

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ALICE JOHNSON,

Claimant,

vs.

OMG, INC.,

Employer,

and

LIBERTY MUTUAL INSURANCE
COMPANY,

Insurance Carrier,
Defendants.

FILED

AUG 01 2018

WORKERS COMPENSATION

File No. 5055510

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

This is a contested case proceeding under Iowa Code chapters 17A and 85. On March 7, 2017, the Iowa Workers' Compensation Commissioner approved a compromise settlement between the claimant Alice Johnson, and the defendants, OMG, Inc. and Liberty Mutual Insurance Co. The compromise settlement releases the defendants from all liability except as to future medical benefits related to Johnson's upper back. On July 19, 2018, Johnson filed an application for medical care alleging the authorized physician's care does not provide pain relief.

On July 20, 2018, the Division of Workers' Compensation served a notice of telephone hearing, scheduling a hearing for August 1, 2018, at 8:30 a.m.

A telephone hearing was held on August 1, 2018. Attorney Steve Hamilton represented Johnson. Johnson appeared and testified. Attorney Rene Lapierre represented the defendants. Exhibits 1 through 3 and A through C were admitted into the record.

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

On March 7, 2017, the Iowa Workers' Compensation Commissioner approved a compromise settlement between Johnson and the defendants. The compromise settlement releases the defendants from all liability except as to future medical benefits related to Johnson's upper back.

Dr. Daniel Miller and Christian Ledet, M.D. have provided treatment to Johnson and are authorized treating physicians. Johnson testified she has not seen Dr. Miller for a couple of years, but she has received treatment from Dr. Ledet for a couple of years. (Johnson Testimony)

On November 1, 2017, Johnson attended an appointment with Dr. Ledet, complaining of neck pain radiating down both upper extremities she described as crushing, sharp, and stabbing. (Exhibit A, page 1) Johnson rated the pain a nine out of ten, and noted she was receiving ten percent relief from pain medications or treatment. (Ex. A, p. 1) Dr. Ledet recommended a TENS unit, which Johnson received. (Ex. A, pp. 1, 7)

In March 2018, Johnson began seeing Timothy Sexton, D.C., for chiropractic manipulation and treatment. (Johnson Testimony; Ex. 1, p. 1) Johnson testified she saw Dr. Sexton for treatments three times per week initially and at the time of the hearing she was treating with him once or twice per week. (Johnson Testimony) Dr. Sexton treats Johnson's neck pain and low back pain. (Johnson Testimony) Johnson's low back pain is not an accepted condition. (Johnson Testimony; Exs. 1; C) Johnson reported following a treatment her pain would be a three or four out of ten, and a few days later her pain would return to a seven or eight out of ten. (Johnson Testimony)

Johnson returned to Dr. Ledet on June 5, 2018, complaining of neck pain radiating into both shoulders. (Ex. B, p. 8) Johnson reported her pain was a seven out of ten on average. (Ex. B, p. 8) Johnson relayed she was receiving chiropractic therapy from Dr. Sexton once weekly and "reports 50% relief." (Ex. B, p. 8) Johnson was also taking Tramadol, prescribed by her rheumatologist for a personal condition unrelated to her work injury, and Tylenol. (Ex. B, p. 8; Johnson Testimony) Johnson requested a referral to a chiropractor. (Ex. B, p. 14) Dr. Ledet declined to refer Johnson to a chiropractor and documented "she was offered and accepted a referral for physical therapy." (Ex. B, p. 14) Dr. Ledet also documented continuing care was deferred to Dr. Miller, in occupational medicine. (Ex. B, p. 14)

Johnson has not scheduled an appointment for physical therapy. (Johnson Testimony) Johnson reported she attended physical therapy in the past and it provided no relief. (Johnson Testimony) Johnson last attended physical therapy in September 2016. (Johnson Testimony) Johnson has not requested an appointment with Dr. Miller. (Johnson Testimony)

CONCLUSIONS OF LAW

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 the workers' compensation law. Iowa Code § 85.27(1) (2017). 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 the necessity therefor, 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 determination of whether care is reasonable is a question of fact. Long v. Roberts Dairy Co., 528 N.W.2d 122 (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).

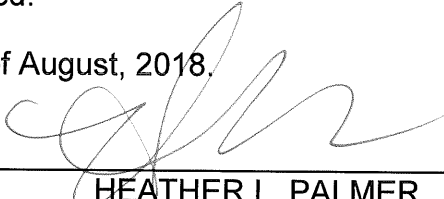
Johnson has complained to Dr. Ledet she is experiencing neck pain. During her last appointment with Dr. Ledet, Johnson reported she had received chiropractic manipulation, which alleviated her pain, and she requested a referral for chiropractic treatment. Dr. Ledet declined to make the referral, and informed Johnson he would authorize physical therapy. Johnson has not scheduled physical therapy, and testified physical therapy has not helped in the past. Johnson has not attended physical therapy for nearly two years. Dr. Ledet has continued to treat Johnson and ordered physical therapy. Dr. Miller is also an authorized physician and Johnson can return to Dr. Miller at any time. Johnson has not established the care authorized by the defendants is unreasonable, ineffective, inferior, or less extensive than the care requested by Johnson. Her application for alternate medical care is denied.

ORDER

THEREFORE IT IS ORDERED:

The application for alternate care is denied.

Signed and filed this 15th day of August, 2018.



HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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