BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RHONDA TUCKER f/k/a RHONDA TUCKER-THOMAS, Claimant, vs. MENARDS, INC., Employer, and PRAETORIAN INSURANCE COMPANY, Insurance Carrier, Defendants.	FILED JUL - 3 2019 WORKERS' COMPENSATION File No. 5039347 APPEAL DECISION Head Note Nos: 1803; 2501; 2905; 2907

Defendants Menards, Inc., employer, and Praetorian Insurance Company, insurer, appeal from a review-reopening decision filed on January 25, 2018. Claimant Rhonda Tucker responds to the appeal. The case was heard on March 13, 2017, and it was considered fully submitted in front of the deputy workers' compensation commissioner on May 17, 2017.

In the underlying arbitration decision, filed on June 25, 2013, claimant was awarded 40 percent industrial disability for a work-related neck injury which occurred on December 5, 2011. In the review-reopening decision, which is the subject of this appeal, the deputy commissioner found claimant's cervical condition had significantly worsened since the arbitration hearing. The deputy commissioner also found this worsening was related to her work injury and was "not just a natural progression unrelated to her work injury." (Review-Reopening Decision, p. 15) The deputy commissioner found claimant's industrial disability had increased from 40 percent to 60 percent since the arbitration hearing. Because the deputy commissioner found claimant's worsening was causally related to her work injury, the deputy commissioner likewise found claimant was entitled to ongoing medical care for her cervical condition, including the authorization of Todd Johnson, M.D., for pain management, and cervical surgery. The deputy commissioner also found defendants responsible for the medical expenses itemized in Exhibits 20 and 21. Lastly, the deputy commissioner ordered defendants to reimburse claimant for her first IME with Sunil Bansal, M.D., and assessed the costs of claimant's vocational report to defendants.

On appeal, defendants assert the deputy commissioner erred in finding claimant sustained a causally related change of condition warranting an increase in her industrial

disability. Defendants also assert the deputy commissioner erred in finding claimant is entitled to reimbursement for all the medical expenses itemized out in Exhibits 20 and 21.

In response, claimant asserts the industrial disability award should be affirmed but she concedes several of the medical expenses itemized in Exhibits 20 and 21 are not causally related to the work injury.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 17A.5 and 86.24, the proposed arbitration decision filed on January 25, 2018, is affirmed in part and modified in part.

I affirm the deputy commissioner's finding that claimant's cervical condition significantly worsened after the arbitration hearing. I affirm the deputy commissioner's finding that this worsening is causally related to claimant's work injury. I affirm the deputy commissioner's finding that claimant's industrial disability increased from 40 percent to 60 percent after the arbitration hearing. I affirm the deputy commissioner's finding that claimant is entitled to ongoing medical care for her cervical condition. I reach the same analysis, findings, and conclusions as those reached by the deputy commissioner regarding those issues.

The deputy commissioner's finding that defendants are responsible for all medical expenses found in Exhibits 20 and 21 is modified, however. I provide the following analysis for modification of this finding:

Defendants on appeal assert claimant is not entitled to reimbursement for several expenses in Exhibits 20 and 21, the first of which relates to claimant's unauthorized treatment with Family Healthcare of Siouxland for dates prior to defendants' denial of liability. Claimant argues defendants' failure to offer any medical care during this timeframe should be treated as a denial.

On June 18, 2013, claimant's counsel sent a letter to defendants' counsel requesting additional care for claimant. (Exhibit 19, p. 1) Several additional requests were sent through July 31, 2013. (See Ex. 19, pp. 2-3, 5-6) On July 29, 2013, defendants indicated their intention to schedule an appointment with David Boarini, M.D., but no date was given. (Ex. 19, p. 4)

Because there was no date certain for claimant's appointment with Dr. Boarini, claimant's counsel told claimant to see her family doctor. (Ex. 19, p. 6) As a result, claimant was evaluated at Family Healthcare of Siouxland, an unauthorized provider, on July 31, 2013. (Ex. 3, pp. 1-3) Claimant was prescribed Toradol. (Ex. 3, p. 2) I find that as of claimant's July 31, 2013 appointment with Family Healthcare of Siouxland, defendants were offering no medical treatment to claimant.

Claimant's counsel continued her requests for authorization of care in August of 2013. (Ex. 19, pp. 8-12) On August 27, 2013, defendants notified claimant of an appointment for an evaluation with Dr. Boarini on September 4, 2013. (Ex. 19, p. 13)

Per Dr. Boarini's October 7, 2013, report, his evaluation was not for purposes of treatment but was instead an independent medical examination (IME). (Ex. C, p. 1) In reliance on the opinions contained in Dr. Boarini's report, defendants issued their denial of liability in a letter dated October 24, 2013. (Ex. O, p. 7)

In the meantime, claimant was again evaluated by Family Healthcare of Siouxland on October 17, 2013. (Ex. 3, p. 4-7) Claimant was prescribed gabapentin. (Ex. 3, p. 6) I find that as of claimant's October 17, 2013, appointment with Family Healthcare of Siouxland, defendants were offering no medical treatment to claimant.

