

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SHANNON GARDNER,

Claimant,

vs.

MENARDS, INC.,

Employer,

and

PRAETORIAN INSURANCE CO.,

Insurance Carrier,
Defendants.

File No. 5054642.01

ARBITRATION DECISION

Head Notes: 2501

STATEMENT OF THE CASE

Claimant, Shannon Gardner, filed a petition in arbitration seeking workers' compensation benefits from Menards, Inc. ("Menards"), employer, and Praetorian Insurance Company, insurer, both as defendants. This matter was heard on May 18, 2023, with a final submission date of June 8, 2023.

The record in this case consists of Joint Exhibits 1 through 6, Claimant's Exhibits 1 through 3, Defendants' Exhibits A through C, and the testimony of claimant.

STIPULATIONS

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

ISSUE

1. Whether there is a causal connection between the injury and the claimed medical expenses.

On the hearing report, claimant indicated claimant's entitlement to alternate medical care was an issue in dispute in this case. At hearing, claimant indicated that since defendants were authorizing continued care and treatment of claimant at Steindler

Orthopedics and with the Ambulatory Surgical Center, alternate medical care was no longer an issue in dispute. (Hearing Transcript, pages 7-8)

FINDINGS OF FACT

Claimant sustained a compensable injury to her back on April 25, 2015. This matter was heard in arbitration on March 12, 2018, and continued to August 13, 2019.

Claimant's Exhibits 18 and 19 for the 2018/2019 hearings was a statement detailing outstanding bills where claimant sought payment. That statement included outstanding bills for Christopher Schuster, M.D., and Benjamin MacLennan, M.D. (Arbitration Decision, Claimant's Exhibit 18, pages 2-4, 17)

An arbitration decision for this matter was filed on December 20, 2019. That decision ordered, in part, that "[d]efendants are responsible for medical expenses of Dr. MacLennan as set forth in Claimant's Exhibits 18 and 19, consistent with this decision." (Arb. Dec., p. 17)

That decision was appealed by the defendants. The appeal decision was issued on September 24, 2020. The appeal decision affirmed the arbitration decision. The appeal decision also ordered that "[d]efendants are responsible for the medical expenses of Dr. MacLennan as set forth in Exhibits 18 and 19, consistent with the arbitration decision." (Appeal Decision, p. 3) The commissioner's decision was not appealed.

Claimant seeks payment for medical and out-of-pocket expenses for the following providers:

PROVIDER	DATES OF SERVICE	RECORD
Iowa City Ambulatory Surgery Center	3/16/2018 to 7/29/2022	Ex. 3, p. 29; Claimant's Post-Hearing Brief, p.2
Iowa City Family Practice/ Dr. Schuster	10/09/2015 to 06/30/2020	Ex. 3, pp. 29-30; Claimant's Post-Hearing Brief, pp. 4-6
Physiotherapy Associates, a/k/a Select Physical Therapy	08/2017 to 05/2018	JE 4, pp. 80-109; Claimant's Post-Hearing Brief, pp. 5-6
Mercy Hospital	11/15/2016 to 11/16/2016	Ex. A, p. 1; Ex. 3, p. 30; Claimant's Post-Hearing Brief pp. 6-7
Progressive Rehab	10/2016 to 03/2017	Ex. 3, p. 32; Claimant's Post-Hearing Brief, pp. 7-8
Steindler Orthopedic Clinic		Ex. A, p. 1; Ex. 3, pp. 33-34; JE 6, pp. 137-147; Claimant's Post-Hearing Brief pp. 8-10

Claimant testified at hearing that she was referred to Dr. Schuster by her employer. She says she was not aware Dr. Schuster had been “de-authorized.” (Tr., 14-15)

Claimant testified she was initially sent to Dr. Schuster. She said that she was later sent for treatment to the Steindler Clinic. (Tr., pp. 18-19)

Claimant testified she has been treating with Dr. MacLennan. (Tr., p. 20) She said she understands that the workers’ compensation insurer has been authorizing her continued care with Dr. MacLennan with Steindler Orthopedics. (Tr., pp. 20-21)

CONCLUSION OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3).

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 1975).

The doctrine of res judicata includes both claim preclusion and issue preclusion. Winnebago Industries, Inc. v. Haverly, 727 N.W.2d 567, 571 (Iowa 2006). Principles of res judicata are also applicable to administrative decisions. Bd. of Sup’rs, Carroll Cty. v. Chi. & N.W. Transp. Co., 260 N.W.2d 813 (Iowa 1977). Under issue preclusion, once a court has decided an issue of fact or law necessary to its judgment, the same issue cannot be re-litigated in later proceedings.

