BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ANTHONY R. BORKOVEC,

Claimant,

vs.

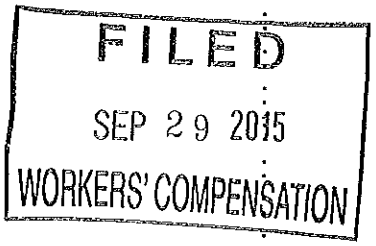
DISH NETWORK,

Employer,

and

ACE AMERICAN INSURANCE COMPANY,

Insurance Carrier,
Defendants.



File No. 5042514

ALTERNATE MEDICAL CARE DECISION

Head Note No.: 2701

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, Anthony Borkovec. Claimant appeared personally and through his attorney, Stephen Brown. Defendants appeared through their attorney, Paul Barta.

The alternate medical care claim came on for hearing on September 25, 2015. The proceedings were digitally recorded which 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.

The record consists of claimant's exhibits 1 and defendants' exhibit A. All exhibits were offered without objection and received into evidence. Claimant testified on his behalf. Defendants elected not to call any witnesses to testify at the time of hearing.

FINDINGS OF FACT

Claimant sustained a work-related injury which resulted in, among other things, complex regional pain syndrome. On July 14, 2015, his treating physician, Carol A.

Donahue, DPM, recommended that claimant use an electric scooter for use over long distances, uneven, or unstable ground. (Exhibit 1, page 2)

This medical record was sent to defendants with a request for authorization of the scooter on July 22, 2015. (Ex. 1, p. 4)

On August 12, 2015, Abena A. Krow-Rodney, M.D., agreed that he wrote a prescription for the claimant for a motorized scooter due to his work related chronic regional pain syndrome. (Ex. 1, p. 1)

On June 3, 2015, Douglas W. Martin, M.D., issued a letter for the defendants recommending claimant obtain a cane with a custom molded grip instead of a scooter because the claimant did not meet the criteria of an individual in need of a power mobility device. (Ex. A, p. 3) Dr. Martin wrote in his letter that he conducts Social Security Disability Examinations and has created a "Continuing Medical Education Program in order to determine whether individuals would qualify for what is frequently referred to as a 'power mobility device.'" (Ex. A, p. 3)

He further stated that it was not medically appropriate and reasonable for the claimant to be using a power medical device because it would "lead to increasing problems with respect to his right lower extremity." (Ex. A, p. 3)

Claimant testified that he did not plan on using the scooter all the time but as a supplement to his use of the cane. For instance, claimant mentioned that he could not walk to the post office but the scooter would presumably allow him more freedom to run errands such as this.

Claimant has not been offered the custom made cane and instead, recently purchased one himself at a local drugstore.

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 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).

Reasonable care includes care necessary to diagnose the condition and defendants are not entitled to interfere with medical judgment of its own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening June 17, 1986).

Two treating physicians recommended claimant obtain a scooter so that he could be more mobile. While Dr. Martin has experience with evaluating disabilities, his expertise does not trump the podiatrist and the family practice doctor in this case. The refusal to comply with two treating physicians' orders is unreasonable, particularly in the face of the care that was being offered. For instance, despite Dr. Martin's recommendations that claimant be provided a custom cane in June, this recommendation was not acted upon.

The defendants asked that the underlying liability case be noted. The claimant was found to be totally and permanently disabled. The defendants have appealed. But for the purposes of this action, the defendants accepted the injury upon which the medical request was based. The underlying action may or may not have a separate outcome, but the present case proceeded upon the defendants' admission at the outset and in the answer that they accepted liability for the injury.

The claimant carried his burden to prove by a preponderance of the evidence that the failure to follow two treating physicians' recommendations to provide claimant with a motorized scooter was unreasonable. Claimant is entitled to a grant of his alternate care petition.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's petition for alternate medical care is granted.

Signed and filed this 29th day of September, 2015.

JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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