

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DIANA RIAHI,
Claimant,

FILED

MAR 08 2019

vs.

WORKERS COMPENSATION

File No. 5067202

IOWA CITY COMMUNITY
SCHOOL DISTRICT,

ALTERNATE MEDICAL

Employer,

CARE DECISION

and

SAFETY NATIONAL CASUALTY,

Insurance Carrier,
Defendants.

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. The undersigned has been delegated final agency action in this decision. Iowa Code section 17A.15(1); Order of Delegation, February 15, 2015. Any appeal of the decision will be to the Iowa District Court.

Claimant appeared through her attorney, Eric Bigley. Defendants appeared through their attorney, Lindsey Mills.

The alternate medical care claim came on for hearing on March 8, 2019 at 9:30 a.m. The proceedings were digitally recorded. The recording constitutes the official record of this proceeding.

The record consists of Claimant's Exhibits 1 through 3, and Defendants' Answer.

Both attorneys were given the opportunity to make opening remarks. Claimant was present during the hearing but she did not testify.

The salient facts were detailed in defendants' answer. They are:

1. Claimant has alleged injuries arising out of her work duties with Defendant Employer on February 24, 2017. Defendants have accepted liability and have provided all reasonable and necessary benefits to date.

2. Recently, Claimant requested to return to the doctor to address alleged cervical issues. Of note, the authorized treating physician, Dr. James Milani, evaluated and examined Claimant's cervical spine in May of 2017. He had ordered EMG and nerve conduction studies of Claimant's cervical spine which were normal.

3. As a result, Dr. Milani referred Claimant to Dr. Mysnyk for further evaluation of a muscular issues [sic] with her neck. Dr. Mysnyk noted a long history of shoulder, neck and right shoulder issues as a result of a prior injury in 2014.

4. According to Claimant, she has sought treatment for migraines (a personal condition unrelated to the work injury) with her own physician, Dr. Jennifer Stern. It is Defendants' understanding that Claimant needs her cervical spine evaluated again given her current complaints over 2 years after the work injury.

5. Defendants have agreed to have Claimant's cervical spine evaluated by Dr. Chad Abernathey, a neurosurgeon. Per Dr. Abernathey's request, all of Claimant's medical records have been provided and Defendants are waiting on the date and time of the appointment.

Counsel for claimant agrees to an appointment with Chad Abernathey, M.D., a board-certified neurologist. However, Mr. Bigley wants a guarantee that Dr. Abernathey will order MRI testing as part of his treatment protocol. It is not within the purview of the undersigned deputy workers' compensation commissioner to control the medical procedures of the authorized treating physicians. If after Dr. Abernathey has completed his treatment of claimant, and she believes the treatment was not reasonable, then claimant may file another petition for alternate medical care.

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 1975).

Under Iowa law, the employer is required to provide care to an injured employee and is permitted to choose the care. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

[T]he employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. . . . The

treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

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.


Defendants have forwarded copies of claimant's medical records to Dr. Abernathey. They are awaiting an appointment as soon as possible.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall schedule an appointment with Chad Abernathey, M.D., for claimant as soon as possible.

Signed and filed this 8th day of March, 2019.


MICHELLE A. MCGOVERN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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