

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JAMES D. BRITTAIN,

FILED

Claimant,

JAN 26 2017

vs.

WORKERS COMPENSATION

File No. 5047566

TRADESMEN INTERNATIONAL,

ALTERNATE MEDICAL

Employer,

CARE DECISION

and

NEW HAMPSHIRE INSURANCE CO.,

Insurance Carrier,
Defendants.

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. James D. Brittain, claimant, appeared with his attorney. Defendants appeared through their attorney, Thomas D. Wolle. There have been eight previous petitions for alternate care filed. Also, an arbitration decision was issued on November 10, 2015. Claimant was awarded a 30 percent industrial disability, plus medical care.

The alternate medical care claim came on for hearing on January 26, 2017. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Iowa Workers' Compensation Commissioner's February 16, 2015 order, the undersigned has been delegated authority to issue a final agency decision in this alternate medical care proceeding. Therefore, this ruling is designated final agency action, and any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code section 17A.

Claimant submitted Exhibit 1. Defendants submitted Exhibit A. Both exhibits were admitted as evidence in the case.

The problems with claimant's medical care all stem from the convoluted procedures the adjusting company is using whenever claimant needs to refill his prescription medications from the authorized treating physician.

Claimant has a prescription card which he presents to the pharmacist. The pharmacist had been calling the number at First Script for authorization. Then the prescriptions were filled and claimant picked up his medications. The process was designed to be efficient and swift.

However, one of the claims adjusters at the adjusting company changed the procedures. The adjuster added another step to the process. She decided to complicate the procedures by requiring her approval before the approved prescriptions could be filled. As a result, there were delays in filling the medications. Some of the delays resulted in weeks where claimant had no access to this authorized prescribed medication. The actions of the claims adjuster were unreasonable. She should not be "second-guessing" the prescription medications ordered by the authorized treating physician. The actions of the claims adjuster have resulted in medical care that is unreasonable. Claimant should not have to wait for his prescription medication.

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).

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).

The employee bears the burden to establish what care is reasonable and it is a question of fact. Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995). The determination will be based on what is reasonably necessary. Long, at 124.

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. Assman v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988).

ORDER

THEREFORE, IT IS ORDERED:

Defendants acted in an unreasonable manner. The claims adjuster interfered with the matters of professional judgment of the authorized treating physician when prescription medications were prescribed.

Signed and filed this 26th day of January, 2017.



MICHELLE A. MCGOVERN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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