care as detailed above.

Signed and filed this 21st day of March, 2017.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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