BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JESSICA SALLEE-BRINEGAR,

Claimant,

vs.

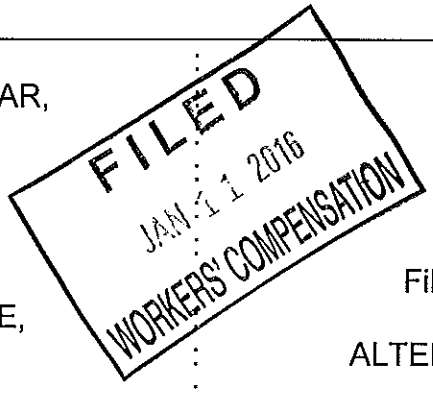
CASEY'S GENERAL STORE,

Employer,

and

CCMSI,

Insurance Carrier,
Defendants.



File No. 5053767

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 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, Jessica Sallee-Brinegar.

The alternate medical care claim came on for hearing on January 8, 2016. The proceedings were digitally recorded which constitutes the official record of this proceeding. This ruling is designated final agency action and any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code 17A.

The record consists of claimant's Exhibit 1, nine pages, and defendants' Exhibits A – D, ten pages. Exhibit E pages 2 and 4 were admitted during the hearing.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of a neurological examination for claimant's foot pain.

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 March 6, 2015. Defendants admit claimant sustained an injury to her foot and deny any other injury as work-related.

Claimant was referred for treatment to Donald Berg, M.D. for treatment for her foot injury. She saw Dr. Berg approximately five times.

On April 28, 2015 Dr. Berg wrote,

> She injured her foot on March 6th and was felt to have a fx [fracture] of the metatarsal at one time and torn ligaments in her foot. Because of persistent symptoms she was using a CAM walker and ordered an MRI scan. On her MRI scan it shows evidence of accessory navicular bone present with some grade 2 marrow edema within the medial aspect of the navicular bone and was felt to have a stress reaction in that area where the posterior tibial tendon attaches and also mild tendinosis extensor hallucis longus and the cuneiforms and some inflammation of the tendons around the Achilles tendon insertion site. The pt also is overweight at 250 lbs and she is advised on weight loss which I think would be of benefit to her.

(Ex. B, p. 1) Dr. Berg recommended a second opinion. After Dr. Berg recommended a second opinion claimant was instructed to receive treatment from Eric Barp, D.P.M.

Claimant saw Dr. Barp about four times. On June 19, 2015 Dr. Barp noted the MRI results did not demonstrate any pathology. Dr. Barp reviewed the MRI with claimant and her significant other. Dr. Barp questioned if claimant was malingering. (Ex. C, p. 2) On July 23, 2015 he wrote,

> Jessica, her husband and I had a candid discussion about her foot. I don't think that there is anything wrong with her. I think she is malingering. Clinically, she has no reproducible pain. MRI was completely negative. Her husband feels that she needs a neurology consult. I disagree. I discussed that the best for her to do is get back to work and recondition her foot and ankle.

(Ex. C, p. 4)

On August 2, 2015 claimant went to the Davis County Hospital for foot pain. (Ex. 1, pp. 1 – 3 and Ex. E, pp. 2, 4) While Claimant testified she saw Ryan Cook, M.D., the records appear to show that see saw Joseph Kruser, ARNP. (Ex. E, p. 4) Dr. Cook evaluated the radiographs of claimant's left foot. (Ex. 1, p. 3) ARNP Kruse wrote:

> I discussed with the patient that this appears to be a chronic issue with pain in her foot and she may need to go to a pain specialist or a neurologist for further testing as she describe [sic] some of the pain that

could be neuropathy with the shooting discomfort in her foot and hot feelings in her foot at times.

(Ex. 1, p. 2) Claimant went to her care provider on August 3, 2015 and was assessed with chronic left foot pain. (Ex. D, p. 2)

On September 3, 2015 Dr. Barp saw claimant. He wrote,

I had a candid discussion with Ms. Brinegar. I don't think there is anything wrong with her. Clinically, no reproducible pain. MRI is negative. I don't have anything else to offer her and think she should return to full duty.

(Ex. C, p. 6) Claimant was discharged from care at this time and allowed four more physical therapy appointments.

On September 15, 2015 claimant received physical therapy form Cory Horstmann, PT, DPT. The discharge summary noted she was having pain — 5 of out 10 — and rages from 4 to 7. (Ex. 1, p. 7) He noted claimant had plateaued. (Ex. 1, p. 9)

On October 16, 2015 claimant was seen at Ottumwa Regional HealthCare, Regional Care Live Clinic. Claimant was complaining of cramping and intermittent sharp and dull pain and that she experiences numbness and burning. (Ex. 1, p. 4) Carrie Smithart, P.A. recommended a referral to a neurologist for further evaluation. (Ex. 1, p. 6)

I find that claimant is still reporting pain in her foot.

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).

A second opinion as to a course of treatment is a part of treatment. The agency commonly orders evaluations for a second opinion in alternate care proceedings. Tansel v. Umthun Trucking, 1179887 (Alt Care Decision, June 12, 1998); A second opinion as to a course of treatment is a part of treatment. The agency commonly orders evaluations for a second opinion in alternate care proceedings. Burr v. Bridgstone/Firestone Inc, File No. 1049010 (Alt Care Decision, September 1999); Tansel v. Umthun Trucking, 1179887 (Alt Care Decision, June 1998); Morris v. Lortex, Inc, File No. 1009285 (Alt Care Decision, April 1998); Dorothy v. Rockwell International, File No. 1045450 (Alt Care Decision, August 1993). Second opinions are a common practice in healthcare matters outside the workers' compensation setting. Morris v. Lortex, Inc., File No. 1009285 (Alt Care Decision, April 28, 1998).

Dr. Barp has clearly nothing further to offer claimant. Claimant has had two health providers recommend consulting with a neurologist: One before her last visit to Dr. Barp and one after. Claimant has had a recommendation as of October 2015 for neurological evaluation. None has been offered. She was assessed with chronic left foot pain.

Based upon the evidence provided I find that the failure to provide a neurological evaluation is not reasonable. The failure is not providing reasonable medical care. Two healthcare professionals, outside of the workers' compensation system, have recommended a neurological evaluation. The defendants shall promptly arrange a neurological evaluation. Defendants shall maintain the right to select the provider and

control care. Defendants shall provide reasonable care for her left foot injury that is recommended after the neurological evaluation.

ORDER

Therefore it is ordered:

The claimant's petition for alternate medical care is granted

Signed and filed this 11th day of January, 2016.

JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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