BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

| | | |
|---|---|---|
| CONNIE DETWEILER,<br><br>Claimant,<br><br>vs.<br><br>FRIENDSHIP HOME,<br><br>Employer,<br><br>and<br><br>CCMSI,<br><br>Insurance Carrier,<br>Defendants. | :<br>:<br>:<br>:<br>:<br>:<br>:<br>:<br>:<br>:<br>:<br>:<br>:<br>:<br>:<br>: | File No. 5030460<br><br>ALTERNATE MEDICAL<br><br>CARE DECISION<br><br>HEAD NOTE NO: 2701 |

This is a contested case proceeding under Iowa Code chapter 17A. Claimant sustained a work-related injury. The date of the work injury was amended at hearing to January 4, 2009.

Claimant filed her petition on July 13, 2009. She alleged at paragraph 5 of her petition:

> Claimant is dissatisfied with the care provided and has communicated that dissatisfaction to employer. Reason for dissatisfaction and relief sought: surgery and care with Dr. Jensen is not being provided.

Defendants filed the answer on July 22, 2009. Defendants admitted the occurrence of a work injury on January 4, 2009. In addition, defendants stated in the answer:

> 4. The allegations of paragraph 4 are denied. Care has been offered with Dr. Richard McCaughey, as well as a "third" surgical opinion with Dr. Huy Trinh. See Exhibit C, pp. 1-2. Dr. McCaughey's office is located at Iowa Methodist Occupational Medicine, 1301 Penn Avenue, Suite 416, Des Moines, Iowa 50316. Dr. Trinh has offices located in Council Bluffs, Clarinda, Denison, and Red Oak. Claimant's home address is 2418 210th Street, Audubon, Iowa. The mileage from

claimant's home to Dr. McCaughey's office is 79.57 miles. The mileage from Claimant's home to Dr. Trinh's office in Denison is 54.69 miles. The requested care with Dr. Jensen in Omaha, Nebraska, would mean the claimant would have to travel 87 miles from her home.

5. The allegations of paragraph 5 that claimant has communicated her dissatisfaction with care to the defendants is admitted. However, surgery and care with Dr. Jensen is denied. On July 2, 2009, Dr. Thomas Carlstrom specifically recommended **against** an anterior lumbar interbody fusion and further opined that he doubted that it would solve her back symptoms. See Exhibit C, p. 4.

The hearing administrator set the case for a telephone hearing on July 23, 2009, at 10:30 a.m. The hearing was recorded by digital means. The digital recording is the official transcript of the proceedings.

The parties offered exhibits. Claimant's Exhibits 1 through 4 and Defendants' Exhibits A through C were admitted as evidence in the case. Claimant was the sole witness to testify. She resides in Audubon, Iowa, a town of 2,382 residents in Audubon County.

According to the Iowa Workers' Compensation Commissioner, the deputy workers' compensation commissioner presiding at the contested case in an application for alternate medical care, pursuant to rule 876 IAC 4.48, is hereby delegated the authority to issue the final agency decision on the application, Iowa Code section 86.3. There is no right of intra-agency appeal on this decision. Continental Telephone Co. v. Colton, 348 N.W.2d 623 (Iowa 1984) and Leaseamerica Corp. v. Iowa Dept. of Revenue, 333 N.W.2d 847 (Iowa 1983)

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Iowa Code section 85.27 (4) provides, in relevant part:

For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. . . . The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer in writing if requested, following which the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow other care.

Reasonable care includes care necessary to diagnose the condition and defendants are not entitled to interfere with medical judgement of its own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening Decision June 17, 1986).

If a claimant is dissatisfied with the medical care he has been receiving, he must communicate his dissatisfaction to the employer. Such dissatisfaction must be communicated to the employer prior to the filing of the original notice and petition. Iowa Code section 85.27.

Before alternate medical care can be ordered, compensability of the medical condition to be treated must be established, either by admission of liability or adjudication. The summary procedure of Iowa Code section 85.27, as more particularly described in administrative rule 876 IAC 4.48(7), is not available to adjudicate liability or causal connection disputes.

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 Company, 528 N.W.2d 122 (Iowa 1995)

When claimant initially sought treatment in April 2009, she contacted her personal physician, James Cunningham, M.D. Dr. Cunningham ordered an MRI of the spine. Mitchell Erickson, M.D., a radiologist at Audubon County Memorial Hospital, interpreted the results of the MRI as:

> IMPRESSION:
>
> 1. Mildly transitional S1 segment.
>
> 2. Disc bulging at L5-S1 lateralizing slightly to the right with posterior annular tearing.

