

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LON L. RICHARDSON,

Claimant,

vs.

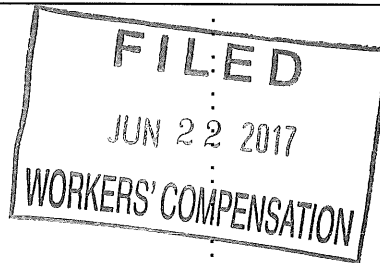
SUNOPTA INGREDIENTS,

Employer,

and

INSURANCE COMPANY OF THE
STATE OF PENNSYLVANIA,

Insurance Carrier,
Defendants.



File No. 5051222

ALTERNATE MEDICAL
CARE DECISION

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, Lon L. Richardson. Claimant filed a petition on June 8, 2017. He alleged at paragraph 5 of his petition:

Reason for dissatisfaction and relief sought: Claimant seeks referral to Mayo Clinic for three-week pain clinic rehab program prescribed by authorized physicians at Mayo Clinic.

Defendants filed an answer on June 15, 2017. The alternative medical care claim came on for hearing on June 21, 2017. The proceedings were recorded digitally and constitute the official record of the hearing. Defendants admitted the occurrence of a work injury on September 22, 2010 and liability for the condition sought to be treated by this proceeding.

The evidentiary record consists of claimant's exhibit 1, defendants' exhibits A through C, and the testimony of the claimant. Both parties submitted hearing briefs for consideration.

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.

ISSUE

The sole issue presented for resolution is whether claimant is entitled to alternate medical care in the form of authorization of the three-week pain rehabilitation program recommended by providers at the Mayo Clinic.

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 22, 2010. Defendants authorized medical treatment, including at the University of Iowa Hospitals & Clinics (UIHC). At UIHC, claimant was treated by both orthopedic surgeon, Nicholas Noiseux, M.D., and physiatrist, Joseph Chen, M.D. His course of care included right total hip replacement in October 2011, following which claimant suffered with significant pain and residual problems. Dr. Chen opined claimant sustained a 50 percent right lower extremity impairment as a result of the hip replacement and chronic pain. (Ex. A, p. 1)

Claimant followed up with Dr. Chen on June 23, 2014. At that time, claimant reported continued significant pain and limitations. Claimant was employed as a custodian, but reported he spent the majority of his day attempting to recover from work activities. Claimant reported his wife had moved out of their joint home due to claimant's inability to receive relief of chronic pain. (Ex. A, p. 1) With respect to treatment options, Dr. Chen indicated he suspected claimant had "a lot of chronic pain behavior and central sensitization of his chronic pain," leading to "suboptimal outcomes". Dr. Chen noted claimant did not appear interested in participating in mental health care or a UIHC spine rehabilitation program evaluation. (Ex. A, p. 2)

Claimant testified Dr. Chen ultimately referred claimant to the Mayo Clinic. Defendants authorized medical treatment at the Mayo Clinic, including implantation of a spinal cord stimulator (SCS). Bryan Hoelzer, M.D., placed the SCS on December 7, 2016. Claimant received approximately one to two months of pain relief, at which time the SCS ceased working and claimant was prescribed opioid medications pending evaluation in the Mayo Clinic Pain Clinic. (Claimant's testimony; Ex. 1, p. 1)

On March 21, 2017, claimant returned to the Mayo Clinic. Claimant testified he was evaluated by Dr. Hoelzer and was also scheduled for evaluation by other providers. (Claimant's testimony)

On that date, claimant presented to the Mayo Clinic Pain Clinic and was evaluated by Tara Emde, APRN for three-month follow-up of SCS placement and reprogramming. (Ex. 1, p. 3; Ex. B, p. 4) Ms. Emde noted claimant remained debilitated by pain and had not worked since May 2016. Ms. Emde issued assessments of intractable right hip and groin pain; status post Medtronic SCS implant; chronic neuropathic pain; depression; and history of right total hip arthroplasty. Ms. Emde recommended claimant be seen that date by Sue Bee, APRN, a cognitive behavioral therapist, to discuss mood and coping strategies. Ms. Emde also noted claimant was scheduled to meet with a Medtronic representative following the evaluation for reprogramming of the SCS. (Ex. 1, pp. 4-5; Ex. B, pp. 4-6) She indicated:

His pain complaints will likely be able to be covered by reprogramming the device and hopefully provide him better benefit. He has been informed that it is not uncommon to undergo multiple reprogramming to find the proper fit after implant. I am hopeful we will find a more fitting program for him.

