

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

PAUL SEARS,	:	
	:	
Claimant,	:	
	:	
vs.	:	
	:	File No. 5029555
MIDWEST CONTINENTAL, INC.,	:	
	:	ALTERNATE MEDICAL
Employer,	:	
	:	CARE DECISION
and	:	
GREAT WEST CASUALTY COMPANY,	:	
	:	
Insurance Carrier,	:	Headnote No.: 2701
Defendants.	:	

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 July 24, 2009. 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 exhibits 1 through 3; defendants' exhibits A, and B; and the testimony of the claimant.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of a functional capacity evaluation.

FINDINGS OF FACT

On or about June 9, 2007, the claimant suffered an injury which arose out of and in the course of the claimant's employment. The injury involved a puncture wound to claimant's finger. Later, claimant alleges, infection set in and

claimant's condition worsened. He alleges his wrist, arm and shoulder conditions are causally related to his work injury.

Defendants admitted liability for the finger injury but denied that the other conditions were causally connected to the work injury. Thus, this alternate care proceeding is limited to the injury and condition admitted by defendants, the finger injury. By denying liability for the other conditions, defendants lose the right to choose the care for those conditions.

The claimant was provided treatment with Jay Talsania, M.D. On March 20, 2009, Dr. Talsania stated, "At this point, I have discussed with him proceeding with a functional capacity evaluation which I am going to speak with our Workman's Compensation Department about ordering and setting up as I do believe he has reached maximum medical improvement." (Ex. 2)

Later, on June 16, 2009, Dr. Talsania stated, "At this point in time, I have continued him on the same restrictions. I do continue to recommend a functional capacity evaluation...." (Ex. 3)

Exhibit 1 is a letter from claimant's counsel requesting defendants to provide the functional capacity evaluation.

Exhibit A contains medical records of Richard Cusick, M.D. (Ex. B) consists of records from Lawrence Weiss, M.D. Both exhibits are independent medical examinations of the claimant. Both physicians appear to find claimant at maximum medical improvement, as shown by their reports and conclusions.

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 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; 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., (Review-Reopening June 17, 1986).

The record suggests a legitimate concern whether the relief sought by claimant, a functional capacity evaluation, is a proper subject of this alternate medical care proceeding. An alternate medical care proceeding is used to re-examine the medical treatment defendants have authorized for claimant’s injury, and where that treatment is found to be inadequate or inappropriate, alternate care can be ordered. It is not to be used to obtain an independent medical examination under Iowa Code section 85.39.

Here, two physicians feel claimant is already at maximum medical improvement. However, it is noted those opinions are addressed to claimant’s finger injury only, and do not address whether he should still be under care for the other alleged conditions.

Dr. Talsania also in his March 2009 report, Exhibit 2, suggests he may be recommending a functional capacity evaluation solely for the purpose of rating claimant’s impairment, as opposed to treating him, because he phrases it in terms of “as I do believe he has reached maximum medical improvement.” However, the record developed at the hearing shows Dr. Talsania has not been asked to perform an independent medical examination or provide a rating of permanent impairment. He has been claimant’s treating doctor. Claimant has not returned to work. His reports are read to recommend a functional capacity evaluation for purposes of treatment, such as to determine if claimant can return to work, and if so, under what restrictions. Defendants’ counsel expressed agreement with this assessment of the doctor’s records.

These are legitimate reasons for ordering a functional capacity evaluation, before or after claimant has reached maximum medical improvement. A functional capacity evaluation is a test, which can be helpful to a physician for an independent medical examination but also helpful in determining if claimant can be returned to work, or what work restrictions claimant needs.

As such, the recommendation for a functional capacity evaluation is in fact a recommendation for further treatment. Dr. Talsania is the treating doctor and most familiar with claimant's conditions. He has recommended the evaluation as part of claimant's treatment by him. There is no compelling reason in the record indicating claimant's treatment should not include the functional capacity evaluation.

It is found that the treatment offered by defendants is not reasonably suited to treat the injury and that the alternate care requested should be approved.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is granted. Defendants shall provide and pay for a functional capacity evaluation.

Signed and filed this 27th day of July, 2009.



JON E. HEITLAND
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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