BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KASANDRA CEJVANOVIC,

Claimant,

vs.

OLIVE GARDEN,

Employer,

and

XL INSURANCE AMERICA, INC.,

Insurance Carrier,
Defendants.

File No. 5066584

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, Kasandra Cejvanovic.

The alternate medical care claim came on for hearing on January 7, 2019. 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 Exhibits 1 – 3 and Defendants' Exhibit A. No witness was called. The parties relied upon the exhibits submitted.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of additional care for claimant's headaches, neck and shoulder pain and symptoms in claimant's fingers and back.

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 May 21, 2018. The defendants asserted that they have provided claimant reasonable care.

Claimant asked for additional care to be provided in a letter dated December 18, 2018 where claimant requested treatment for daily headaches, neck pain that goes into the shoulders and back and symptoms in claimant's fingers and hands. (Exhibit 2, page 1) The additional care was not provided.

Defendants submitted Exhibit A, an independent medical examination (IME) report by Robert Broghammer, M.D. dated November 7, 2018. (Ex. A, pp. 1 – 12)

Dr. Broghammer performed the IME on November 5, 2018. Dr. Broghammer noted that claimant sustained an injury on May 21, 2018 when a bottle fell onto claimant's head. Claimant was referred to and seen by Brian O'Shaughnessy, M.D. on June 25, 2018 for her head injury. Dr. O'Shaughnessy assessed claimant with persistent symptoms after head injury and that claimant had post-concussion syndrome. Dr. O'Shaughnessy discussed physical therapy and prescribed medications. (Ex. A, p. 3)

On August 30, 2018 Dr. O'Shaughnessy noted claimant was not following the typical concussion course and recommended an MRI and trigger point injections. (Ex. A, p. 4) On September 6, 2018 Dr. O'Shaughnessy performed multiple trigger point injections. (Ex. A, p. 4) Claimant had an MRI on that date which showed, "This demonstrated a negative noncontrast MRI of the brain with mild paranasal sinus disease." (Ex. A, p. 2)

Dr. Broghammer opined that claimant should have been at maximum medical improvement (MMI) around August 30, 2018 and wrote,

> ... and I believe at the present time all the medically necessary treatment has occurred through the Workers' Compensation System and any ongoing treatment would be due to Ms. Cejvanovic's behavioral component.

(Ex. A, p. 9) Dr. Broghammer said claimant has received all necessary medical treatment and was at MMI as of the last appointment with Dr. O'Shaughnessy. (Ex. A, p. 10)

On September 25, 2018, Dr. O'Shaughnessy saw the claimant. This was the last visit claimant had with Dr. O'Shaughnessy. Dr. O'Shaughnessy wrote:

> Kasandra Cejvanovic was seen for the follow-up of headaches and symptoms after a head injury. The last time I saw her we tried trigger point injections. She had to go to the emergency room later on that day. They thought she may have had an allergic reaction to the chemicals. It did not help her headaches. Her headaches are the same. Today she comes with her physical therapist. The physical therapist notes some mild

> difficulty with her neck but does not feel it is severe. At this point [sic] time I do not have anything else to offer this patient. We have tried therapy, trigger point injections, and oral medications. She continues to complain of headaches. From my point of view I do not have anything further to offer. She will not make further follow-ups with me. I would recommend as I did 2 appointments ago that she referred [sic] to a rehabilitation specialist that specializes in rehabilitating concussions. There was no charge for today's appointment.

(Ex. 3, p. 1) Dr. O'Shaughnessy was an authorized treating physician. Dr. O'Shaughnessy's note of September 25, 2018 stated that he had recommended a rehabilitation specialist that specializes in rehabilitating concussions two appointments ago—August 30, 2018. (Ex. 3, p. 1) Dr. O'Shaughnessy made the same recommendation on September 25, 2018.

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); 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 their own treating physician. Pote v. Mickow Corp., File No. 694639 Review-Reopening Decision (June 17, 1986).

In this case Dr. O'Shaughnessy is a treating physician. He has made recommendation for further care. Defendants have not provided this care even though it was recommended in August and September of 2018.

Defendants admit responsibility for the condition and injury which claimant is seeking treatment for in this proceeding.

I find that defendants are not providing reasonable care. Recommended treatment from an authorized physician is not being provided.

Defendants shall promptly refer claimant to a specialist in rehabilitant concussions and provide treatment for her headaches, neck, shoulder and hands and fingers related to the May 21, 2018 work injury.

ORDER

THEREFORE IT IS ORDERED:

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

Signed and filed this 7th day of January, 2019.

JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Gary B. Nelson
Attorney at Law
PO Box 637
Cedar Rapids, IA 52406-0637
gary@rushnicholson.com

Bill M. Lamson
Attorney at Law
11422 Miracle Hills Dr., Ste. 400
Omaha, NE 68154
blamson@evans-dixon.com

JFE/sam