(Ex. 1, p. 5; Ex. B, p. 5)

Later that date, claimant presented to Mr. Bee for repeat evaluation. Ms. Bee noted claimant's SCS was reprogrammed, with some relief, but Ms. Bee described claimant as discouraged by the lack of function. (Ex. 1, p. 1; Ex. B, p. 7) Ms. Bee noted she and claimant discussed concepts claimant had learned in the SCS class and identified local cognitive behavioral therapists for claimant to contact regarding his chronic pain. Additionally, Ms. Bee noted the two "again" discussed the Mayo Clinic's three-week pain rehabilitation center program. She indicated this program would provide claimant with structure and support, with the goal of restoring functioning levels. Claimant expressed knowledge his pain could not be fixed and he needed to develop skills to manage the pain in order to improve his quality of life. Mr. Bee described claimant as motivated to participate in the pain rehabilitation program. (Ex. 1, p. 2; Ex. B, p. 7) Ms. Bee formally recommended a three-week pain clinic rehabilitation program and requested defendants' authorization of the treatment. (Ex. 1, p. 1)

On April 27, 2012, the Mayo Clinic authored a precertification request directed to defendant-insurance carrier. The paperwork noted claimant had been scheduled for the 17-day pain management program, beginning on July 25, 2017. Authorization was requested, as well as pre-payment in the amount of \$47,405.00. (Ex. B, p. 3)

Claimant testified he received approximately one month's relief following the SCS reprogramming on March 21, 2017, but his pain subsequently returned. Claimant testified he desires to proceed with the pain rehabilitation program, in hopes to learn strategies in managing his chronic pain. Claimant admits he was not advised the program would improve his physical condition or increase his likelihood of returning to work. He testified he discussed the program with Ms. Bee, the Medtronic representative, and Dr. Hoelzer. Claimant testified Dr. Hoelzer recommended claimant

speak with Ms. Bee regarding the program, as she serves as the program coordinator. Claimant testified he is scheduled to return to the Mayo Clinic on approximately July 25, 2017. (Claimant's testimony)

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 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 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, File No. 866389 (Declaratory Ruling, May 19, 1988).

The agency will ordinarily grant a petition for alternate medical care when it appears that defendants are interfering with the recommendations of an authorized medical provider. Bursell v. Lynch Livestock, Inc., File No. 5032265 (Remand August 2, 2016).

"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).

In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997), the supreme court held that "when evidence is presented to the commissioner that the employer-authorized medical care has not been effective and that such care is 'inferior

or less extensive' than other available care requested by the employee, . . . the commissioner is justified by section 85.27 to order the alternate care."

Claimant requests authorization of the three-week pain rehabilitation program at the Mayo Clinic. Claimant highlights that the recommendation was made by an established, authorized treatment provider, and accordingly, argues claimant is entitled to participate in the program. Defendants argue the pain rehabilitation program is not a reasonable necessity in claimant's care, as the program is expensive and it is uncertain if the program will improve claimant's health or ability to return to work. Defendants also argue the pain management program is premature, in that claimant has not yet undergone multiple adjustments to his SCS in hopes of receiving greater relief. Defendants represent the Mayo Clinic remains an authorized provider and further represented that defendants would authorize repeat pain clinic evaluations and reprogramming of the spinal cord stimulator. Defendants contest only the appropriateness of authorization of the pain rehabilitation program.

Claimant has received authorized medical treatment at Mayo Clinic since 2014. By defendants' admission, the providers at the Mayo Clinic remain authorized providers and defendants agree to continue authorizing certain medical treatment at Mayo Clinic, including pain clinic evaluations and SCS reprogramming. Despite the fact Mayo Clinic was and remains an authorized provider, defendants refuse to authorize the pain rehabilitation program recommended by an authorized provider.

While it is true an authorized provider may recommend medical treatment which could be found unreasonable, I believe such a finding would be the exception, not the rule. Generally speaking, if a medical provider recommends a treatment, a reasonable person may conclude that provider is attesting to the reasonableness of the recommended care. In the instant matter, defendants offered no evidence the recommended treatment plan is unreasonable or unnecessary. Similarly, defendants offered no medical opinions that the recommendation for pain rehabilitation program is premature and should be deferred pending further attempts at reprogramming of the spinal cord stimulator.

Instead, defendants note the cost and uncertainty regarding success of the program. I find these considerations, although valid, are insufficient to overcome the treatment recommendation of a medical provider in this case. No medical procedure or treatment carries a guarantee of success, nor a guarantee of improvement. To deny a claimant a reasonable treatment option based on a lack of guarantee of success would be improper.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's application for alternate medical care is granted. Claimant is entitled to participate in the three-week pain rehabilitation program recommended by providers at the Mayo Clinic.

Signed and filed this 22nd day of June, 2017.



ERICA J. FITCH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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