

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JACOBO TRUJILLO,
Claimant,
vs.
SMITHFIELD FOODS f/k/a
FARMLAND FOODS
Employer,
and
SAFETY NATIONAL, c/o/ ESIS,
Insurance Carrier,
Defendants.

FILED
JUN 21 2019
WORKERS COMPENSATION

File No. 5065724
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, Jacobo Trujillo.

The alternate medical care claim came on for hearing on June 19, 2019, at 1:00 p.m. 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 the claimant's testimony as provided through an interpreter and claimant's exhibits 1, 3, and 4. Attorneys for each party provided argument.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of a referral to a pain management specialist.

FINDINGS OF FACT

The undersigned having considered all of the testimony and evidence in the record finds:

An underlying petition was heard on July 27, 2018, and a decision was issued on October 5, 2018. In that decision, it was determined that claimant's chronic neck and

bilateral shoulder pain were connected to the November 9, 2015, work incident. The decision was not appealed and is therefore controlling.

The decision also determined that claimant was entitled to reimbursement for treatment for his neck and bilateral shoulder. After the decision was rendered, claimant sought treatment with Dr. Greene, a surgeon. The defendants authorized this treatment and claimant discussed the possibility of surgical repair of his neck. Dr. Greene ultimately came to the conclusion that surgery was not appropriate and recommended treatment for pain. Claimant was then sent to Matthew Hahn, M.D., a physical medicine doctor who provides pain treatment care.

Dr. Hahn ordered physical therapy and Amitriptyline. Claimant took the medication and attended physical therapy for a month without relief. He returned to Dr. Greene on February 28, 2019. (Ex. 4) In that visit, Dr. Greene documented that claimant's pain had worsened since the January appointment. (Ex. 4, p. 11) The pain was localized in the neck and right upper trapezius area with intermittent radicular pain extending into the right hand. Id. Claimant's pain was eight on a ten scale. (Ex. 4. p. 12)

Dr. Hahn's records went on to note that the "patient has exhausted conservative management including PT, medication management and injection care. He is not considered a surgical candidate per Dr. Greene. He will be placed at MMI at this time per the patient's request." Id. at p. 12.

Dr. Hahn went on to write that "although as discussed by Dr. Reynolds in June 2018, causation for his neck injury remains an issue." Id. Per the statements of the attorneys, Dr. Reynolds is the authorized treating orthopaedic surgeon who treated claimant's bilateral shoulder pain.

Dr. Hahn's notes state that if claimant fails to progress, "pain medicine consultation if non-operative care chosen" and that "patient will call for appointment as needed." (Ex. 4, p. 12)

During testimony, claimant maintained that Dr. Hahn advised claimant that there was no further care to be provided to claimant. Based on this, claimant sought out additional care from his family doctor, Dr. Luft. (Ex. 3) Dr. Luft recommended claimant undergo pain management treatment. While not stated specifically in the petition, claimant appears to want to have care from an anesthesiologist or someone who is specifically trained in pain management therapy.

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 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., 562 N.W.2d at 433, 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" care 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, June 17, 1986).

Claimant argues that defendants' authorized treating physician, Dr. Hahn, has released claimant from care and therefore the current care provided by the defendants at this point is the equivalent of no care at all.

Defendants assert that claimant should have called Dr. Hahn's office for follow up if he felt additional care was necessary.

Based on the testimony of the claimant along with the medical records of Dr. Hahn in which he notes that the claimant has exhausted conservative management including PT, medication management, and injection care and surgery is not an option, claimant's testimony that Dr. Hahn expressed the opinion that he has no other care options for claimant is adopted herein.

Therefore, claimant had been released by Dr. Hahn after February 28, 2019. When claimant sought out care on his own with his personal physician, no care was

being offered by Dr. Hahn, the only pain management doctor authorized by the defendants.

Currently, the care authorized by the defendants is a return to Dr. Hahn. However, Dr. Hahn has already stated in his records that claimant has exhausted all care including physical therapy, medication management and injection care. It is unclear what care Dr. Hahn would provide to claimant now. In that February 28, 2019, visit, claimant's pain was severe. He had worsened since the January appointment. In response, Dr. Hahn found claimant at MMI and released claimant with no further treatment recommendations.

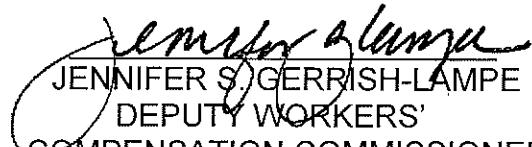
To require claimant to return to a doctor who has released him in response to complaints of severe pain and worsening function is not reasonable. Claimant is entitled to see another doctor of the defendants' choosing.

ORDER

THEREFORE IS ORDERED:

The claimant's petition for alternate medical care is granted. Claimant is entitled to see a pain specialist other than Dr. Hahn. Defendants are entitled to select this medical care provider.

Signed and filed this 21st day of June, 2019.


JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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