

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KELLY J. BALLARD,

FILED

Claimant,

APR 27 2016

vs.

WORKERS COMPENSATION

File No. 5055854

TOYOTA FINANCIAL SERVICES,

ALTERNATE MEDICAL

Employer,

CARE DECISION

and

TOKIO MARINE AMERICAN INS. CO.,

Insurance Carrier,
Defendants.

HEAD NOTE NO: 2701

STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapters 17A and 85. Claimant Kelly Ballard ("Ballard") sustained a work-related injury to her left hand on January 30, 2014, while working for the defendant, Toyota Financial Services ("Toyota"). On April 15, 2016, Ballard filed a petition for alternate medical care under Iowa Code section 85.27 and rule 876 IAC 4.48. Ballard requested Toyota and its insurer, the defendant, Tokio Marine American Insurance Company ("Tokio"), authorize a spinal cord stimulator trial recommended by her authorized medical providers. Toyota and Tokio have refused to authorize the spinal cord stimulator trial.

On April 18, 2016, this division filed a notice of telephone hearing, scheduling a telephone hearing for April 27, 2016, at 8:30 a.m. A copy of the notice was mailed to Ballard's counsel, and to Toyota and Tokio, to the attention of the adjuster, Tom Street, Sedgwick, P.O. Box 14446, in Lexington, Kentucky.

A telephone hearing was held on April 27, 2016 at 8:30 a.m. Attorney Thomas Wertz represented Ballard. Ballard appeared and testified. No one appeared on behalf of Toyota and Tokio. Toyota and Tokio did not submit an answer or any other responsive documents. Ballard's Exhibit 1 was admitted into the record. The proceeding was recorded by digital recorder and the digital recording is the official record of the proceeding.

The undersigned has been delegated with the authority to issue final agency action in this matter. Appeal of this decision, if any, is to the district court pursuant to Iowa Code section 17A.19.

FINDINGS OF FACT

Ballard sustained a work-related injury to her left hand while working for Toyota on January 30, 2014. (Petition) Ballard was diagnosed with carpal tunnel syndrome of the left hand along with trigger finger. (Exhibit 1, page 1) Peter Pardubsky, M.D., an orthopedic surgeon, performed surgery for both conditions. (Ex. 1, p. 1) Ballard developed chronic regional pain syndrome in her left upper extremity following the surgery and received treatment for her chronic pain at the University of Iowa. (Ex. 1, p. 1) Toyota and Tokio authorized payment of a spinal cord stimulator to treat her chronic pain. (Ballard Testimony; Ex. 1, p. 3) Ballard testified the spinal cord stimulator trial was successful. (Ballard Testimony)

Ballard later developed swelling and pain her feet. (Ballard Testimony) Ballard's treating physician determined the swelling and pain was not due to neuropathy, finding Ballard's chronic regional pain syndrome had moved to her feet. (Ex. 1, p. 1) Ballard was referred to Mary Hlavin, M.D., for a neurosurgical consultation in November 2015. (Ex. 1, p. 1) Dr. Hlavin recommended placement of a dorsal column stimulator to treat Ballard's chronic pain in her feet. (Ex. 1, p. 2) Stanley Mathew, M.D., Ballard's treating physician, supports the placement of a spinal cord stimulator. (Ex. 1, p. 4)

After receiving the recommendation for a spinal cord stimulator, Toyota and Tokio requested Ballard attend an evaluation with Peter Matos, D.O. (Ex. 1, p. 5) Ballard attended an appointment with Dr. Matos in mid-February 2016. (Ex. 1, p. 5) Toyota and Tokio have not approved the spinal cord stimulator trial to date. (Ballard Testimony)

REASONING AND CONCLUSIONS OF LAW

An employer is required to 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. Iowa Code § 85.27(1) (2015). The employer has the right to choose the provider of care, except when the employer has denied liability for the injury. Id. "The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." Id. § 85.27(4). If the employee is dissatisfied with the care, the employee should communicate the basis for the dissatisfaction to the employer. Id. If the employer and employee cannot agree on alternate care, the commissioner "may, upon application and reasonable proofs of necessity therefore, allow and order other care." Id.

The employee bears the burden of proving the care authorized by the employer is unreasonable. R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 196 (Iowa 2003).

The determination of whether care is reasonable is a question of fact. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

Ballard has chronic pain in her feet. The current treatment she is receiving has not alleviated her pain. Ballard's treating physicians have recommended a spinal cord stimulator trial. For many years this agency has held that reasonable care includes care necessary to diagnose the condition, and that a defendant may not interfere with the medical judgment of its own treating physician. Berns v. CRST, File No. 5034602 (Alt. Care Aug. 27, 2012) (citing Cahill v. S & H Fabricating & Eng'r, File No. 1138063, (Alt. Care May 30, 1997); Hawxby v. Hallett Materials, File No. 1112821 (Alt. Care Feb. 20, 1996); Leitzen v. Collis, Inc., File No. 1084677 (Alt. Care Sept. 9, 1996)). Toyota and Tokio are interfering with the medical judgment of the authorized treating physicians.


Ballard complied with Toyota and Tokio's request that she attend an appointment with Dr. Matos in mid-February 2016. To date Toyota and Tokio have refused to authorize the spinal cord stimulator trial for the pain in her feet. Ballard received favorable results from the spinal cord stimulator trial for her left upper extremity pain. Toyota and Tokio did not appear at the hearing or offer any contrary evidence. Toyota and Tokio have acted unreasonably in this case by failing to authorize the spinal cord stimulator trial recommended by Drs. Hlavin and Mathew. Ballard's petition for alternate care should be granted.

ORDER

THEREFORE IT IS ORDERED:

Ballard's petition for alternate care is granted. Ballard is entitled to a spinal cord stimulator trial.

Signed and filed this 27th day of April, 2016.


HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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HLP/srs