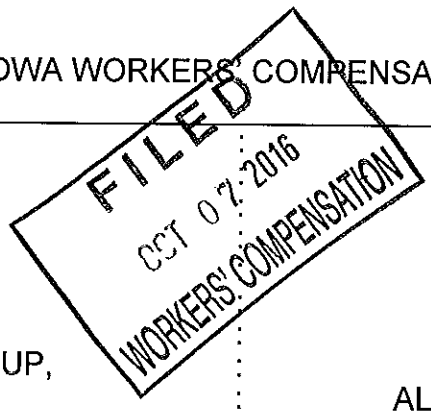
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



JULIE M. PIKE,

Claimant,

vs.

THE RASMUSSEN GROUP,

Employer,

and

ARCH INS. CO.,

Insurance Carrier,

and

SECOND INJURY FUND OF IOWA,

Defendants.

File No. 5057073

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

This is a contested case proceeding under Iowa Code chapters 85 and 17A. The expedited procedures of rule 876 IAC 4.48, the "alternate medical care" rule, are invoked by claimant, Julie Pike.

This alternate medical care claim came on for hearing on October 7, 2016. The proceedings were recorded digitally and constitute the official record of the hearing. By an order filed by the workers' compensation commissioner, this decision is designated final agency action. Any appeal would be a petition for judicial review under Iowa Code section 17A.19.

The record in this case consists of claimant's Exhibits 1-10, defendant's Exhibits A thorough C, and the testimony of claimant.

ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of authorization of care for claimant's left knee flare-ups with Unity Point Urgent Care Southglen or Amy Lamberti, P.A.

FINDINGS OF FACT

Defendants accept liability for a left knee injury to claimant occurring on or about September 25, 2014.

On June 30, 2015 claimant was evaluated by Jason Sullivan, M.D. for her left knee. Claimant was found to be at maximum medical improvement (MMI). Claimant was allowed to return to work full time. Claimant was recommended to wear tennis shoes at work and wear a knee brace. (Exhibit A)

In a July 29, 2015 letter Dr. Sullivan found claimant had a 76 percent permanent impairment to the left lower extremity. Dr. Sullivan opined claimant would require a total knee replacement (TKR) in the future, and that he would causally relate the need for a TKR to the September 25, 2014 date of injury. (Ex. 9)

In a February 8, 2016 report, Dr. Sullivan indicated claimant no longer needed to wear a brace at work. (Ex. B)

Claimant returned in follow-up with Dr. Sullivan on March 29, 2016 with complaints of daily pain in the right knee. Claimant believed right knee pain was caused by overcompensating for the left knee. Claimant was assessed as having right knee pain of unknown etiology. Claimant was told that if her left knee pain worsened or if she had a gait disturbance, claimant could see Matthew DeWall, M.D. Both Dr. DeWall and Dr. Sullivan are orthopedic surgeons with the DMOS clinic. (Ex. C)

On June 14, 2016 claimant was evaluated by Dr. DeWall. Claimant had some symptoms with her left knee. Her main symptoms were with her right knee and hip. As claimant was not having many symptoms with the left knee, Dr. DeWall indicated treatment for the left was not necessary. (Ex C)

In a September 20, 2016 e-mail, at 1:20 p.m., claimant's counsel indicated, to defense counsel, claimant was having left knee pain. Claimant requested authorization to treat with her primary care doctor, P.A. Lamberti. (Ex. 1)

In a September 20, 2016 response, defendants' counsel would not authorize P.A. Lamberti to treat claimant based on Dr. DeWall's June 14, 2016 report. (Ex. 2)

In a September 20, 2016 response, claimant's counsel indicted treatment was requested for the 2014 left knee injury, not a new 2016 right knee problem. (Ex 3)

In a September 21, 2016 e-mail, defendants authorized claimant to treat with Dr. DeWall and told claimant to set up an appointment with Dr. DeWall. (Ex. 4)

In a September 21, 2016 response, claimant's counsel indicated claimant required immediate care and was on her way to an emergency room for treatment. (Ex. 5)

In a September 21, 2016 note, Christina Collins, P.A. indicated claimant should remain off work until September 26, 2016. (Ex. 6)

Exhibit 10 is a CD containing footage of claimant walking. The footage shows claimant climbing down from a semi-truck cab, limping, and climbing back into the truck cab. The video shows claimant using her right leg to bear weight while climbing back into the cab. (Ex. 10)

Claimant testified that since her knee surgery, she occasionally has flare-ups to her left knee condition. She said that following her surgery she had an infection to her knee that went undetected for approximately a week. She said that once the infection was diagnosed, she spent approximately a week in the hospital for the infection. Claimant testified that as a result, she is very cautious when symptoms in her knee flare up.

Claimant testified that in the past, when she has had flare-ups, the insurer has allowed her to treat with P.A. Lamberti. She said when she had a recent flare-up, occurring on or about September 20, 2016, the insurer would not authorize her to see P.A. Lamberti.

Claimant testified it takes approximately two weeks for her to get an appointment with Dr. DeWall, and she feels she needs to see a care provider immediately when her knee symptoms flare.

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. 6.14(6).

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.

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.

The record indicates claimant has received authorization, in the past from the insurer to see P.A. Lamberti for flares of her knee condition. Recently when claimant asked for immediate care for her symptoms, the defendants denied care, for about a day, when there was a mistake regarding which injury claimant was seeking care. Claimant sought and received emergency care with P.A. Collins, who took claimant off work for several days. There is no indication that, at the time of hearing, claimant needed emergency care.

Defendants have authorized Dr. DeWall to treat claimant and asked claimant to set up an appointment with him at her convenience. Given this record, I cannot find the care offered by defendants is unreasonable.

I appreciate claimant's need for immediate care. However, the record indicates claimant does not need emergency care for a flare-up of her knee condition at the time of hearing, as she has recently received care from P.A. Collins. Defendants have authorized claimant to treat with Dr. DeWall. The records do not indicate claimant has asked Dr. DeWall if she can treat with a physician's assistant, should her symptoms flare in the future. Claimant should seek the care, offered by defendants with Dr. DeWall in the near future. Claimant should ask Dr. DeWall if she can seek future care, on an emergency basis if needed, with a physician's assistant or with Southglen.

ORDER

THEREFORE, it is ordered:

That claimant's petition for alternate medical care is denied.

Signed and filed this 7th day of October, 2016.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Marlon Mormann
3320 Kinsey Ave.
Des Moines, IA 50317-2712
aljmormann@gmail.com

Garrett Lutovsky
Attorney at Law
1350 Woodmen Tower
Omaha, NE 68102
glutovsky@ekoklaw.com

JFC/sam