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 has the right to choose the provider of care, except where the employer has denied liability for the injury. Iowa Code § 85.27; Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

However, when an injured worker abandons the statutory framework and seeks unauthorized care, the employer is only held liable for the unauthorized medical expenses if the medical treatment is reasonable and beneficial under the totality of the circumstances, meaning that the unauthorized medical care provides "a more favorable medical outcome than would likely have been achieved by the care authorized by the employer." Brewer-Strong v. HNI Corp., 913 N.W.2d 235, 248 (Iowa 2018) (quoting Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 206 (Iowa 2010)). The Iowa Supreme Court has referred to this evidentiary standard as a significant burden. Bell Bros., 779 N.W.2d at 206.

In this case, the treatment at Family Healthcare of Siouxland was not authorized, so claimant bears the burden to establish the treatment received provided a more favorable outcome than could have been achieved by the care authorized by the provider.

At the time of claimant's unauthorized visits, claimant was requesting and seeking authorization for treatment through defendants, but defendants failed to offer any such treatment. Instead, they scheduled an IME. I therefore find claimant's treatment at Family Healthcare of Siouxland, which resulted in prescription medication in an attempt to manage claimant's symptoms, provided a more favorable outcome than what was being authorized by defendants. As such, I conclude claimant satisfied her burden to prove defendants are liable for the unauthorized care received on July 31, 2013, and October 17, 2013, at Family Healthcare of Siouxland.

Defendants next challenge claimant's treatment at Westroads Medical Group. Claimant concedes on appeal that "these charges are not Defendants' liability."

(Claimant's Reply to Def. Review-Reopening Appeal Brief, p. 18) As such, the deputy commissioner's finding that defendants are responsible for the medical expenses found in Exhibits 20 and 21 is modified to exclude the charges for treatment at Westroads Medical Group.

Lastly, defendants assert charges from several dates after defendants' denial of liability should not be their responsibility because they are not causally related to claimant's cervical spine condition. Claimant concedes on appeal that the appointments at Mercy Medical Center on November 8, 2014, and at Siouxland Community Health Center on October 5, 2016 and October 10, 2016 are not defendants' responsibility. (Cl. App. Brief, p. 19) Thus, the deputy commissioner's finding that defendants are responsible for the medical expenses found in Exhibits 20 and 21 is modified to exclude the charges for treatment at Mercy Medical Center on November 8, 2014, and Siouxland Community Health on October 5, 2016, and October 10, 2016.

The remaining appointments in dispute are July 1, 2016; August 4, 2016; and September 7, 2016, all at Siouxland Community Health. Defendants contend the July 1, 2016, appointment was for treatment of a personal thyroid condition and that the August 4, 2016, and September 7, 2016, appointments were for refills of claimant's non-work-related anxiety. Claimant asserts these appointments were for pain management of her cervical condition.

While I agree with defendants that the July 1, 2016, appointment involved a discussion regarding claimant's thyroid, claimant's neck pain was also discussed, and claimant was given a new prescription of gabapentin. (Ex. 13, p. 8) I find this appointment is causally related to claimant's cervical condition. Defendants are responsible for the expenses related to these appointments.

The August 4, 2016, and September 7, 2016, appointments addressed claimant's anxiety, but they also addressed claimant's cervical pain and resulting medication management. (Ex. 13, p. 10, 13-15; 17, 20-21) I likewise find these appointments are causally related to claimant's cervical condition. Defendants are responsible for the expenses related to these appointments.

ORDER

IT IS THEREFORE ORDERED that the review-reopening decision filed on January 25, 2018, is affirmed in part and modified in part.

Defendants shall pay claimant an additional twenty percent (20%) industrial disability, 100 additional weeks of permanent partial disability benefits, at the weekly rate of three hundred fifty-eight and 46/100 dollars ($358.46) commencing on December 11, 2014.

Defendants shall receive credit for all benefits previously paid.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due

which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Defendants shall reimburse claimant for any past medical expenses paid directly by claimant to medical providers, shall either pay to claimant or directly to the medical providers any outstanding past medical expenses, and shall hold claimant harmless for any medical expenses itemized in Claimant's Exhibit 20 and 21, with the exception of the appointments set forth above.

Claimant is awarded two thousand six hundred ninety-five and 00/100 dollars ($2,695.00) in IME expenses.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of $1,000.00, and defendants shall pay the costs of the appeal, including the cost of the hearing transcript.

Pursuant to rule 876 IAC 3.1(2), defendant shall file subsequent reports of injury as required by this agency.

Signed and filed on this 3rd day of July, 2019.

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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