



On January 31, 2019 claimant's right hand was caught in a conveyor belt-type of device for an extended period of time. (Exhibit 1, page 1) On the same date claimant underwent a right forearm amputation, a radial shortening osteotomy, ulnar shortening osteotomy, and a muscle myodesis. (Ex. 1, p. 1)

On February 20, 2019 claimant had a split-thickness skin graft to denude muscle of the right forearm. (Ex. 1, p. 1)

On February 26, 2019 claimant underwent a right forearm amputation. (Ex. 1, p. 1)

On September 13, 2019 claimant was evaluated by Kamaldeen Aderibigbe, M.D. with Iowa Orthopedics. Claimant had phantom pain. Claimant had not been working due to severe pain. Claimant was to be prescribed a prosthetic device. (Ex. 1, pp. 1-2)

On October 23, 2019 Dr. Aderibigbe prescribed a prosthetic device for claimant with American Prosthetics. (Ex. 1, pp. 5-6)

A peer review dated January 2, 2020 from Medical Review Institute of America (MRI), a vendor of defendant insurer, opines the requested myoelectric prosthesis with computer controlled articulating digits was not medically necessary or the most appropriate prosthesis for claimant. The review is authored by a Saul Weingarden, M.D. (Ex. C)

On January 10, 2020, claimant's counsel wrote to defendant insurer indicating claimant was not able to get his prescribed arm prosthetic with American Prosthetics, as defendants had not yet authorized the device. (Ex. 2, p. 2)

A February 5, 2020 email from a claims representative with defendant insurer indicated she spoke with American Prosthetic and asked the company to submit a quote for a different device that was less expensive but still functional. (Ex. 2, p. 1)

In a March 17, 2020 letter Dr. Aderibigbe recommended claimant needed a transradial myoelectric prosthesis. Dr. Aderibigbe indicated this was the best option to allow claimant to return to two-handed work he had performed before the injury. Dr. Aderibigbe indicated this specific prescribed prosthetic was medically necessary for claimant. (Ex. 2, p. 1)

In a March 24, 2020 email, claimant's counsel responded to defendant insurer's email, indicating that based on the March 17, 2020 note, Dr. Aderibigbe opined the prosthetic at issue was necessary for claimant. Claimant indicated he was dissatisfied with the care given and requested the prosthetic recommended by Dr. Aderibigbe be approved by defendants. (Ex. 2, p. 1)

An undated invoice from American Prosthetics indicates the prosthetic at issue costs \$189,140.00. (Ex. A)

An undated note from Travis Carlson, LPO indicates he reviewed the proposed prosthesis for claimant and its appropriateness. He opined there were more cost effective ways to provide claimant a functional prosthesis that would allow him to return to work while also acting as a litmus test for his acceptance to a prosthesis. Mr. Carlson indicated a standard dual electrode site system with a single grip position is how he starts all his myo-electric candidates. He opined the simplicity of that prosthesis allows for a shorter learning curve and allows for him to better adapt the prosthetic to the needs to the patient. Mr. Carlson is a partner with Clark and Associates, a prosthetic and orthotic company. (Ex. D)

In an April 7, 2020 letter, written by defendants' counsel, Dr. Aderibigbe indicated he reviewed the invoice from American Prosthetics, the MRI peer review and the note from Mr. Carlson. He agreed the \$189,000.00 prosthetic recommended by American Prosthetics was not medically reasonable or necessary. He agreed it was medically reasonable and appropriate to consider a more cost effective prosthetic device and recommended claimant be evaluated by another prosthetist, including Mr. Carlson, for this purpose. (Ex. E)

#### 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.

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 record indicates Dr. Aderibigbe prescribed a prosthetic device for claimant in late October of 2019. (Ex. 1, pp. 5-6) Defendants did not authorize the device. A

February 2020 email from defendant insurer indicated they were in contact with American Prosthetics to submit a quote for a different device. (Ex. 2, p.1) On March 17, 2020, Dr. Aderibigbe recommended claimant needed the device recommended by American Prosthetics. (Ex. 2, p. 1)

Mr. Carlson is a licensed prosthetist orthotist. He opined a dual electrode site system would allow for a shorter learning curve for claimant to use the prosthetic and would allow an LPO to manage changes more effectively in the fitting and usage of the prosthetic. (Ex. D)

In an April 7, 2020 note Dr. Aderibigbe indicated he reviewed an invoice from American Prosthetics, the note from Mr. Carlson and the MRI peer review. He agreed the prosthetic recommended by American Prosthetics was not medically reasonable or necessary. He agreed it was medically reasonable and appropriate to consider a more cost effective prosthetic device and recommended claimant be evaluated by another prosthetist, including Mr. Carlson, for this purpose. (Ex. E)

Claimant argues that it is over five months from the time the prosthetic was prescribed until the alternate care hearing and claimant still lacks a prosthetic device. Claimant contends defendants chose American Prosthetics as a provider. Claimant argues that cost should not be a factor in considering care in this matter.

I agree with nearly every argument raised by claimant and his counsel. Dr. Aderibigbe prescribed a prosthesis in late October 2019. It was not until early February 2020 defendants indicated they were looking for a different quote from American Prosthetics. It was not until claimant filed an alternate medical care petition that defendants made the offer to have claimant re-evaluated with Mr. Carlson. There is no reason claimant's care should have been delayed for so long.

I also agree that the cost of a prosthesis should not be a factor in determining care in this case. Claimant had an amputation of his upper arm. Cost is not and should not be a criterion in providing claimant with a replacement for that amputation.

However, I cannot ignore Dr. Aderibigbe's most recent opinion. He agreed the prosthetic recommended by American Prosthetics was not medically reasonable or necessary. He agreed it was medically reasonable and appropriate to consider a different prosthetic device and recommended claimant be evaluated by another prosthetist, including Mr. Carlson, for this purpose. Evidence from Mr. Carlson also indicates that a prosthesis he recommends would allow for a shorter learning curve for claimant and would allow for more effective adaptation of the prosthesis.

Defendants indicate they will authorize claimant to work with Mr. Carlson to fit him with a prosthetic device. Dr. Aderibigbe agreed it was medically reasonable and appropriate to consider a different prosthetic device and recommended claimant be evaluated by another prosthetist. Given this record, the care offered by defendants cannot be found to be unreasonable.

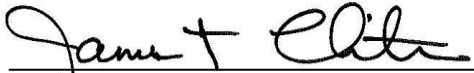
ORDER

THEREFORE, it is ordered

Claimant's petition is denied.

Defendants shall authorize claimant to be evaluated and fitted for a prosthetic device by Mr. Carlson, or another LPO, as soon as practicable taking into consideration the Governor's most recent proclamation limiting non-essential medical services concerning Covid-19.

Signed and filed this 8<sup>th</sup> day of April, 2020.

  
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JAMES F. CHRISTENSON  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served as follows:

Lori Brandau (via WCES)

Joseph Powell (via WCES)