

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

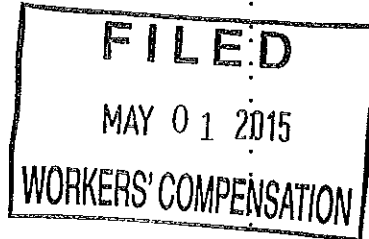
MARK HASKIN,
Claimant,

vs.

DO-IT CORPORATION,
Employer,

and

SECURA INSURANCE COMPANIES,
Insurance Carrier,
Defendants.



File No. 5052474

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 May 1, 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 Exhibit 1, Defendants' Exhibits A, B and C, and the testimony of the claimant.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of authorization of further physical therapy for his back, right knee and right ankle.

FINDINGS OF FACT

On or about May 16, 2012, the claimant suffered an injury which arose out of and in the course of the claimant's employment. This petition concerns an injury to his lower back, with pain radiating into his right leg, and a meniscus tear

in his right knee, and two tears in his right ankle. He has been told he has two ruptured discs in his lower back. Claimant is requesting more physical therapy. He has had it in the past and it helped, but it was discontinued.

Today he has pain in his lower back which goes into his right buttocks, down his right thigh and to his knee and ankle. His hip pops, and feels like something is out of place. He has constant pain in his right hip. He has swelling on his right knee, his ankle swells on the right side by the ankle bone, as well as on top of the ankle. These symptoms cause him pain when he attempts to bend over, crouch, or even normal walking. He is unable to lift his leg high enough to step over things. He has a feeling of "floppiness" in his right leg. His right foot angles out to the right. The range of motion in his back is very stiff. His sleep is disrupted.

He feels physical therapy is the best for him as he does not like to take pills. The physical therapy kept him loose and more mobile. There is deep tissue that needs to be addressed by therapy. It is hard for him to get these exercises done at home. Of all the treatment he has had, including knee surgery, physical therapy has helped him the most. When he has physical therapy, the pain level decreases a little, but he is more functional. He takes pain medications. He is not comfortable taking pain medications.

He acknowledges he has had a lot of physical therapy already. His last physical therapy visit for his back was May 29, 2013. At that time his back was looser, he was more mobile, and the pain was less. He did not want to stop physical therapy, but Kenneth McMains, M.D., along with Melissa Jakubowski, a senior claims representative for the insurer, terminated the therapy.

July 29, 2014 was the last physical therapy for his knee. Thomas Gorsche, M.D., again along with Ms. Jakubowski, determined he would not need any further physical therapy for his knee. Claimant disagreed, as he felt he was making progress.

His last physical therapy for his ankle was in April, 2014. He did not think this physical therapy helped his ankle, and in fact made it feel worse. That course of therapy was provided by a different provider, Accelerated Rehab in Cedar Falls, Iowa. He had a different therapist each time he went there. He felt it was more of an analysis of what he could and could not do, rather than trying to make him better.

Currently claimant has seen Dr. Weber, M.D., first name not provided. He is claimant's family doctor. Claimant told the doctor about his various conditions and his past treatment. Claimant has tried to do home exercises but he finds he cannot do as well as the physical therapy.

On cross examination, claimant stated Chad Abernathey, M.D., had wanted to perform surgery, but claimant wanted a second opinion. Claimant agreed he has not requested a return visit to Dr. Abernathey.

For the right knee, claimant received treatment from Dr. Gorsche, and somewhat by Dr. McMains. July 2014 was the last physical therapy visit for the right knee. Claimant was not sure if he returned to Dr. Gorsche after that therapy ended. Claimant understands Dr. Gorsche has closed out his file on claimant. Claimant requested further therapy but Dr. Gorsche did not order it.

For the right ankle, claimant treated at the University of Iowa Hospitals and Clinics. Claimant visited with Phinit Phisitkul, M.D., on October 30, 2014. Claimant indicated the physical therapy for his ankle was not working. A decision on surgery for his ankle was left to claimant. Claimant declined surgery because of the tendons that would have to be cut in his ankle. Claimant felt Accelerated Rehab was not doing him any good, and in fact the exercises were aggravating the ankle condition. Claimant does not recall being offered a steroid injection.

