

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LISA KAIN,
Claimant,

FILED

JUL 20 2016

vs.

WORKERS COMPENSATION

File No. 5044687

IOWA HEALTH PHYSICIANS,

ALTERNATE MEDICAL

Employer,

CARE DECISION

and

EMC INSURANCE COMPANIES,

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. Lisa Kain, claimant, appeared with her attorney. Defendants appeared through their attorney. Ms. Darlene Liveringhouse, claim specialist, appeared too.

The alternate medical care claim came on for hearing on July 20, 2016. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Iowa Workers' Compensation 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 and 2, and defendants' exhibits A and B. All exhibits were offered and received into evidence.

FINDINGS OF FACT

Claimant sustained a work-related injury on December 14, 2009. The case was settled pursuant to a compromise special case settlement. However, the following paragraphs were included in the compromise settlement:

Furthermore, pursuant to the provisions of Iowa Code Section 85.35(6), future medical treatment under Iowa Code Section 85.27 will remain open for Claimant's neck, sequela of headaches/migraines, left shoulder, psychiatric care, and treatment related to medication side effects (currently medication for dry eyes prescribed by optometrist). Defendants

are responsible for treatment of these aforementioned conditions that are causally related to Claimant's injury on December 14, 2009. Both parties retain their full and complete rights under Iowa Code Section 85.27.

Furthermore, Defendants have agreed to pay any outstanding medical charges for authorized treatment Claimant has received in the past which is causally related to her injury on December 14, 2009.

It is further agreed that this settlement is entered into with the understanding that the payment described above represents the final and only amount Claimant will ever receive from the Defendants with respect to the injuries sustained on December 14, 2009 or any other date of injury which could have been pled.

On July 8, 2016, claimant filed her petition for alternate medical care. At paragraph 5 of the petition, claimant alleged:

5. Claimant is dissatisfied with the care provided and has communicated that dissatisfaction to employer. Reason for dissatisfaction and relief sought:

An approved Compromise Settlement was filed December 2, 2014. On June 14, 2016, Claimant's authorized provider, Dr. Vermillion, recommended a referral to Dr. Andrzej Szczepanek to receive a cervical epidural. (Ex. 1) Claimant requested authorization for the epidural June 27, 2016 and June 30, 2016. (Ex. 2) To date there has not been a response.

Claimant requests that the Defendants' [*sic*] be ordered to authorize the cervical epidural with Dr. Szczepanek.

At the hearing, defendants presented Exhibit A. Timothy Vermillion, D.O., claimant's authorized treating physician wrote on page 2 of Exhibit A:

1. I don't feel the delay of cervical epidural is appropriate.

Defense counsel agreed the insurance carrier would authorize the cervical epidural injection with Andrzej Szczepanek, M.D. The claims specialist, Ms. Liveringhouse, agreed to schedule the appointment within the next day.

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).

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall schedule a cervical epidural injection for claimant with Dr. Szczepanek. The epidural appointment shall be scheduled within one day of the filing of this decision.

Signed and filed this 20th day of July, 2016.



MICHELLE A. MCGOVERN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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