BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SCOTT RICH,

Claimant,

vs.

MAINSTREAM LIVING, INC.,

Employer,

and

UNITED HEARTLAND,

Insurance Carrier,
Defendants.

File No. 5035590

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, Scott Rich. Claimant appeared through his attorney, Ms. Jean Mauss. Defendants appeared through their attorney Mr. Andrew Portis.

The alternate medical care claim came on for telephone hearing on April 26, 2016. 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.

The claimant offered exhibits 1 through 6, which were admitted without objection. Defendant offered exhibits A through D, which were also admitted without objection. Both the claimant and the employer/insurance carrier submitted briefs in support of their respective positions. Claimant Scott Rich testified at hearing.

ISSUE

The issue presented for resolution is whether the current medical care offered by the defendant is reasonable under Iowa Code section 85.27.

FINGINGS OF FACT

Claimant is 55 years old and receives ongoing treatment for chronic pain in his hand/arm from a work injury that occurred on September 13, 2009, while employed at Mainstream Living, Inc. Claimant testified that since the date of the injury, he has had ongoing medical treatment consisting of multiple surgeries and pain management.

Claimant testified that he underwent surgery with Dr. Quenzer, who also prescribed opioid pain medication, but as the surgeon, he did not provide long term pain management. Claimant testified that he was then sent to Dr. Iqbal, a pain management specialist, who experimented with several types of medications to control claimant's pain, but found that opioid medication provided the most effective relief. Claimant testified that he treated with Dr. Iqbal for about five years until his practice changed and Dr. Iqbal was no longer available to provide ongoing medical treatment to claimant. Claimant testified that he was then seen by Louann Hart, DNP, ARNP, who continued prescribing opioid medication. However, on July 16, 2014, she issued a letter to claimant discharging him from continued care, alleging that at a scheduled appointment a pill count was conducted, and claimant had less than the determined amount of two different pain medications. (Exhibit B) Claimant testified that this was a misunderstanding that arose when he called Ms. Hart's office requesting an appointment because the medication that she had been prescribing him was causing unpleasant side effects and was less effective. Claimant also testified that Ms. Hart was unwilling to change the medication. Claimant testified that as a result, he threatened to simply walk away from her treatment, and according to claimant, Ms. Hart replied that she would discharge him from her care and that he would never be able to see another pain specialist in Des Moines.

Claimant, was then seen by Laura Francisco, who prescribed an opioid medication and referred him to Dr. Ledet. Claimant testified that he filled a prescription from Ms. Francisco and saw Dr. Ledet on the same day. Claimant testified that Dr. Ledet prescribed the same opioid medication that he had received from Ms. Francisco. Claimant stated that a few weeks after his appointment with Dr. Ledet, he took Dr. Ledet's prescription to the same pharmacy where he had taken the prescription from Ms. Francisco. This was the same pharmacy that claimant had used for the previous five years. The pharmacy "flagged" the prescription because claimant now had two opioid prescriptions from two different providers. This led to the claimant being contacted by Dr. Ledet's office on or about January 23, 2015, and being told that Dr. Ledet would no longer provide pain treatment with opioids because of a breach of the opioid pain management agreement. (Ex. C) This letter from Dr. Ledet concerning the reason for discontinuing opioid use is contrary to the reason stated by him in deposition and contrary to the argument of the defendants. (Ex. A, p. 3; Def. Brief, p. 2) Dr. Ledet testified in deposition and defendants argued that that opioid pain medications ceased because, among other things, it was not effective for treating claimant's pain. (Def. Brief, p. 2) This is contradicted by claimant's testimony and the medical records submitted. (Ex. 6, p. 1-2)

Dr. Ledet attempted to wean claimant off opioid medication in favor of alternative treatments. (Ex. A, p. 2) Dr. Ledet acknowledged that by March 2015, "Mr. Rich and I were continuing to struggle to get control of his pain." (Id.) Dr. Ledet had suggested a spinal cord stimulator, but the claimant was not interested in pursuing treatment that included implanting a device into his body. (Ex. A, p. 2-3) Dr. Ledet stated that in treating chronic pain, if a particular treatment plan elicits from the patient a report that "their pain is improved by greater than 30 percent, then that treatment is generally considered to be a valid treatment." (Id.) Dr. Ledet also stated that pain management should consider whether there is a "demonstrable improvement in their ability to participate in everyday living and/or other functional improvements that come from the treatment." (Ex. A, p. 3)

Because claimant's pain was not under control, Dr. Ledet referred the claimant to Dr. Bollinger for the express purpose of obtaining "some additional ideas and thoughts to be certain that I hadn't missed any opportunity to treat Mr. Rich in a better fashion." (Ex. A, p. 2) Dr. Bollinger began treating claimant in May 2015 for his chronic hand/arm pain. (Ex. 1, p. 1) Claimant testified that Dr. Bollinger and he considered multiple treatment options, however, it was determined that opioid medication was the most effective treatment for claimant's chronic pain. The claimant testified that when he was treating with Dr. Ledet, and being weaned off his opioid medication, his pain was at a level of 8 out of 10. He also testified that after approximately one year of treatment with Dr. Bollinger, his pain level had come down to 3 out of 10 and occasionally, on a good day, 2 out of 10. Claimant's testimony in this regard is supported by the medical records presented. (Ex. 6, p. 1-2) A reduction of reported pain level from 8 to 3 represents a change of greater than 60 percent. This degree of pain relief is well over Dr. Ledet's stated standard of 30 percent for determining whether a particular treatment regimen is valid, as stated above. Also, claimant testified that he has had an increase in functionality under the care of Dr. Bollinger, including the ability to engage in modified household chores inside and outside the home along with improvement of his general mental/emotional health. Claimant testified that before treating with Dr. Bollinger, he "sat on the couch" and had "sleep disturbances" and that he is now significantly more involved in everyday activities. This would also support Dr. Ledet's stated criteria for assessing the effectiveness of treatment for chronic pain.

