

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DEBRA LANGGUTH,

Claimant,

vs.

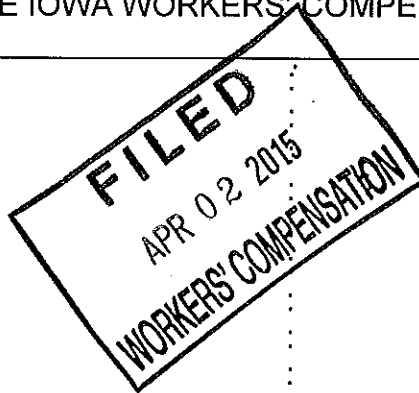
NORDSTROM,

Employer,
Self-Insured,
Defendant.

File No. 5052368

ALTERNATE MEDICAL
CARE DECISION

HEAD NOTE NO: 2701



This is a contested case proceeding under Iowa Code chapters 85 and 17A. The expedited procedures of rule 876 IAC 4.48, the "alternate medical care" rule, are invoked by claimant, Debra Langguth.

This alternate medical care claim came on for hearing on April 2, 2015. The proceedings were recorded digitally and constitute the official record of the hearing. By an order filed by the workers' compensation commissioner, this decision is designated final agency action. Any appeal would be a petition for judicial review under Iowa Code section 17A.19.

The record in this case consists of claimant's exhibits 1 through 4, defendant's exhibits A through E, and the testimony of claimant. Defendant's exhibits were lettered by the undersigned for clarity of the record.

ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of continued physical therapy with Mercy Rehabilitation.

FINDINGS OF FACT

Defendant accepts liability for a shoulder injury occurring on May 28, 2014.

On November 14, 2014 claimant underwent a left subacromial decompression performed by James Pape, M.D. (Exhibit 1)

On December 5, 2014 claimant was evaluated by Dustin Huinker, P.T. with Mercy Rehabilitation. He assessed claimant as having decreased strength and range of

motion in the left shoulder. Claimant was to undergo physical therapy for three months to increase strength and range of motion. (Ex. 2)

On December 22, 2014 claimant was evaluated by Tracy Novak P.T.A. Claimant's arm was still throbbing and claimant was not tolerating stretching. Claimant indicated her arm felt like it was going to fall off when taken out of the sling. (Ex. E)

Claimant testified that she had a lot of pain approximately the first month after surgery. She said her first month of treatment, after surgery, was simply to deal with pain. She said that on December 28, 2014 Dr. Pape gave her a cortisone shot in her left shoulder which significantly helped with pain. She said her pain improved after her shot and soon she began to work on range of motion in physical therapy beginning in January 2015.

In a March 2, 2015 note, Brian Jones, M.P.T. noted claimant's range of motion and strength in her left shoulder was unchanged from two weeks prior. (Ex. C)

In a March 4, 2015 note, Dr. Pape indicated claimant could continue to work with present physical therapy and restrictions. Treatment was to increase range of motion, strength, and function. (Exs. 3 and A)

Claimant testified at hearing Nurse Care Manager Linda Carpenter was at the evaluation with Dr. Pape on March 4, 2015. She said Dr. Pape did not indicate, at that time, there needed to be a change in the physical therapy group conducting physical therapy.

Claimant testified that, at that meeting, Nurse Care Manager Carpenter asked twice that claimant be allowed to return to work at eight hours a day. She said Dr. Pape told Nurse Carpenter claimant should only return to work at 6 hours a day. She said Nurse Carpenter became frustrated when Dr. Pape did not follow her suggestions.

Claimant testified she did speak with Nurse Carpenter after that evaluation and told Nurse Carpenter she was frustrated with the slow progress with her return to function, strength and range of motion. She testified Dr. Pape told her progress might be slow in regaining strength, range of motion and function in her shoulder.

In a March 11, 2015 letter, claimant's counsel requested claimant be allowed to continue physical therapy with Mercy Rehabilitation. (Ex. 4) Claimant testified at hearing she did not want to begin going for physical therapy with Performance Therapy.

In an April 1, 2015 letter, Nurse Case Manager Carpenter indicated she is the nurse case manager for claimant's workers' compensation claim. She said she met with claimant on March 4, 2015 after her appointment with Dr. Pape. Ms. Carpenter indicated that, at that time, claimant did not think the physical therapy she received with Mercy was helping her. She indicted claimant complained of seeing physical therapy assistants occasionally and not physical therapists. (Ex. B)

Claimant testified she does not want to go to a different physical therapy group, but wants to stay with Mercy Rehabilitation. She says this is because she feels she is making progress at Mercy. This is also because claimant feels uncomfortable with strangers touching her body. She said she has gotten somewhat comfortable with physical therapists and assistants touching her at Mercy. She said she does not want to go through issues of having new physical therapists, she does not know, touch her body. Claimant testified she has worked with at least two different physical therapists at Mercy and between two to four physical therapy assistants.

Claimant testified she wants to continue treatment at Mercy for physical therapy.

CONCLUSION OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

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 employer and 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 and order other care.

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)

The claimant cites Santucci v. Air and Water Technologies, Corp., File No. 967995 (Arb. April 20, 1993) in support of her position that once the care has been authorized the burden shifts to defendant to show that the new care is unreasonable.

More recent case law suggests that the defendants must only proffer a rational justification, LaRue v. Blake Bykret Trucking, File No. 126513 (Alt Care, August 2000), and that the statutory right to authorize care is broad.

The record indicates the main reason defendant changed the provider of physical therapy is based on a conversation claimant had with Nurse Case Manager Carpenter. Claimant did testify she expressed frustration with slow progress in function of her left shoulder. She also testified she has made progress in physical therapy with Mercy. She testified she has difficulty with new practitioners touching her. She testified she wants to stay with Mercy for physical therapy.

There is no record Dr. Pape requested physical therapy be changed from Mercy. Records do indicate Dr. Pape noted claimant was to continue with "...present restrictions, therapy..." (Ex. 3)

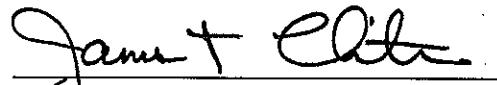
It appears the only reason the physical therapy provider was changed was based on a misunderstanding claimant was dissatisfied with Mercy. The record indicates claimant is satisfied with physical therapy with Mercy. No rational justification has been shown for the change in physical therapy providers. Given this record, claimant's petition is granted and claimant shall be allowed to continue physical therapy with Mercy Rehabilitation.

ORDER

THEREFORE IT IS ORDERED:

That claimant's petition is granted. Claimant shall be allowed to continue her physical therapy with Mercy Rehabilitation.

Signed and filed this 2nd day of April, 2015.



JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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