BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MARY SANTANA,

Claimant,

vs.

MARY SANTANA,

Employer,

and

THE HARTFORD,

Insurance Carrier,
Defendants.

FILED
AUG 11 2015
WORKERS' COMPENSATION

File No. 5060676

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, the "alternate medical care" rule, is invoked by the claimant.

The alternate medical care claim came on for hearing on August 7, 2015. The proceedings were digitally recorded, which constitutes the official record of this proceeding. By order of the Iowa Workers' Compensation Commissioner, this ruling is designated final agency action.

The record consists of claimant's exhibits 1 through 4, defendants exhibit A, and 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 recommended by Physical Therapist Todd Neighbor.

FINDINGS OF FACT

Claimant suffered a work injury to her back, pelvis and groin. She underwent authorized treatment for her back. Jeffrey Westpheling, M.D., recommended a Functional Capacity Evaluation (FCE) be performed.

Physical Therapist Todd Neighbor performed a functional capacity evaluation on May 19, 2015. He expressed the opinion her physical condition included pelvic misalignment, and that physical therapy would help with her groin and pelvic problems.

She has had cramping in her groin from the day of injury. She has had surgery on her back. Her pain today is focused in her left groin. Exhibit 3, page1, the FCE shows Mr. Neighbor thought there was a good chance of improving her pain. She has asked the insurer for the therapy, but the insurer has declined.

She entered into a settlement three weeks ago, and left the medical benefits open due to the possibility of future medications and this therapy. Defendants were asked to authorize the therapy prior to the open file settlement.

She has trouble walking. She can walk but it puts pressure on her groin and she begins to limp. She has had physical therapy in the past, for post-surgery range of motion and recovery. This was for her back.

On cross examination, she agreed she had not asked her doctors to recommend the therapy. She agreed Dr. Taylor, who did an independent medical examination (IME), did not mention physical therapy for her groin. Jeffrey Westpheling, M.D., also did not specifically recommend physical therapy for her groin pain.

On re-direct examination, claimant stated Dr. Abernathey only treated her back, not her groin. Dr. Westpheling referred her for an FCE, which was performed by Todd Neighbor, who recommended the physical therapy for her groin and pelvis. She has not been asked by the insurer to go see any of her doctors again.

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-Reopening, 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 Rule of Appellate Procedure 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 (Iowa 1995); Pirelli-Armstrong Tire Co., 562 N.W.2d at 437 (Iowa 1997).

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., (Review-Reopening decision June 17, 1986).

Claimant argues her complaints of groin pain, which have existed since the injury, have not been addressed. The recommendation for physical therapy for her groin occurred late in the pendency of this case, just before the settlement. Defendants point out none of claimant's doctors recommended this physical therapy.

As often happens, when an injured worker has more than one condition from the injury, one may be adequately addressed by the medical treatment offered while the others are not addressed. The focus of the treatment in this case was on the back condition, while little or no attention was paid to claimant's groin complaints.

Now Mr. Neighbor has recognized the groin problem and has offered a way to address it. Claimant is not requesting expensive surgery, or other procedures. She is merely asking that the physical therapy that has been suggested might alleviate her groin pain be tried. Her request is reasonable and there is no compelling reason to deny the treatment.

It is found that the treatment offered by defendant is not reasonably suited to treat the injury and that the alternate care requested should be granted.

ORDER

THEREFORE IT IS ORDERED:

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

Signed and filed this 11th day of August, 2015.

Jon E. Heitland

JON E. HEITLAND
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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