(Exhibit 4, page 8)

Dr. Cunningham referred claimant to Ric E. Jensen, M.D., Ph.D., a neurosurgeon in Omaha, Nebraska. Claimant saw Dr. Jensen on three separate occasions. The neurosurgeon ordered conservative care including physical therapy and an epidural steroid injection. Claimant experienced no relief from the conservative measures. Dr. Jensen opined:

> I also informed Connie that the nature of her lumbosacral spinal pathology will remain problematic to the extent that if she fails to improve

> significantly over time a surgical fusion procedure may be required to eliminate her back pain syndrome.

(Ex. 1, p. 2)

Defendants sent claimant for treatment with Patti Hildreth, ARNP. Claimant provided a brief medical history to Nurse Hildreth. Claimant requested a referral to Dr. Jensen, the neurosurgeon. Dr. Cunningham had already suggested Dr. Jensen for care. Nurse Hildreth concurred, and a referral to Dr. Jensen was made. Referral by an authorized physician to another practitioner is generally found to be authorized treatment. Limoges v. Meier Auto Salvage, 1 Iowa Ind. Comm'r Rep. 207 (1981). As a result of Nurse Hildreth's referral, Dr. Jensen became an authorized treating neurosurgeon.

Effective June 16, 2009, Dr. Jensen recommended the following treatment for claimant:

> I had a thorough and extensive discussion with Connie relating to the issues at hand regarding the findings per her past MRI imaging of her lumbosacral spine, as performed April 18, 2009. Connie understands that she has failed a thorough and extensive course of conservative treatment measures for her current back pain syndrome and that she has sustained an acute injury to her lower lumbosacral spine per an annular tear at the L4-5 lumbar level. Connie has a sacralized L5 lumbar vertebrae and this accounts for the numbering discrepancy between her evaluation and that put forth in the radiology report. In any event, Connie's back pain syndrome has failed to respond to conservative treatments and she is now considered for an anterior lumbosacral spinal interbody discectomy/arthrodesis with plate fixation procedure. I informed Connie that this procedure would offer her the most significant probability for significant, if not complete, pain reduction in the absence of significant disruption for posterior paraspinal muscle elements. The nature of anterior lumbosacral spinal fusion with plate fixation was discussed with Connie in great detail prior to the completion of the visitation. Connie wishes to pursue operative therapy at this time and I have informed her that we engage efforts to consider coverage of her procedure with workman's compensation. All of Connie's relative to her current lumbosacral spinal pathology and treatment course were discussed with her in detail prior to the completion of the visitation. We will contact Connie when we have achieved coverage for her anterior lumbosacral spinal interbody arthrodesis procedure. Based upon the totality of available evidence of treatment history at this time, it is clearly rational and reasonable to consider operative fusion at this juncture.

(Ex. 2, p. 6)

Claimant testified she trusts Dr. Jensen, the neurosurgeon. Claimant wants the spine surgery. She is dissatisfied with the recommendations made by Thomas A. Carlstrom, M.D., an independent medical examiner, retained by defendants to assess claimant's spinal condition. Claimant does not desire to pursue weight loss measures, back bracing, and water aerobics for conditioning. (Ex. C, p. 6) She is unwilling to treat with a specialist in occupational medicine for physical rehabilitation.

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. American v. Blue Star Foods, declaratory ruling, file number 866389 (May 18, 1988).

Defendants may not interfere with the medical judgment of Dr. Jensen who opines surgery is now warranted for claimant. While surgery appears drastic for a woman who is only 25 and morbidly obese, Dr. Jensen is confident the surgery is the only viable treatment for claimant. Claimant is adamant. She wants spinal surgery. She is totally dissatisfied with the conservative treatment modalities offered by other medical providers.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's petition for alternate medical care is granted.

Defendant shall schedule an appointment for claimant with Ric E. Jensen, M.D., Ph.D. of Omaha, Nebraska, and surgery is hereby granted with Dr. Jensen, the authorized treating neurosurgeon, if warranted by Dr. Jensen.

Prior to the first appointment, defendant shall forward to Dr. Jensen all of claimant's prior medical records related to the spine, including chiropractic records.

Defendants shall also forward to Dr. Jensen, a copy of this decision.

Defendants shall contact Dr. Jensen within seven (7) days of the filing of this decision in order to schedule the appointment for claimant.

Signed and filed this ___24th_____ day of July, 2009.

_____
MICHELLE A. MCGOVERN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Ryan T. Beattie
Attorney at Law
4300 Grand Ave.
Des Moines, IA 50312
ryan@beattielawfirm.com

Iris J. Post
Attorney at Law
801 Grand Ave., Ste. 3700
Des Moines, IA 50309
post.iris@bradshawlaw.com

MAM/dll