BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JODIE BUCHANAN, Claimant, vs. PSSI HOLDINGS, L.L.C. d/b/a, PACKERS SANITATION SERV., INC., Employer, and INDEMNITY INSURANCE CO. OF NORTH AMERICA, Insurance Carrier, Defendants.	File No. 5054334 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, Jodie Buchanan. Claimant appeared personally and through her attorney, Joanie Grife. Defendants appeared through their attorney, Jordan Kaplan.

The alternate medical care claim came on for hearing on August 14, 2015. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding.

Pursuant to the 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 through 7. Defendants offered exhibits A and B. All exhibits were received into evidence. Claimant was the only witness called to testify. Counsel both offered cogent and articulate arguments in support of their clients' positions. The case was submitted upon the written exhibits, claimant's testimony, and arguments of counsel on August 14, 2015.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care. Claimant seeks an order compelling defendants to authorize and pay for an L5-S1 right posterior decompression and diskectomy surgery recommended by claimant's treating authorized surgeon, Sarkis Kaspar, M.D.

FINDINGS OF FACT

The undersigned having considered all the evidence in the record finds:

Jodie Buchanan sustained a low back injury that arose out of and in the course of her employment with PSSI Holdings on May 14, 2014. As a result of that injury, claimant has required medical treatment. Defendants selected Joseph J. Chen, M.D. and Sergio A. Mendoza, M.D. as authorized medical providers.

Dr. Chen and Dr. Mendoza both offered reasonable medical care to claimant, including diagnostic testing, spinal injections, physical therapy, and work hardening. Unfortunately, claimants' low back and right leg symptoms did not resolve as a result of the care offered by Dr. Chen and Dr. Mendoza. (Exhibit A, page 7)

Dr. Chen and Dr. Mendoza both released claimant from their care without further medical treatment recommendations. Dr. Chen specifically declared maximum medical improvement occurred on January 28, 2015. (Ex. A, p. 9) He further opined, "that her chronic pain is much more due to central sensitization of her nervous system that is poorly responsive to medical treatments. From a physical medicine and rehabilitation standpoint, I encouraged her to remain physically fit and try to understand her pain not as a signal that is harmful to her spine." (Ex. A, p. 9)

Following her discharge from care by Dr. Mendoza and Dr. Chen, claimant continued to experienced symptoms in her low back and down her right leg. (Claimant's testimony) She sought evaluation for those symptoms through her personal physician, who recommended a repeat MRI be performed. Following receipt of the MRI results, her personal physician referred claimant for her further orthopaedic evaluation by Sarkis Kaspar, M.D. (Claimant's testimony)

Dr. Kaspar evaluated claimant on July 23, 2015. Dr. Kaspar had all three of the MRI's performed on claimant's low back available to him during his evaluation. In reviewing those MRI's, Dr. Kaspar noted that the initial MRI performed one month after claimant's injury demonstrated a "small central disk protrusion S1." He noted the second MRI performed demonstrated "similar" results. However, he noted the third MRI performed one year post-injury (approximately May 2015) demonstrated "increased size of that rt paracentral canal protrusion with [sic] is a moderate size disk herniation (contained) tenting up to posterior ligament and causes moderately severe central stenosis." (Ex. 4 and 5)

The third MRI referenced by Dr. Kaspar as demonstrating an increase in the size of the disk herniation appears to have occurred after claimant was discharged from care by Dr. Mendoza and Dr. Chen. Given this change in the MRI, Dr. Kaspar recommended that claimant submit to an L5-S1 right posterior decompression and discectomy surgery on her low back as a result of the work injuries she sustained. (Ex. 4 and 5)

Defendants have not authorized the surgical procedure recommended by Dr. Kaspar. Instead, defendants take the position that the recommended surgery is not medically reasonable or appropriate given claimant's condition. Defendants point to the opinions expressed by Dr. Chen in his January 28, 2015 office note (Ex. A) to suggest that claimant may actually be worse off if she proceeds with surgery. Defendants also appropriately point out that Dr. Kaspar misstates Dr. Mendoza's recommendations. Contrary to Dr. Kaspar's note, Dr. Mendoza did not recommend surgery after the spinal injections failed. (Claimant's testimony)

Although I find that Dr. Kaspar's history contains the above error, I also find that Dr. Kaspar was privy to additional medical diagnostic testing not in existence at the time Dr. Chen and Dr. Mendoza discharged claimant. Although I may have been inclined to accept the medical opinions of Dr. Chen about the potential for claimant's condition to worsen with surgery prior to the third MRI, I do not find that opinion to be as persuasive given that Dr. Kaspar had additional medical information available to him when rendering his opinions.

I specifically find that defendants are not currently offering claimant additional medical treatment. I find that claimant has identified another medical alternative that is based upon superior information (the third MRI). I find Dr. Kaspar's medical opinions to be more persuasive in this situation than those offered by Dr. Chen or Dr. Mendoza given the objective change in claimant's lumbar MRI findings. Therefore, I find that defendants are not currently offering claimant reasonable and necessary medical treatment reasonably suited to treat claimant's injury.

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).

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997), the supreme court held that "when evidence is presented to the commissioner that the employer-authorized medical care has not been effective and that such care is 'inferior or less extensive' than other available care requested by the employee, . . . the commissioner is justified by section 85.27 to order the alternate care."

In this case, I found that the authorized physicians have declared maximum medical improvement with no further medical treatment recommendations. As such, the employer is not currently offering claimant any additional medical care to treat her injuries. On the other hand, claimant has identified a physician that offers additional medical treatments, including the recommended surgical procedure, to treat her injuries. Dr. Kaspar has superior medical information, particularly the third lumbar MRI, which demonstrates the need for further medical intervention in the form of an L5-S1 right posterior decompression and discectomy.

Claimant has established that the defendants are not currently offering medical care that is reasonably suited to treat her injury. She has established that the care offered by defendants has not been effective in resolving her condition and symptoms. She has also demonstrated by a preponderance of the evidence that there is other available care that is more extensive than the care offered by defendants. Therefore, I conclude that claimant has proven entitlement to an order for alternate medical care.

ORDER

THEREFORE IT IS ORDERED:

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

Defendants should immediately authorize the L5-S1 right posterior decompression and diskectomy surgery recommended by and to be performed by Sarkis Kaspar, M.D.

Failure to comply with this order may result in sanctions pursuant to 876 IAC 4.36.

Signed and filed this 17th day of August, 2015.

WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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