BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BRENDA SWEET,	File No. 5053602
Claimant,	ALTERNATE MEDICAL
vs.	CARE DECISION
COMMUNITY MEDIA GROUP,	
Employer, Defendant.	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, Brenda Sweet.

The alternate medical care claim came on for hearing on December 15, 2015. 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 claimant's exhibits 1(10/21/2015 email) and 2 (9/1/2015 Out Patient Order Form), and defendant's exhibits A (5/15/2015 note from Margaret Mangold, M.D.), B (9/1/2015 consultation report of Margaret Fehrle, M.D.), C (listing of charges and payments) and D (10/27/2014 letter).

No witness was called by claimant. Defendant called Shelly Haesner and Debbie Corkery.

At the time of claimant's injury the defendant did not have workers' compensation insurance for Iowa claims. A search of the NCCI website indicates the defendant currently has workers' compensation insurance through First Liberty Insurance Corporation.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of physical therapy.

FINDINGS OF FACT

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

Defendant admitted liability for an injury occurring on October 9, 2014. On May 13, 2014 Dr. Mangold noted that claimant had been released from physical therapy and had reached maximum medical improvement. (Exhibit A, page 1) Dr. Mangold was an authorized physician.

Ms. Haesner is the business manager for the Iowa location of defendant. She received the report of claimant's injury, Exhibit D, and sent it to the home office. The home office then took care of the workers' compensation claim. Ms. Haesner did not authorize Dr. Fehrle to provide medical care and was not aware if the home office authorized Dr. Fehrle to provide medical care.

Ms. Corkery is the assistant publisher for the Iowa location of the defendant. She was claimant's supervisor and advised claimant to report her injury to Ms. Haesner. Ms. Corkery testified that no one in Iowa authorized claimant to receive treatment from Dr. Fehrle. The medical bills submitted by defendant show that November 14, 2014 was that last payment to the Virginia Gay Hospital and the last billing from the Vinton Family Medical Clinic was April 8, 2015. (Ex. C)

On September 1, 2015 Dr. Fehrle examined claimant. Her report stated the attending physician was Dr. Mangold. The report does not indicate whether Dr. Mangold referred the claimant to her for treatment.

Dr. Fehrle's assessment was, "Patient is a 50 year-old female left-hand dominant and with chronic left shoulder tendonitis secondary to a work place injury." (Ex. B, p. 1) She noted that physical therapy had helped claimant's motion in the past. She also noted claimant's strength is significantly deteriorated. She recommended and provided an injection. She also recommended physical therapy and that claimant return for further evaluation after physical therapy. (Ex. B, p. 2) Dr. Fehrle wrote an order for physical therapy on September 1, 2015. (Ex. 2, p. 1)

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-reopen 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. 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; 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 decision June 17, 1986).

The defendant has argued that Dr. Fehrle was not an authorized physician and that the defendant is entitled to maintain control of the medical care. The record is not clear that Dr. Fehrle is an authorized physician, either by appointment by defendant or a referral by authorized physician Mangold. If claimant had proven Dr. Fehrle was an authorized physician, defendant would have been bound to provide care she recommends and would not be allow to second guess their own treating physician. Claimant did not prove by a preponderance of the evidence that Dr. Fehrle was an authorized physician.

The fact of whether Dr. Fehrle was an authorized physician, however, is not dispositive of the issue. The issue is whether the defendant is providing reasonable medical care for the claimant's work-related shoulder injury. Dr. Fehrle found on September 1, 2015 claimant's strength had significantly deteriorated. There is no evidence that defendant has offered any care to claimant to address the worsening of claimant's shoulder condition. It has been 18 weeks since Dr. Fehrle recommended physical therapy. The defendant is not offering reasonable care.

The defendant is ordered to provide physical therapy to the claimant. Defendant shall arrange for physical therapy for claimant's left shoulder within ten (10) business days of this order.

Defendant still has the right to choose the physical therapy provider and reauthorize Dr. Mangold or any other physician to provide care.

ORDER

Therefore it is ordered:

The claimant's petition for alternate medical care is granted

Signed and filed this 15th day of December, 2015.

JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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