

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

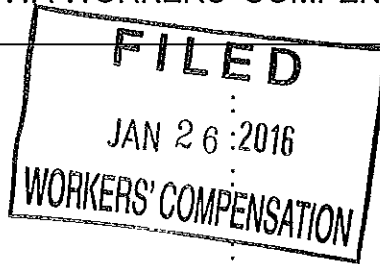
TAMMY NEWCOMB,

Claimant,

vs.

JOHN DEERE DAVENPORT WORKS,

Employer,
Self-Insured,
Defendants.



File No. 5052805

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, Tammy Newcomb. Claimant appeared personally and through her attorney, Jerry Soper. Defendant appeared through its attorney, Troy Howell.

The alternate medical care claim came on for a telephone hearing on January 25, 2016. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's February 16, 2015 Order, the undersigned has been delegated authority to issue a final agency decision in this alternate medical care proceeding. Therefore, this ruling is designated final agency action and any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code section 17A.

The record consists of claimant's exhibits 1-3, which include a total of 12 pages. The record also contains defendant's exhibits A-C, which contain nine pages. Claimant testified on her own behalf. No other witnesses were called to testify.

ISSUE

The issue presented for resolution is whether the claimant is entitled to an order authorizing a spinal cord stimulator trial through St. Luke's Pain Clinic.

FINDINGS OF FACT

The undersigned having considered all the evidence in the record finds:

Tammy Newcomb, claimant, sustained a low back injury working for the employer and had two back surgeries. Both surgeries, a lumbar discectomy and a lumbar fusion, were performed by David H. Segal, M.D. The lumbar fusion was the second surgery and occurred in January 2014.

On September 11, 2014, claimant sustained another injury to her low back, which is the subject of this claim. Defendant admitted the injury and that the current condition is causally related to the September 11, 2014 work injury. Claimant seeks an order of this agency granting her treatment through the St. Luke's Pain Clinic for a spinal cord stimulator trial. Defendant resists the requested referral to the pain clinic and argues that the stimulator trial is not reasonable and that claimant has refused alternate psychological treatment that has been offered for her condition, including behavioral therapy.

Defendant scheduled claimant to be evaluated by its occupational medicine physician, Lester Kelty, M.D. Dr. Kelty referred claimant to Dr. Segal for a neurosurgical evaluation. (Claimant's testimony) Dr. Segal became an authorized treating physician upon the referral from Dr. Kelty. Dr. Segal evaluated claimant on October 27, 2015 and recommended a thoracic dorsal spinal cord stimulator trial. Dr. Segal referred claimant to the St. Luke's Pain Clinic to conduct that stimulator trial.

Following that referral by Dr. Segal, defendants offered psychological behavioral counseling, per the recommendations of another authorized treating physician, Dr. Wagle. Claimant has declined any such treatment. Dr. Wagle's records and recommendations are not detailed within this evidentiary record. I am unable to determine if the offered behavioral therapy is reasonable care that is suited to treat claimant's work injury based on the record presented.

Claimant produces the recommendations of Dr. Segal as exhibit 1. Defendant contends that Dr. Segal's opinions should not be accepted or relied upon because he is under investigation and charges by the Iowa Board of Medicine. Claimant is aware of the pending charges against Dr. Segal, but the specifics of those charges are not contained within this evidentiary record. Defendant contends that Dr. Segal should no longer be the authorized treating neurosurgeon based upon the pending charges.

Pending charges against Dr. Segal may be a legitimate reason to transfer any future neurosurgical treatment through his office. However, the pending request in this alternate medical care proceeding is for authorization of the St. Luke's Pain Clinic. No evidence is presented in this record to suggest that the St. Luke's Pain Clinic is not a reasonable treatment option.

I find that claimant has established that a spinal cord stimulator trial is a reasonable treatment option based upon the recommendation from Dr. Segal. I cannot find that the recommended behavioral therapy is either a reasonable treatment option or that it is not a reasonable treatment option. No evidence is contained within this record

to suggest that both treatment options could not be pursued simultaneously. Defendant may request an opinion from the St. Luke's Pain Clinic regarding the reasonableness and necessity of psychological counseling, but defendant should also be prepared to follow the recommendations of the authorized pain clinic.

I find that there is insufficient evidence in this record to determine if the psychological treatment offered by defendants was reasonable, necessary and reasonably suited to treat claimant's condition and symptoms. Defendant relies upon the opinions of Christine Deignan, M.D., who essentially opines that the spinal cord stimulator is not reasonable and necessary. However, she also opines that claimant is essentially at maximum medical improvement. In this respect, I find that claimant has offered evidence of a reasonable treatment alternative that is more extensive than the opinions and recommendations of Dr. Deignan.

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); Bell Bros. Heating v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); 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. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). 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).

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care she has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. 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." Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995).

An employer's right to select the provider of medical treatment to an injured worker does not include the right to determine how an injured worker should be diagnosed, evaluated, treated, or other matters of professional medical judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988).

When a designated physician refers a patient to another physician, that physician acts as the defendant employer's agent. Permission for the referral from defendant is not necessary. Kittrell v. Allen Memorial Hospital, Thirty-fourth Biennial Report of the Industrial Commissioner, 164 (Arb. November 1, 1979) (aff'd by industrial commissioner). See also Limoges v. Meier Auto Salvage, Iowa Industrial Commissioner Reports 207 (1981).

In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997), the supreme court held that "when evidence is presented to the commissioner that the employer-authorized medical care has not been effective and that such care is 'inferior or less extensive' than other available care requested by the employee, . . . the commissioner is justified by section 85.27 to order the alternate care."

Having found that Dr. Segal is an authorized treating surgeon and that he made certain referrals and recommendations, I conclude that Dr. Segal's referral to the St. Luke's Pain Clinic made that facility an authorized medical provider regardless of whether defendant desired to transfer care to that facility.

Defendant offers the opinion of Dr. Deignan. Dr. Deignan opines that claimant is at maximum medical improvement given her refusal of behavioral psychological interventions. Certainly behavioral psychological counseling may be helpful to claimant's outlook and abilities to function. The undersigned is not in a position to determine which potential course of action is more likely to provide claimant sustained relief of her symptoms.

However, the referral to a qualified pain center appears to be a reasonable treatment option. Defendant may inquire of the pain center and any psychologist the pain center has evaluate claimant whether behavioral therapy may be a productive treatment option. Claimant may benefit from either or both of the proposed treatment options. However, I do not think it is reasonable treatment to offer claimant no further treatment per Dr. Deignan's recommendation, particularly if there is additional and more extensive treatment options that could be pursued. Therefore, I conclude that claimant has proven she is entitled to alternate medical care through the St. Luke's Pain Center.

ORDER

THEREFORE IT IS ORDERED:

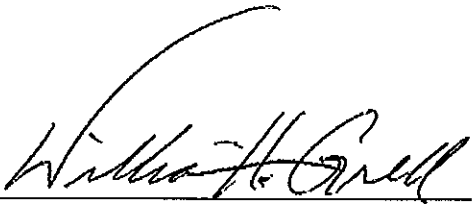
The claimant's petition for alternate medical care is granted.

Defendant shall authorize and schedule claimant to be evaluated at the St. Luke's Pain Center at the first available time.

Pursuant to the referral from Dr. Segal, the pain center should evaluate claimant for the possibility and reasonableness of a spinal cord stimulator trial, including any necessary psychological evaluation or testing.

Defendant is permitted to inquire of the pain center whether behavioral therapy is appropriate, reasonable, and necessary before or in conjunction with the spinal cord stimulator trial.

Signed and filed this 26th day of January, 2016.


WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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