

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOSHUA SCHIPPERS,

Claimant,

vs.

WEILER, INC.,

Employer,

and

VALLEY FORGE INSURANCE CO.,

Insurance Carrier,
Defendants.

File No. 21009318.03

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, Joshua Schippers. Claimant appeared through his attorney, MaKayla Augustine. Defendants appeared through their attorney, Tyler Laflin.

The alternate medical care claim came on for a telephonic hearing on August 30, 2021. 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.

Claimant offered exhibits 1-10, totaling 10 pages. Defendants introduced exhibit A, which includes two pages. All exhibits were received without objection. No witnesses testified, but counsel offered argument and responded to questioning by the undersigned.

At the commencement of hearing, the undersigned clarified the care being sought with claimant's counsel. Claimant seeks authorization of an injection into the left wrist and seeks an order cutting off defendants' right to select the authorized medical provider. Claimant also seeks authorization of care for the left shoulder. Defendants admit liability for the left hand and/or left arm injury. However, defendants do not admit

liability for the left shoulder at this time. The evidentiary record closed at the conclusion of the alternate medical care hearing.

ISSUE

The issue presented for resolution is whether the claimant is entitled to authorization of care, including an injection into the Guyon's canal and whether claimant should be permitted to control and select his own treatment due to an alleged abandonment of care by the defendants.

FINDINGS OF FACT

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

Claimant, Joshua Schippers, is a 35-year-old gentleman, who works as a machinist for Weiler Supply. (Claimant's Exhibit 2) Mr. Schippers sustained admitted injuries to his left hand and/or left arm as a result of his work activities for this employer on March 3, 2020. As a result of those injuries, claimant has been referred to an orthopaedic surgeon. Defendants selected the initial authorized treating orthopaedic surgeon, Todd Harbach, M.D., at Iowa Ortho.

Dr. Harbach apparently obtained a cervical MRI and EMG testing. Although claimant's neck MRI demonstrated some right-sided abnormalities, claimant's symptoms occur in the left arm. The EMG apparently disclosed no cervical radiculopathy. Dr. Harbach recommended an injection of the carpal tunnel and Guyon's canal. (Claimant's Ex. 2-3)

Defendants apparently authorized further treatment of the left hand and arm with an upper extremity specialist, ZeHui Han, M.D., also practicing at Iowa Ortho. Dr. Han examined claimant and recommended decompression of the carpal tunnel and Guyon's canal. An independent medical evaluation was subsequently performed by another orthopaedic surgeon at Iowa Ortho, Joshua Kimelman, D.O., on December 7, 2020. Dr. Kimelman concluded that "the etiology of his symptoms is somewhat obscure so I would recommend that he not have invasive treatment such as a cervical disc surgery or decompressive surgery to the wrist and hand, but a trial of injection therapy to Guyon's canal and see if that has any benefit for him." (Claimant's Ex. 3)

Claimant desires the proposed injection therapy and requested that from defendants. Defendants authorized the injections in an e-mail by defense counsel on April 30, 2021. (Claimant's Ex. 4) However, defense counsel stated during his argument that Dr. Kimelman would not agree to accept claimant as a patient or perform the proposed injection(s). Defendants authorized follow-up care with Dr. Han.

Dr. Han re-evaluated claimant on May 19, 2021. Dr. Han recommends "carpal tunnel release and guyon canal release based on his EMG/NCS findings a[s] well as his

physical exam. I do not believe that his symptoms are related to cervical radiculopathy. I also do not recommend a cortisone injection to the guyon canal.” (Defendants’ Ex. A, p. 2) Dr. Han permits claimant to follow-up with him as needed. Defense counsel confirmed at hearing that Dr. Han remains an authorized physician.

Claimant does not wish to proceed with the recommended surgery until he has attempted the injections recommended by Dr. Kimelman. Claimant asserts that defendants have abandoned care because they have not authorized the recommended injections.

Claimant continued to experience symptoms and sought treatment with his personal physician, Mark J. Zacharjasz, M.D., on July 16, 2021. (Claimant’s Ex. 6-8) The After Visit Summary introduced by claimant indicates that Dr. Zacharjasz evaluated claimant for “Left shoulder pain, unspecified chronicity.” (Claimant’s Ex. 7) Dr. Zacharjasz recommended claimant be evaluated by a “Shoulder specialist”, Dr. Schwimley, in Ottumwa.

Dr. Zacharjasz’s After Visit Summary provides no mention or analysis of the left hand and left arm issues. There is no recommendation for an injection into the carpal tunnel or Guyon’s canal in Dr. Zacharjasz’s record. Nor does it appear that Dr. Zacharjasz is recommending additional care specific to the left hand or left arm. Instead, it appears he recommends additional evaluation and treatment for claimant’s left shoulder. However, defendants indicated they cannot admit liability for the left shoulder at this time.

Ultimately, I find that Dr. Kimelman recommended an injection at the carpal tunnel and Guyon’s canal. Such medical care could be reasonable and I understand why claimant would desire to proceed with conservative care before embarking on surgical intervention. However, none of the physicians is ready and willing to perform the injections sought. Neither defendants nor the undersigned have authority to order a physician to perform a medical procedure the physician is not willing to perform or that the physician deems unnecessary.

Based on the record submitted, there is no physician ready and willing to perform injections into claimant’s left arm. Dr. Han is the ongoing authorized surgeon for claimant’s left hand and left arm. Defendants’ authorization of an orthopaedic hand specialist, Dr. Han, is reasonable. Following Dr. Han’s recommended course of care is also reasonable. I find that defendants are offering reasonable and necessary medical care through Dr. Han.

