

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CLAUDIO VITALE,

Claimant,

VS.

SALVATORE'S BY PAPA RENO, LLC.,

Employer,

and

SOCIETY INSURANCE,

Insurance Carrier,
Defendants.

File No. 1657328.02

ALTERNATE MEDICAL
CARE DECISION

Headnote No: 2701

On May 19, 2021, Claimant Claudio Vitale file an Original Notice and Petition Concerning Application for Alternate Care (“Application for Alternate Care”), alleging Defendants Salvatore’s by Papa Reno, LLC (“Salvatore”) and Society Insurance, had refused to authorize and pay for Lyrica, Naproxen, and Voltaren gel that had previously been prescribed by the Steindler Clinic and for appointments with his primary care provider for ongoing pain management.

A hearing on the Application for Alternate Care was held on Tuesday, June 1, 2021, at 10:30 a.m. Attorney Nicholas Pothitakis represented Vitale. Vitale appeared and testified. Attorney Stephen Spencer represented Defendants. Angela Bonlander appeared and testified on behalf of Defendants. Exhibit A was admitted into the record. The proceeding was recorded digitally and the digital recording is the official record of the proceeding.

The undersigned has been delegated with the authority to issue final agency action in this matter. Appeal of this decision, if any, is to the district court pursuant to Iowa Code section 17A.19.

FINDINGS OF FACT

Vitale is the owner of Salvatore. (Vitale Testimony) On September 20, 2017, Vitale sustained an injury to his right lower extremity. (Vitale Testimony) In 2018, Vitale underwent a right knee arthroscopy with Matthew Bollier, M.D., an orthopedic surgeon at the University of Iowa Hospitals and Clinics (“UIHC”). (Ex. A; Vitale Testimony)

Vitale was dissatisfied with the ongoing care he was receiving from the UIHC and he requested a referral to the Steindler Orthopedic Clinic. (Vitale Testimony) Defendants authorized the referral and he treated with the clinic many times. (Vitale Testimony) In February 2020, Fred Dery, M.D., with the Steindler Orthopedic Clinic

found Vitale had reached maximum medical improvement and he recommended Vitale see his personal physician for ongoing pain management and prescriptions. (Vitale Testimony) Vitale's personal physician was Colette Hostetler, M.D., a family medicine physician. (Vitale Testimony) Dr. Hostetler prescribed Lyrica, Naproxen, and Voltaren gel for Vitale and monitored his pain. (Vitale Testimony) Defendants authorized payment for the prescriptions and for Vitale's pain management visits with Dr. Hostetler. (Vitale Testimony)

Vitale learned Dr. Hostetler was retiring. (Vitale Testimony) Vitale wanted to continue with the same clinic and he transferred his care to Benjamin Pohl, a physician assistant. (Vitale Testimony) Vitale reported he had treated with Pohl in 2021 for his right knee condition. (Vitale Testimony)

Vitale testified he continues to experience pain with his right lower extremity. (Vitale Testimony) Vitale reported Defendants have not authorized care with Pohl, or his Lyrica, Naproxen, and Voltaren gel refills. (Vitale Testimony)

Bonlander has been the adjuster for Vitale's case since 2018. (Bonlander Testimony) Bonlander testified Vitale has a prescription card through Defendants that he has had since he initiated his claim. (Bonlander Testimony) Bonlander testified on March 4, 2021, Defendants paid \$35.40 to Vitale's pharmacy for a refill of tramadol. (Bonlander Testimony) While she did not know what medications had been paid in February 2021 or November 2020, Bonlander testified Defendants paid \$139.88 for prescriptions related to the claim on February 19, 2021, and \$55.55 in November 2020. (Bonlander Testimony)

Vitale testified the pharmacy told him his prescriptions were not authorized in 2021 and that his personal insurance had been billed for the March 2021 prescription. (Vitale Testimony) He denied having a prescription card. (Vitale Testimony)

During cross-examination, Bonlander denied seeing e-mail correspondence from Vitale's counsel to Defendants' counsel on February 8, 2021, March 4, 2021, March 5, 2021, March 19, 2021, April 14, 2021, or the letter sent by Vitale's counsel on April 29, 2021 requesting his pain management care with Pohl and his prescriptions be authorized. (Bonlander Testimony)

Defendants stated they intended to authorize an occupational medicine physician for Vitale's ongoing medical care and agreed to authorize payment for the Lyrica, Naproxen, and Voltaren gel refills. No occupational medicine physician was identified at hearing.

CONCLUSIONS OF LAW

Under Iowa Code section 85.27, an employer is required to furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under Iowa Code chapters 85 and 85A. The employer has the right to choose the provider of care, except when the employer has denied liability for the injury. Id.

“The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee.” Id. § 85.27(4). If the employee is dissatisfied with the care, the employee should communicate the basis for the dissatisfaction to the employer. Id. If the employer and employee cannot agree on alternate care, the commissioner “may, upon application and reasonable proofs of necessity therefore, allow and order other care.” Id.

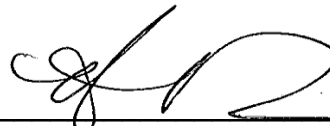
The employee bears the burden of proving the care authorized by the employer is unreasonable. R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 196 (Iowa 2003). “The employer’s obligation under the statute turns on the question of reasonable necessity, not desirability.” Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995). The care authorized by the employer is unreasonable if it is ineffective, inferior, or less extensive than the care requested by the employee. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997). The determination of whether care is reasonable is a question of fact. Long, 528 N.W.2d at 123.

Vitale testified Defendants have failed to authorize care for him with Pohl for pain management and have refused to pay for his Lyrica, Naproxen, and Voltaren gel refills. Dr. Dery referred Vitale to his primary care provider for ongoing pain management when he found he had reached maximum medical improvement. Defendants authorized care with Dr. Hostetler. Dr. Hostetler is retiring and Vitale sought care with Pohl, who is also in her group. Defendants refused to authorize care with Pohl and did not schedule an appointment with any medical provider before the June 1, 2021 hearing. Defendants want to authorize a new provider, but did not identify who that would be at hearing. I find Defendants have failed to authorize any care for Vitale for his pain management and that his Application for Alternate Care should be granted. Defendants are responsible for Vitale’s ongoing pain management with Pohl and for his Lyrica, Naproxen, and Voltaren gel refills.

ORDER

Vitale’s Application for Alternate Medical Care is granted. Defendants are responsible for Vitale’s ongoing pain management with Pohl and for his Lyrica, Naproxen, and Voltaren gel refills, related to the work injury.

Signed and filed this 1st day of June, 2021.



HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Nicholas Pothitakis (via WCES)

Stephen William Spencer (via WCES)