BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ROBERT GEORGIE,

Claimant,

vs.

SCOPE INDUSTRIES,

Employer,

and

THE HARTFORD,

Insurance Carrier,
Defendants.

FILED
SEP 16 2016
WORKERS' COMPENSATION

File No. 5062329

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, Robert Georgie.

The alternate medical care claim came on for hearing on September 16, 2016. 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 testimony, claimant's Exhibit A and defendants' Exhibits 1, 2 and 3.

Attorney Nate Willems entered an oral appearance on behalf of the claimant.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of neurosurgical care transferred to Mary Hlavin, M.D.

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 June 8, 2016.

Claimant was in a motor vehicle accident on June 8, 2016. He injured his back, hand, and knee. Defendant has authorized treatment for these conditions. Defendants requested that the claimant sign a patient's waiver on July 19, 2016 and received the patient's waiver on August 12, 2016. Defendants faxed the patient's waiver to Dr. Hlavin on August 12, 2016. (Exhibit 2, page 1)

Claimant was seen by Chad Abernathey, M.D., on August 8, 2016, two months after the accident. Dr. Abernathey noted:

> Mr. Robert Georgie is a 60 year old white male who presents with a chronic history of low back pain with radiation into the lower extremities which has been present for several years. The patient has undergone extensive conservative management under the care of Lisa Schepanski, PA-C, Dr. Kilburg, and Dr. Hlavin. The patient has also been treated at the University of Iowa and interestingly, has been told by physicians at the University of Iowa and the Wolfe Eye Clinic[1] that he cannot undergo any extensive spine operation due to risk of blindness due to AON.

(Ex. A, p. 1)

Dr. Abernathey discussed a possible decompression and discectomy procedure at L2-L3. He was not in favor of extending the fusion to L2- L3. He noted claimant was scheduled to see Dr. Hlavin. (Ex. A, p 2) Defendants' counsel agreed at the hearing that if claimant was not a surgical candidate that Dr. Abernathey would not provide continuing care for his back condition.

An email by case manager of September 14, 2016 stated that she expected to receive the records from Dr. Hlavin by September 20, 2016 and would provide the records to claimant's counsel. (Ex. 3, p. 1)

Claimant testified he would like to have his treatment with Dr. Hlavin. He has had treatment with her in the past and desires to continue to receive treatment from her. Claimant testified that since his accident he has had different pain in his back and new numbness in his lower extremity and buttock.

REASONING AND CONCLUSIONS OF LAW

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance and hospital services

[1] It does not appear that either party has been in contact with UIHC or the Wolf Eye Clinic to obtain records or confer with those treating physicians concerning the possible blindness caused by surgery. Dr. Hlavin's record may or may not have that information. It would seem prudent that information from those treating sources be obtained and considered. That, of course, is a medical judgment that will need to be made by medical personnel.

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.

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 June 17, 1986).

Claimant has received treatment for his back in the past by Dr. Hlavin and wants to have Dr. Hlavin be his authorized treating physician. Claimant has not articulated what specific care he is seeking other than to have Dr. Hlavin provide care.

Claimant asserts that care has not been prompt and that Dr. Abernathey has not developed a care plan. There has been delay in providing care to the claimant. It took two months for Dr. Abernathey to examine claimant. Dr. Abernathey has not decided whether he will perform surgery until he reviews the records from Dr. Hlavin.

The question is whether the delay is such that the defendants have failed to provide reasonable care. There was no evidence presented that there is specific

medical care that that defendants have failed to provide. Claimant did not prove that there is ongoing non-surgical care that has been recommended that defendants have not provided. Given the potential complications of any surgery, it is reasonable to investigate additional medical records.

I find that, at present, defendants are providing reasonable care. The delays, at present, are reasonable. Claimant has failed to prove he is entitled to alternate care.

ORDER

THEREFORE, IT IS ORDERED:

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

Signed and filed this 16th day of September, 2016.

James F. Elliott

JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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