Steindler Orthopedic Clinic

Defendants’ counsel indicated at hearing that defendants were authorizing treatment through Steindler Orthopedics. (Tr., pp. 7-8; Defendants’ Post-Hearing Brief, p. 8)

Iowa City Ambulatory Surgical Center

Defendants’ counsel indicated at hearing that defendants were authorizing treatment for Iowa City Ambulatory Surgical Center. (Tr., pp. 7-8; Defendants’ Post-Hearing Brief, p. 8)

Mercy Medical Center

Defendants indicated in their brief they accepted responsibility for payment of bills with Mercy Medical Center. (Defendants’ Brief, p. 8)

Progressive Rehabilitation

Defendants' counsel indicated at hearing that defendants were accepting responsibility for payment of bills with Progressive Rehabilitation. (Tr., pp. 7-8; Defendants' Brief, p. 8)

Iowa City Family Practice/Dr. Schuster

Defendants denied liability for bills regarding Iowa City Family Practice and Dr. Schuster.

As detailed above, this case was originally heard in arbitration in March of 2018 and August of 2019. An arbitration decision was issued in that case in December 2019. Exhibit 18 and 19, from that hearing, are spreadsheets of medical expenses. Those expenses include medical expenses with Dr. MacLennan and Dr. Schuster, among others.

The arbitration decision held that defendants were liable for billings detailed in Exhibit 18 and 19 for Dr. MacLennan only. That decision was affirmed on appeal. Claimant did not appeal the agency's final decision. The doctrine of res judicata precludes claimant from bringing any claims for medical benefits that should have been litigated in the 2018/2019 hearing.

Regarding any claim for Dr. Schuster subsequent to the 2018/2019 arbitration hearing, claimant contends she was referred by her employer to Dr. Schuster following her injury. (Arbitration Decision, page 4; Tr., pp. 14-15) Claimant testified at hearing she was never notified that Dr. Schuster was no longer an authorized provider. (Tr., p. 15)

Claimant also testified at hearing she was referred from Dr. Schuster to Dr. MacLennan by her employer. (Tr., p. 14) The arbitration decision indicates that Dr. MacLennan performed claimant's back surgery and her treatment remained with Dr. MacLennan following her surgery. (Arbitration Decision pp. 5-6)

As indicated above, Claimant's Exhibits 18 and 19 from the 2018/2019 arbitration hearings were a spreadsheet of outstanding bills for medical care. That spreadsheet included charges for services with Dr. Schuster and Dr. MacLennan. The arbitration decision found defendants were only to pay for the medical expenses of Dr. MacLennan found in Exhibits 18 and 19, and not Dr. Schuster. (Arbitration Decision, p. 17) The 2019 arbitration decision has already found Dr. MacLennan, not Dr. Schuster, as the authorized provider for claimant.

Finally, claimant is seeking a payment of medical treatment for Dr. Schuster from August 6, 2018, August 21, 2018, February 11, 2019, April 29, 2019, January 9, 2020, and June 30, 2020. (JE 2) There is no evidence in the record of the treatment provided by Dr. Schuster before those dates. As a result, claimant has failed to carry her burden of proof or provide any evidence, for those periods, that treatment for these dates was reasonable and beneficial.

Claimant is precluded, by the doctrine of res judicata, from litigating billings, in this hearing, that should have been submitted at the 2018/2019 hearing. The 2019 arbitration decision found Dr. MacLennan, not Dr. Schuster, was the authorized provider for claimant's care. Claimant failed to provide medical records for dates of treatment as detailed above. For these reasons, claimant has failed to carry her burden of proof that defendants are liable for any payments of services by Dr. Schuster as detailed in Claimant's Exhibit 3, pages 29-30.

As it is found that Dr. Schuster was not an authorized provider for claimant's care, after care was transferred to Dr. MacLennan, defendants are also not liable for any costs incurred with Select PT or any other provider that claimant was referred to by Dr. Schuster. In addition, defendants are not liable for any services with Select PT for services between August 2017 and May 2018, as those charges should have and could have been litigated in the 2018/2019 hearings.

As noted above, at hearing claimant withdrew her request for alternate medical care as defendants were authorizing and providing continued care with the Steindler Orthopedic Clinic. (Tr., pp. 7-8)

At the end of claimant's brief, claimant asked for an order for further medical care to be provided by Steindler Clinic. Claimant also seeks defendants to authorize continued care with Dr. Schuster. (Claimant's Post-Hearing Brief, p. 11)

As detailed, defendants have agreed to continue to authorize and provide claimant's ongoing care with Steindler Clinic. Because it is found that Dr. Schuster is not an authorized provider, and because claimant withdrew her claim for alternate medical care at hearing, defendants will not be ordered to authorize and provide care with Dr. Schuster.

ORDER

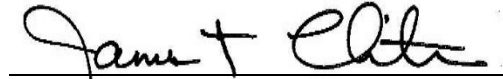
THEREFORE IT IS ORDERED:

That defendants shall pay medical expenses and co-pays, detailed in Exhibit 3, for Iowa City Ambulatory Surgical Center, Mercy Iowa City (regarding charges for claimant's 2016 surgery), Progressive Rehabilitation, Dr. MacLennan, and Steindler Orthopedic Clinic.

That defendants shall pay costs.

That defendants shall file subsequent reports of injury as required by this agency under Rule 876 IAC 3.1(2).

Signed and filed this 7TH day of September, 2023.


JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Thomas Wertz (via WCES)

Charles Blades (via WCES)

Rachael Neff (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.