

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

PATRICIA DE ESPADA,

Claimant,

vs.

FARMLAND FOODS n/k/a SMITHFIELD
FOODS, INC.,

Employer,

and

SAFETY NATIONAL CAS, CORP.,

Insurance Carrier,
Defendants.

File No. 5063294.01

ALTERNATE MEDICAL CARE
DECISION

Head Note: 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, Patricia De Espada. Claimant appeared telephonically and through her attorney, Dennis McElwain. Defendants appeared through their attorney, Michael Miller. The hearing was interpreted by Ernest Nino-Murcia.

The alternate medical care claim came on for hearing on May 27, 2022. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's February 16, 2015 Order, the undersigned has been delegated authority to issue a final agency decision in this alternate medical care proceeding. Therefore, this ruling is designated final agency action and any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code section 17A.

The record consists of claimant's exhibits 1 through 4 and defendants' exhibits A through D. Claimant provided testimony. No other witnesses were called. Counsel offered oral arguments to support their positions.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of MRI testing of her bilateral shoulders at OrthoNebraska, as recommended by Mark Goebel, M.D.

FINDINGS OF FACT

Claimant sustained an injury, which arose out of and in the course of employment, on December 12, 2014. The initial injury involved claimant's right shoulder, and she eventually developed left shoulder sequela, as well as bilateral upper extremity injuries. The current petition involves the bilateral shoulders. Defendants admitted liability for the bilateral shoulder injuries and the current condition for which claimant seeks alternate medical care.

Defendants have authorized and directed medical care for the injuries since December 2014. She was initially authorized to treat with Charles Rosipal, M.D. Dr. Rosipal has performed two right shoulder surgeries, the first in 2015 and the second in 2016. Claimant continued working for Smithfield after the surgeries, but continued to have shoulder pain. Claimant returned to Dr. Rosipal in 2018. At that time, he ordered MRI studies of both shoulders. The right shoulder showed a small area of possible recurrent full thickness rotator cuff tearing. (Claimant's Exhibit 1, p. 2) The left shoulder showed some rotator cuff tear pathology. Claimant testified that Dr. Rosipal told her that he could not do any additional surgeries since she was still working, and she should seek a second opinion. She testified that she took his recommendation to her employer, but no second opinion was ever scheduled.

Dr. Rosipal did recommend claimant attend physical therapy in 2018, for which she saw Brian Koeppen, DPT, CMT. (Defendants' Exhibit B, pp. 4-5) Mr. Koeppen saw claimant for five treatments, and noted inconsistencies with claimant's presentation and reports of pain and functioning. Ultimately, Dr. Rosipal determined no additional physical therapy was warranted due to claimant's lack of progress. (Def. Ex. B, p. 4)

Claimant returned to Dr. Rosipal's office in February 2020. She testified that she was examined by a physician's assistant at that appointment. Dr. Rosipal came in at the end of the appointment and told her again to get a second opinion, and told her he could not offer her any additional treatment since she continued to work. Claimant testified that she again asked her employer for a second opinion, but no appointment was scheduled.

Claimant's attorney sent her to Mark Goebel, M.D., who she first saw on April 6, 2020. (Cl. Ex. 1, p. 1) Dr. Goebel reviewed prior medical records and the MRI studies from 2018. He noted that claimant continued to work at Smithfield with permanent restrictions. She reported pain at a level 8 out of 10 in both shoulders. On physical examination, he noted restricted range of motion in both shoulders. (Cl. Ex. 1, p. 2) He took x-rays, which showed signs of mild arthritis in both shoulders. Dr. Goebel's recommendation was to obtain repeat MRI studies of both shoulders, specifically at OrthoNebraska. He noted that because of claimant's prior right shoulder surgery, MRI images would be distorted. However, the MRI scanner at OrthoNebraska has the ability to "suppress the interference from prior surgical intervention and give a true accurate reading." He also noted that the doctor who reads the MRI studies at OrthoNebraska, Dr. Burdeny, "is one of the top MRI radiologists in the country. He is exceedingly

accurate.” Dr. Goebel noted that once he had updated MRI studies, he would be able to formulate a treatment plan. (Cl. Ex. 1, pp. 2-3)

Claimant continued to work for Smithfield until she was injured in an unrelated motor vehicle accident in August of 2020. She has not returned to work since that time. Defendants referred claimant to Joseph Chen, M.D., for an evaluation on September 21, 2021. (Def. Ex. C, pp. 6-8) Dr. Chen opined that claimant had several important misunderstandings about her shoulder muscles and tendons, which has resulted in her developing “numerous fear avoidance behaviors.” (Def. Ex. C, p. 7) He did not recommend any additional physical therapy for either shoulder, noting she had had over 59 sessions of physical therapy over the course of her treatment. (Def. Ex. C, pp. 7-8)

Claimant returned to Dr. Goebel on October 25, 2021. (Cl. Ex. 1, p. 4) Dr. Goebel’s recommendation remained the same regarding updated MRI studies at OrthoNebraska, following which he would formulate a treatment plan. (Cl. Ex 1, p. 5)

Defendants sent claimant for an independent medical evaluation (IME) with Edward Fehringer, M.D., which took place on November 8, 2021. (Def. Ex. D, p. 9) Dr. Fehringer did not recommend additional MRI studies of either shoulder. He explained that because claimant’s right shoulder did not respond well to the prior surgical interventions, additional surgeries would not be recommended, and updated MRI studies would not change that opinion. He noted that many full-thickness rotator cuff tears can be treated effectively without surgery, and did not recommend any further intervention or imaging studies.

