

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

THOMAS SULLIVAN,

Claimant,

vs.

LOWE'S HOME CENTERS, INC.,

Employer,
Self-Insured,
Defendant.

FILED

MAY 23 2019

WORKERS' COMPENSATION

File No. 5066816

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE: 2701

This case 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 and with his attorney, Nicholas G. Pothitakis. Defendant appeared through its attorney, Mark A. Woollums.

The alternate medical care claim came on for hearing on May 22, 2019 at 2:00 p.m. The proceedings were digitally recorded. The recording constitutes the official record of this proceeding.

At the commencement of the proceedings, claimant offered: Exhibit 1, pages 1 through 4. Defendant offered no exhibits. All proffered exhibits were admitted as evidence in the hearing.

Both attorneys were given opportunities to provide oral arguments. The oral arguments were short and to the point.

Thomas Sullivan, claimant, testified. He sustained a work related injury to his left shoulder on or about May 8, 2017. Defendant has admitted the occurrence of the work injury. Claimant testified subsequent to the work injury, he sustained no other left shoulder injuries.

Defendant authorized treatment with a Dr. Kendall (first name unknown). Dr. Kendall practices orthopedic surgery in the state of Indiana. On April 4, 2018, Dr. Kendall performed "s/p left shoulder arthroscopy with subacromial decompression,

debridement of bursae, distal clavicle excision, biceps tenotomy, and superior capsular reconstruction." (Joint Exhibit 1, page 1)

Claimant's left shoulder problems persisted. He last saw Dr. Kendall on November 20, 2019 [sic]. (Ex. 1, p. 1) At that time, Dr. Kendall referred claimant to Jeffery Soldatis, M.D., another orthopedic surgeon in Indiana. (Ex. 1, p. 1)

Claimant saw Dr. Soldatis on March 19, 2019. (Ex. 1, p. 1) Claimant related the following medical history to Dr. Soldatis:

His DOI occurred on 5/8/17 while at work, watering landscape when the hose got tangled and jerked the left arm. He presented to Concentra initially after the injury and he was not able to receive treatment from a specialist for many months due to insurance problems. He saw Dr. Kendall when he first moved to Indiana from Davenport, Iowa, which is where the injury occurred. Since he last saw Dr. Kendall in November 2018, his shoulder symptoms continue to persist and he feels it is a "structural issue." He must be cautious of activities he is performing with his left arm or he will experience a stabbing intermittent pain, which can last up to 15-20 minutes. He began utilizing Meloxicam for his discomfort, which does help some. He has trouble sleeping at night because he will roll onto his left side at night, which is painful. Any movements overhead, reaching out in abduction, and with internal rotation are very painful. While in Iowa, he had 3 cortisone injections, stating he did not receive much relief from the injections. He states "I would be more than happy with 75% improvement" of shoulder symptoms.

(Ex. 1, p. 1)

Dr. Soldatis spent greater than 40 minutes reviewing claimant's history, conducting a physical examination of claimant, reviewing radiographic and operating reports, assessing claimant's condition and discussing the condition with claimant. (Ex. 1, p. 3)

Dr. Soldatis diagnosed claimant with the following active problems:

1. Complete rotator cuff tear of the left shoulder
2. Left shoulder pain
3. Osteoarthritis of left acromioclavicular joint
4. Subluxation of tendon of long head of biceps

(Ex. 1, pp. 1-2)

Dr. Soldatis found during his physical examination of claimant:

Physical Exam

Left shoulder exam: ACTIVE-FF to 90, but assisted can get to 130.
Abduction to 90 with a painful arc x2.

External rotation strength 4/5 with some discomfort. Belly press strength 4/5 with some discomfort. Supraspinatus test position is painful and then gives way. PASSIVE – No GH stiffness.

Right shoulder exam: ACTIVE-FF 165. Abduction 120.

General: The patient appears given stated age, alert and oriented x3, and has a moderately elevated BMI.

(Ex. 1, pp. 2-3)

Dr. Soldatis assessed claimant's left shoulder pain. He determined:

Assessment

1. Left shoulder pain
2. Complete rotator cuff tear of left shoulder

Left shoulder pain, RC arthropathy, s/p RC tear – poor function after SCR, more functional and not related to DJD.

(Ex. 1, p. 3)

Dr. Soldatis was prepared to schedule a left shoulder replacement. Claimant requested the surgery. Counsel for claimant made repeated requests for the surgery. As of the date of the alternate care hearing, defendant had not authorized the left shoulder replacement.

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 1975).

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).

The employee bears the burden to establish what care is reasonable and it is a question of fact. Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995). The determination will be based on what is reasonably necessary. Long, at 124.

An employer's right to select the provider of medical treatment to an injured worker does not include the right to determine how an injured worker should be diagnosed, evaluated, treated, or other matters of professional medical judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988).

An employer's failure to follow recommendations of an authorized physician in matters of treatment is commonly a failure to provide reasonable treatment. Boggs v. Cargill, Inc., File No. 1050396 (Alt Care Dec. January 31, 1994).

Defendants, under Assman v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988), may not interfere with the professional judgment of authorized treating physicians.

Defendant authorized treatment with Dr. Kendall, an orthopedic surgeon. Dr. Kendall treated claimant's left shoulder via a variety of modalities, including surgery. Claimant's condition did not improve appreciably. Dr. Kendall referred claimant to Dr. Soldatis. Then Dr. Soldatis became an authorized treating physician. He recommended a total replacement of the left shoulder. Defendant does not have the right to determine how claimant should be treated under Assman. Claimant is entitled to the left shoulder replacement as recommended by Dr. Soldatis.

ORDER

THEREFORE, IT IS ORDERED:

Within ten (10) days of the filing of this order, defendant shall schedule the requisite surgery for claimant with Dr. Soldatis.

Signed and filed this 23rd day of May, 2019.



MICHELLE A. MCGOVERN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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