On re-direct examination, claimant stated he does not want surgery, and this is why he did not go back to Dr. Gorsche or Dr. Abernathey. Claimant was not happy with the surgery he has already had. Dr. Phisitkul also only offered further surgery, and claimant did not ask to see him again for that reason. Claimant again stated physical therapy has been the most helpful. He stated the three injections for his knee only helped for a few days.

Claimant feels he has had good results with Waltz physical therapy and thinks he would have further improvement if allowed to return there.

Exhibit 1 is a report from Dr. Weber ordering a physical therapy consult for claimant.

Exhibit A is three pages of dates claimant attended physical therapy, from October 22, 2012 to August 12, 2013.

Exhibit B is a letter dated March 30, 2015, from Dr. McMains to Melissa Jakubowski, Senior Claims Representative, stating his belief claimant does not need further physical therapy. Dr. McMains notes claimant has undergone significant physical therapy "with no evidence of any long lasting effect", and that "there is no published literature that I know of that supports ongoing physical therapy three years after the injury occurred."

Exhibit C, the report of Dr. Phisitkul, indicates claimant was offered surgery for his ankle. The surgery did carry with it a ten percent chance claimant's ankle would be worse rather than better, and that other risks included infection, tendons not healing, and scar tissue returning. Claimant was noted to

have had a prior incident involving his hand where two tendons were nicked and he was slow to heal after that.

On questioning by the undersigned, claimant's attorney stated claimant's purpose is a physical therapy "refresher", in that some time has passed since his last therapy, his symptoms have worsened, and physical therapy has helped in the past. Claimant wishes to avoid narcotic pain medication by using physical therapy instead.

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 decision, 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 June 17, 1986).

Claimant has credibly testified physical therapy has improved his range of motion and lessened his pain for his back and knee conditions. He acknowledges it has not helped his ankle condition, and in fact made it worse, but he attributes this to the particular physical therapy provider. He asks for authorization for continued physical therapy for his back, knee and ankle from the provider that helped his symptoms before.

Defendants have provided the written opinion of Dr. McMains that further physical therapy is not warranted. The testimony indicates Dr. Gorsche also did not order further therapy.

It is true claimant has already received a great deal of physical therapy. It is also true that while he was undergoing therapy, claimant felt he improved. Now that he has not had therapy for over a year, his symptoms have worsened, and he has had to rely more on pain medication:

This is an unusual request. Normally a claimant who has only been offered physical therapy seeks authorization for recommended surgery that is being withheld. Here, claimant is requesting the more conservative treatment of further physical therapy. His reasoning for doing so is sound. It has worked for him in the past, and his symptoms have worsened since he stopped. Certainly further physical therapy presents a more cost effective treatment for defendants as opposed to surgery, narcotic pain medications, etc. It is also more common to see an injured worker who has not been diligent in their prescribed physical therapy. Here, claimant has been very faithful in participating in physical therapy, and desires to continue it.

Dr. McMains' reason for not recommending further therapy is based on two presumptions. One is that the medical literature does not support physical therapy three years after the injury. This is unpersuasive, as every injury is unique, and when one considers a year of that three years claimant has been denied physical therapy, as opposed to three years of physical therapy, this objection fails. Similarly, he relies on an incorrect statement the physical therapy to date has not helped. On the contrary, claimant credibly testified it has helped a great deal, things got worse when it stopped, and it helped more than any other treatment he has been given, including surgery.


It is concluded claimant would benefit from further physical therapy. Further therapy is a reasonable and necessary treatment for his ongoing symptoms from his work injury. 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 authorized.

ORDER

THEREFORE IT IS ORDERED:

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

Signed and filed this 1st day of May, 2015.



JON E. HEITLAND
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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