On January 6, 2022, Dr. Rosipal authored a letter to defense counsel after reviewing Dr. Goebel’s record from April 6, 2020, and Dr. Fehringer’s IME report. (Def. Ex. A, p. 1) Dr. Rosipal opined that repeat MRI studies are not indicated, given that claimant previously had two surgeries on her right shoulder without success. He noted that the tear on the left side is a similar size. He does not believe additional MRI studies are needed as the results will not change treatment. On January 14, 2022, Dr. Rosipal issued a second letter, after reviewing the additional record from Dr. Goebel dated October 25, 2021. (Def. Ex. A, p. 3) His opinion remained unchanged.

On February 27, 2022, Dr. Goebel authored a letter to claimant’s attorney. (Cl. Ex. 1, pp. 6-9) He had reviewed the reports of Dr. Rosipal and Dr. Fehringer. (Cl. Ex. 1, p. 9) He continued to recommend repeat MRI studies of both shoulders, to be performed at OrthoNebraska and read by Dr. Derek Burdeny. He further explained that claimant is only 60 years of age and remains active. (Cl. Ex. 1, p. 8) As such, he does not believe it is appropriate to abandon her care by stating nothing further can be done for her. He noted that she has complied with extensive conservative treatment, which has failed. He believes that more likely than not, “something can be done to help diminish her persistent daily discomfort and restricted motion and weakness in both shoulders.” He opined that it is in claimant’s best interest to have the updated MRI scans performed to determine “the exact current status” of both shoulders and determine whether additional intervention could be of benefit to her. (Cl. Ex. 1, pp. 8-9) He also noted that as time goes by her rotator cuff tears could worsen. (Cl. Ex. 1, p. 9)

Claimant testified that due to the condition of her shoulders, she is no longer able to perform normal tasks as she did before. She can no longer lift heavy items, has trouble using her arms overhead, and cannot pull things. She related that two days prior to hearing, she dyed her hair, and she experienced a burning pain in her shoulders just from having her arms extended upward for a short period of time.

Defendants are not currently offering any medical treatment for claimant's bilateral shoulders, as their authorized treating physician has indicated no additional treatment is needed. As such, defendants are not offering medical care that is reasonably suited to treat claimant's injury. However, claimant has established that alternate treatment options exist that are more extensive and/or superior to the authorized treatment offered by defendants. Dr. Goebel has indicated that updated MRI studies conducted at OrthoNebraska and read by Dr. Burdeny is the first step required in order for him to formulate an appropriate treatment plan. As such, claimant has proven entitlement to alternate medical care.

REASONING AND CONCLUSIONS OF LAW

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.

Iowa Code § 85.27(4).

Defendants' "obligation under the statute is confined to *reasonable* care for the diagnosis and treatment of work-related injuries." Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995) (emphasis in original). In other words, the "obligation under the statute turns on the question of reasonable necessity, not desirability." Id.

Similarly, an application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care she 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. See Iowa Code § 85.27(4). Thus, 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 6.904(3)(e); Long, 528 N.W.2d at 124.

However, an employer's right to select the provider of medical treatment to an injured worker does not include the right to determine how an injured worker should be diagnosed, evaluated, treated, or other matters of professional medical judgment. Assmann v. Blue Star Foods, Inc., File No. 866389 (Declaratory Ruling, May 18, 1988). 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).

Defendants argue that this is not a case in which care has been abandoned, and point out they have provided appropriate treatment for claimant's injuries since December 2014. However, defendants are not currently offering any additional treatment, as the physicians they have authorized for treatment and consulted for independent evaluations are not recommending any additional care. This would not necessarily be an issue if no medical provider was offering care, but in this case, Dr. Goebel has indicated that he believes something more can be done to help claimant with her bilateral shoulder symptoms. In order to formulate a treatment plan, he first needs updated MRI studies of claimant's bilateral shoulders.

Ultimately, determining whether care is reasonable under the statute is a question of fact. Long, 528 N.W.2d at 123. Additionally, 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. v. Reynolds; 562 N.W.2d 433, 437 (Iowa 1997).

I found that defendants are not currently offering medical care that is reasonably suited to treat claimant's bilateral shoulder injuries. Additionally, I found that claimant has established that alternate treatment options exist that are more extensive and/or superior to the authorized treatment currently offered by defendants, which is none. Therefore, I conclude that claimant has established entitlement to alternate medical care. Defendants are ordered to authorize and pay for claimant to have bilateral shoulder MRI studies at OrthoNebraska, as recommended by Dr. Goebel.

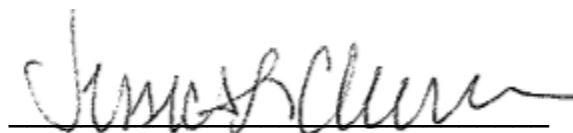
ORDER

THEREFORE IT IS ORDERED:

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

Defendants shall immediately authorize and timely pay for claimant to have MRI studies of her bilateral shoulders at OrthoNebraska, as recommended by Dr. Goebel.

Signed and filed this 27th day of May, 2022.

A handwritten signature in dark ink, appearing to read 'Jessica L. Cleereman', is written over a horizontal line.

JESSICA L. CLEEREMAN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Dennis McElwain (via WCES)

Michael J. Miller (via WCES)