

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LISA MILLER,

FILED

Claimant,

APR 12 2018

File No. 5061798

vs.

WORKERS COMPENSATION ALTERNATE MEDICAL

WHIRLPOOL AMANA
MANUFACTURING,

CARE DECISION

Employer,
Self-Insured,
Defendant.

HEAD NOTE NO: 2701

STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapters 17A and 85. The expedited procedure of rule 876 IAC 4.48, the "alternate medical care" rule, is requested by claimant, Lisa Miller. Claimant filed a petition on March 30, 2018, alleging dissatisfaction with medical care to date. Defendant filed an answer on April 9, 2018. Defendant admitted the occurrence of a work injury on September 21, 2017 and liability for the medical condition sought to be treated by this proceeding.

The alternative medical care claim came on for hearing on April 11, 2018. The proceedings were recorded digitally and constitute the official record of the hearing. By an order filed February 16, 2015 by the workers' compensation commissioner, this decision is designated final agency action. Any appeal would be by petition for judicial review under Iowa Code section 17A.19.

The evidentiary record consists of Claimant's Exhibits 1 through 4 and Defendant's Exhibits A through B. The parties submitted the matter for consideration on the written records and oral arguments of counsel.

ISSUE

The sole issue presented for resolution is whether claimant is entitled to alternate medical care in the form of removal of defendant's right to direct care relative to the September 21, 2017 work injury.

FINDINGS OF FACT

The undersigned, having considered all of the testimony and evidence in the record, finds:

Claimant sustained a stipulated work related injury on September 21, 2017. Defendant authorized medical care with Peter Matos, M.D. Claimant's course of care centered initially upon right shoulder complaints, with Dr. Matos ordering physical therapy and conservative measures. On December 11, 2017, claimant returned to Dr. Matos in follow up of right shoulder complaints. Claimant reported 75 percent improvement and denied shoulder pain. At that visit, however, Dr. Matos noted claimant complained of "new low back and mid back pain" which claimant related to her right shoulder condition. (CE1, page 1) The medical record in evidence is incomplete and does not include Dr. Matos' assessments or plan of treatment for the visit on December 11, 2017.

On January 8, 2018, claimant returned to Dr. Matos for evaluation. Claimant again denied shoulder pain and expressed complaints of "new low back and mid back pain that she states is from her shoulder pain." Following examination, Dr. Matos assessed shoulder pain and ordered additional physical therapy. Dr. Matos also ordered trigger point injections to claimant's back. (CE1, p. 1)

On January 23, 2018, claimant sought evaluation with Thomas Paynter, M.D. of Physicians' Clinic of Iowa. Claimant complained of right-sided thoracic pain, beginning approximately four months prior with a work-related injury. (CE2, p. 1) Following x-rays and examination, Dr. Paynter assessed right-sided thoracic back pain. (CE2, p. 2) He opined claimant was nonsurgical, issued a prescription for meloxicam, recommended a home exercise program, and opined claimant would likely benefit from trigger point injections. (CE2, p. 3)

Claimant's counsel authored correspondence to defendant's counsel on February 20, 2018, requesting additional care per Dr. Matos. (CE3, p. 1)

On March 9, 2018, claimant's counsel again authored correspondence to defendant's counsel. On this occasion, counsel requested scheduling of a repeat appointment with Dr. Matos or a pain clinic. In the event such care was not authorized, claimant advised of an intention to file an alternate medical care petition. (CE4, p. 1)

Defendant's counsel authored correspondence to claimant's counsel on March 22, 2018. He noted defendant believed causation needed to be addressed and indicated he had contacted Dr. Matos to secure his opinion with respect to the work-relatedness of claimant's back complaints. Counsel also represented that if Dr. Matos related claimant's back complaints to the work injury, the recommended trigger point injections would be authorized. (DEA)

On March 30, 2018, claimant filed the instant alternate medical care petition.

