

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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DENNIS HENGL,

Claimant,

vs.

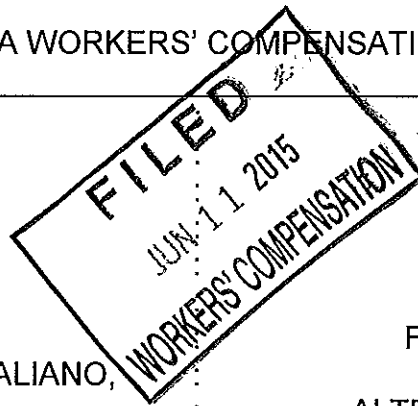
BIAGGI'S RISTORANTE ITALIANO,

Employer,

and

NATIONWIDE INSURANCE CO.,

Insurance Carrier,  
Defendants.



File No. 5052620

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

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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, Dennis Hengl.

The alternate medical care claim came on for hearing on June 11, 2015. The proceedings were tape-recorded, which constitutes the official record of this proceeding by order filed February 16, 2015.

The record consists of claimant's exhibits 1 and 2; defendants' exhibit A as well as the testimony of the claimant.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of physical therapy, water therapy and a physical examination by an internist.

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 February 6, 2014 but deny liability for mental health, head injury, PTSD and headaches. Claimant's injury occurred

when he slipped and fell on the floor. As a result of this injury claimant was treated for a compression fracture of the lumbar spine at L1.

Claimant has been provided physical therapy and work hardening. He also underwent a functional capacity evaluation. The claimant missed physical therapy sessions and work hardening sessions. His effort for the functional capacity evaluation was deemed invalid.

Claimant had an independent medical evaluation with Robert Milas, M.D. on February 24, 2015. Dr. Milas opined that claimant warrants further work-up and evaluation of his post-concussive syndrome and the L1 fracture. Dr. Milas' report confirms that claimant has had x-rays and an MRI as well as eight months of care with Michael Dolphin, D.O. See claimant's Exhibit 1, page 1. Based upon Dr. Milas' recommendation claimant requests a work-up with an internist. Claimant also saw Richard Kreiter, M.D. on April 29, 2015 at claimant's attorney's request. Dr. Kreiter's diagnosis was:

My diagnosis includes A) Healed compression fracture at L1, with deconditioned thoracolumbar spine with chronic pain, neurologically intact, but with right intermittent sciatica. B) Crohn's disease with history of ulcerative colitis. C) Headaches, etiology uncertain. D) Intermittent anxiety and depression, possible posttraumatic stress syndrome.

(Ex. 2, p. 1)

With respect to further care Dr. Kreiter recommends:

It is my opinion that Mr. Hengl needs further treatment. His depression/anxiety, and posttraumatic issues need to be addressed with perhaps visits to Vera French center with therapy and proper medication. He needs a good physical examination by an internist or family physician, to monitor his increased blood pressure which was 140/90 today, his ulcerative colitis, and his questionable memory loss. He needs to become more physically active, and a few PT sessions to encourage him to start a home program of muscle strengthening. A water exercise class at the YMCA would be encouraged. I encouraged him to walk through Vander Veer Park to St. Paul Lutheran Church Sunday since he lives nearby, and the walk and a community of friends would really help him at this point. He fortunately seems to have neighbors that are concerned and are helpful.

(Ex. 2, p. 2)

Based upon Dr. Kreiter's recommendation claimant requests pool therapy and physical therapy.

## 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-reopen 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 its own treating physician. Pote v. Mickow Corp., File No. 694639 (review-reopening decision June 17, 1986).

Claimant has already been provided physical therapy and work hardening, but he did not attend. His cooperation with the treatment he has already be provided has been the limiting factor in that treatment's success. Further, Dr. Kreiter's recommendation with respect to therapy appears to be for the claimant to be encouraged to pursue physical therapy at home, at the YMCA pool or simply walking through the park to

church. It cannot be said, based upon these recommendations, that the care provided to claimant is unreasonable.

Dr. Milas' recommendation makes no reference to an internist and certainly no indication that an internist would have any expertise relevant to the L1 compression fracture that would be superior to the care the claimant has received. The internist might be of assistance with the conditions for which liability has been denied by the defendants, and claimant is free to obtain that care without concern of an authorization defense.

Claimant has not established that the care provided is unreasonable. Claimant's request for alternate care is denied.

ORDER

Therefore it is ordered:

The claimant's petition for alternate medical care is denied. The portions of claimant's request for care that pertain to mental health, head injury, PTSD and headaches are dismissed. It is further ordered that defendants have lost the right to choose the care for mental health, head injury, PTSD and headaches, and defendants are barred from asserting a lack of authorization defense in response to a subsequent claim for the expenses of alternate care for mental health, head injury, PTSD and headaches.

Signed and filed this 11<sup>th</sup> day of June, 2015.



RON POHLMAN  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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