While I understand why claimant desires the conservative care he seeks, claimant has not proven that a physician stands ready and willing to provide alternate medical care for the left hand or left arm. Accordingly, I find that claimant failed to prove the care offered by defendants was unreasonable or that alternate care is available that

is superior to or more extensive than that offered through the authorized medical provider, Dr. Han.

REASONING AND CONCLUSIONS OF LAW

Before any benefits can be ordered, including medical benefits, compensability of the claim must be established, either by admission of liability or by adjudication. The summary provisions of Iowa Code section 85.27, as more particularly described in rule 876 IAC 4.48, are not designed to adjudicate disputed compensability of a claim.

The Iowa Supreme Court has held:

We emphasize that the commissioner's ability to decide the merits of a section 85.27(4) alternate medical care claim is limited to situations where the compensability of an injury is conceded, but the reasonableness of a particular course of treatment for the compensable injury is disputed. . . . Thus, the commissioner cannot decide the reasonableness of the alternate care claim without also necessarily deciding the ultimate disputed issue in the case: whether or not the medical condition Barnett was suffering at the time of the request was a work-related injury.

. . . .

Once an employer takes the position in response to a claim for alternate medical care that the care sought is for a noncompensatory injury, the employer cannot assert an authorization defense in response to a subsequent claim by the employee for the expenses of the alternate medical care.

R. R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 197-198 (Iowa 2003) (fn 2).

In this case, claimant seeks an order authorizing treatment for the left shoulder, including an evaluation with an orthopaedic surgeon and potentially an MRI of the left shoulder. Defendants do not admit liability for a left shoulder injury. Given the denial of liability, claimant's original notice and petition for alternate medical care must be dismissed with respect to the left shoulder. Given their denial of liability for the left shoulder condition sought to be treated in the petition for alternate medical care, defendants lose their right to control the medical care claimant seeks during their period of denial and the claimant is free to choose care for the left shoulder. Brewer-Strong v. HNI Corp., 913 N.W.2d 235 (Iowa 2018); Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193 (Iowa 2010).

As a result of the denial of liability for the left shoulder condition sought to be treated in this proceeding, claimant may obtain reasonable medical care from any provider for this treatment but at claimant's expense and seek reimbursement for such care using regular claim proceedings before this agency. Haack v. Von Hoffman

Graphics, File No. 1268172 (App. July 31, 2002); Kindhart v. Fort Des Moines Hotel, Iowa Industrial Comm'r Decisions No. 3, 611 (App. March 27, 1985). "[T]he employer has no right to choose the medical care when compensability is contested." Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010). Therefore, defendants are precluded from asserting an authorization defense as to any future treatment of the left shoulder during their period of denial.

Defendants admitted liability for the alleged left hand and/or left arm conditions. Therefore, it is appropriate to proceed with the alternate medical care hearing with respect to those conditions. Claimant seeks an order authorizing an injection to the Guyon's canal and further seeks an order cutting off defendants' right to select the authorize provider. Instead, claimant seeks an order permitting claimant to select his own medical care for the left hand and/or left arm and asserts that defendants have abandoned care.

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); Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); 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. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). 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).

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).

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., File No. 694639 (Review-Reopening June 17, 1986).

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, defendants offer treatment through Dr. Han, an orthopaedic hand specialist. Dr. Han has diagnosed claimant and offered additional treatment via surgical intervention. Claimant does not want to proceed with the recommended surgical procedure unless and until a diagnostic injection is performed. While claimant is able to point to the recommendations of Dr. Harbach and Dr. Kimelman relative to the requested injection, Dr. Kimelman is not willing to assume care or perform the injection. Dr. Han believes the diagnostic injection is unnecessary and is not willing to perform it.

Defendants cannot realistically authorize an injection when no physician has been identified that is actually willing to perform the injection. Defendants rely upon and continue to authorize treatment with the physician they selected, Dr. Han. Defendants’ authorization of treatment with a hand surgeon is reasonable care. Claimant may desire alternate treatment in the form of a diagnostic injection. However, there is no evidence in this record to suggest that another physician is ready and willing to perform the alternate course of care via the injection.

Having found that the defendants are offering reasonable care through a hand surgeon, Dr. Han, I conclude that claimant failed to carry his burden of proof to establish that the care offered by defendants is unreasonable. At this point in time, there is only one physician offering specific care: Dr. Han. Defendants selected and continue to authorize care through Dr. Han. Claimant has been offered reasonable medical care for his left hand/left arm injuries. Accordingly, I conclude that defendants have not abandoned care and I conclude that the claimant’s request to terminate defendants’ right to select the authorized medical provider is not legally supported at this time. Accordingly, based on the record created at this alternate medical care hearing, Dr. Han remains the authorized physician for claimant’s left hand and/or left arm injuries.

ORDER

THEREFORE, IT IS ORDERED:

The claimant's petition for alternate medical care is denied with respect to the left hand and/or left arm injuries.

Dr. Han remains the authorized physician for claimant’s left hand and/or left arm injuries.

Claimant's original notice and petition for alternate medical care is dismissed with respect to the claim for treatment of the left shoulder.

Given their denial of liability for the left shoulder condition sought to be treated in the petition for alternate medical care, defendants lose their right to control the medical care claimant seeks for the left shoulder during their period of denial and the claimant is free to choose care for the left shoulder.

Defendants are precluded from asserting an authorization defense for the left shoulder condition during the period of their denial.

Signed and filed this 30th day of August, 2021.

A handwritten signature in black ink, appearing to read "William H. Grell", written over a horizontal line.

WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

MaKayla Augustine (via WCES)

L. Tyler Laflin (via WCES)