On April 5, 2018, defendant's counsel contacted claimant's counsel and advised he had discussed causation with Dr. Matos. Counsel noted Dr. Matos opined claimant's back complaints were work-related and accordingly, represented the pending injections would be authorized and scheduled. (DEB)

This matter proceeded to telephonic hearing on April 11, 2018. At that time, claimant requested it be determined that defendant had lost the right to direct claimant's medical care relative to the entire September 21, 2017 injury. Claimant argued Dr. Matos, an authorized physician, had issued a treatment recommendation over 90 days prior and defendant's refusal to authorize the care amounted to a failure to provide reasonable and necessary medical care without undue delay.

Defendant argued it behaved reasonably in handling claimant's claim, as claimant's initial complaints had involved only the right shoulder. Counsel noted defendant provided prompt and continuous care for claimant's right shoulder complaints from the date of injury, September 21, 2017, through December 2017. It was not until December 2017 that claimant raised complaints of back pain to Dr. Matos and not until January 2018 that Dr. Matos recommended treatment of claimant's back complaints. At neither time did Dr. Matos offer an opinion regarding causal connection between claimant's back complaints and the work injury. Defendant's counsel specifically sought a causation opinion from Dr. Matos and once Dr. Matos causally related claimant's back complaints to the work injury, authorization was made for the recommended injections. Counsel was not immediately aware, however, if the third party administrator had conveyed this authorization and if so, to which provider(s). He similarly was unaware if an appointment for such care had been scheduled. Counsel also argued that defendant should not, under the facts of this case, lose the right to direct care relative to claimant's right shoulder complaints, as defendant had promptly and continuously provided care relative to that body part.

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).

Iowa Code section 85.27(4) provides, in relevant part:

For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. . . . The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he 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).

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 1975).

“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).

Dr. Matos, an authorized treating physician, ordered trigger point injections on January 8, 2018. Such a treatment recommendation, ordinarily, should be authorized and approved in short order. However, in this case, Dr. Matos recommended such treatment with respect to a body part which had not been initially noted as a complaint arising from the work injury. Dr. Matos was authorized and provided treatment for claimant’s right shoulder. It was not until nearly 3 months post-injury, on December 11, 2017, that Dr. Matos noted “new” back pain. It was not until approximately 3 ½ months post-injury, on January 8, 2018, that Dr. Matos recommended specific treatment for claimant’s back.

Claimant specifically relies upon the timing of this January 8, 2018 recommendation as the basis of her request for relief. However, Dr. Matos did not contemporaneously relate claimant’s back complaints to the work injury. Defendant is not responsible for medical care on complaints unrelated to the work injury. Upon receipt of Dr. Matos’ records and claimant’s inquiries, defendant promptly notified claimant’s counsel that further investigation was being made into the issue of causal

connection of claimant's back complaints to the work injury. Once Dr. Matos tied claimant's back complaints to the work injury, defendant's counsel notified claimant's counsel that the ordered trigger point injections were authorized.

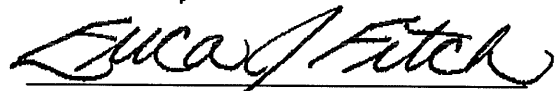
On these facts, I find defendant behaved reasonably in investigating and authorizing care for claimant's claim. As claimant's back complaints were not noted until nearly 3 months post-injury and are located in a distinct bodily region, it is entirely reasonable for defendant to investigate causal connection between the work injury and those complaints. While such an investigation ideally could have been completed in less than three months, this timeframe is not inherently unreasonable; particularly when claimant's counsel did not specifically request authorization until February 20, 2018. Defendant has now authorized the specific treatment modality recommended by Dr. Matos. I cannot find that defendant's actions in investigating and authorizing care warrant the severe sanction requested by claimant, removal of defendant's right to direct care with respect to the entirety of claimant's September 21, 2017 claim.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's application for alternate medical care is denied.

Signed and filed this 12th day of April, 2018.



ERICA J. FITCH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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