However, Dr. Ledet did state that a medical record that he reviewed from January, 2016 indicated that claimant was not experiencing improved functional capacity and that he was dissatisfied with the level of pain relief. (Ex. A, p. 4) However, the particular medical record referenced by Dr. Ledet, was not offered into evidence in this matter, and is contradicted by claimants testimony and the more recent medical record of April 12, 2016, in which claimant reported that his average pain level was a 3 out of 10. Further, claimant testified that during the winter months his pain did increase due to the weather and cold.

Dr. Ledet has offered claimant a spinal cord stimulator as treatment for the chronic hand/arm pain. Claimant testified that he thoughtfully considered this option, but does not want to proceed with this invasive procedure. Further, there is no medical

opinion in the record that states with any certainty the probable outcome of implanting a spinal cord stimulator, or whether or not claimant, may in fact still require medication management including opioid medication after the stimulator is implanted. Dr. Ledet stated: "I don't know if a spinal cord stimulator specifically would treat his pain, but what I do know is that in the balance of risk and benefit, the current treatment strategy does not fit what I would describe as a reasonable balance of benefit for the risk that is actually being taken." (Ex. A, p. 5) Presumably, the statement concerning the risk/benefit analysis of the current treatment was made based on the January 2016, medical record, which is not in evidence, and not in consideration of the more recent April 12, 2016 medical record. As discussed above, the current treatment seems to fit within Dr. Ledet's criteria for determining valid chronic pain treatment.

There is a broader issue involved in this case, one which the undersigned need not try to resolve within the confines of this limited alternate medical care matter, which is the possible effects of long term opioid prescriptions for the treatment of chronic pain. The undersigned offers no opinion on the general policy determination of this issue, and must focus on the facts of this case. The question to be answered by the undersigned is whether the current care is reasonable. The current care being offered by defendants is non-opioid medication, which has failed to control claimant's pain prescribed by Dr. Ledet, or implanting a spinal cord stimulator, which claimant does not want to do and which carries its own set of risks and provides no guaranty of ending or even reducing claimant's pain or need for medication. Dr. Ledet has removed opioid medication as a treatment option. Dr. Bollinger on the other hand believes that there are circumstances in which opioid medication is appropriate and claimant represents one of those instances. Claimant testified that he has obtained substantial relief from pain and improved his functionality with the treatment provided by Dr. Bollinger. Further Dr. Ledet recognizes Dr. Bollinger as particularly helpful and effective in providing medication management strategies for patients and that he is helpful with complicated medication management. (Ex. A, p. 6) Dr. Bollinger also notes that while other physicians in his office do interventional procedures, he typically handles the difficult medication management cases. (Ex. 1, p. 3) This is precisely the situation that claimant is in.

Defendants argue that any ongoing need for opioid medication is based on claimant's non-work related chronic back and knee pain. Claimant testified that he has had prior back and knee pain, unrelated to this workers compensation claim. Dr. Ledet has opined that the anticonvulsant medications "prescribed to claimant" are related to this hand/arm injury, but that the opioid medications are not related to the work injury. (Ex. 3; Ex. 4) On the other hand, Dr. Bollinger has opined that "If Mr. Rich had a healthy pain-free back, his current medication protocol would be the same. In other words, all of the medications set forth above are needed to address Mr. Rich's right hand/arm pain caused by the work injury." (Ex. 1, p. 2) Dr. Bollinger agrees that he also treats the claimant for his back pain, but that even if he did not, the medications he has prescribed would not change. (Ex. 1, p. 1-2) Further, in view of claimant's medical treatment for more than six years with opioid medication, it is difficult for the undersigned to conceive that suddenly the need for this medication is now only related

to back pain. Also, claimant testified that he had not previously received pain medications for his back pain. Rather, he had received injections, physical therapy and a rhizotomy, which he described as burning the nerves. Therefore, I accept Dr. Bollinger's opinion that the opioid medication that he has been prescribing are for treatment of claimant's hand/arm pain.

Defendants also argue that claimant cannot express dissatisfaction with care offered by Dr. Ledet, because claimant has yet to try the options proposed by Dr. Ledet. I believe this argument fails on two points. First, claimant was in the process of trying the treatment options proposed by Dr. Ledet from January, 2015, when claimant was told that opioid treatment would no longer be provided, through May, 2015. By both the account of claimant and Dr. Ledet, those options were not controlling claimant's pain. (Ex. C; Ex. A, p. 2; Claimant's Testimony) Second, concerning operative or invasive treatments, these differ substantially from non-invasive treatments that produce less risk to try for a time. I find that an injured worker can express dissatisfaction with proposed operative or invasive procedures without first going through with the procedure.

Claimant was advised on or about March 31, 2016, that Dr. Ledet would resume medical care for claimant's hand/arm pain. (Ex. 2, p. 1) Dr. Bollinger understands that presently, he is no longer authorized to provide care to claimant. (Ex. 1, p. 2) Claimant testified that Dr. Ledet's treatment recommendations include implanting a spinal cord stimulator and cessation of opioid medication, which is consistent with the documentary evidence provided by the parties. Dr. Bollinger remains willing to treat the claimant going forward and claimant desires to continue with treatment with Dr. Bollinger.

I find at this time, the defendants are offering care with Dr. Ledet, who intends to cease opioid medication and has offered a spinal cord stimulator as treatment for claimant's chronic hand/arm pain. Claimant does not want to proceed with the invasive procedure of a spinal cord stimulator implanted into his body. Dr. Ledet has attempted to wean claimant off opioid medication in the past and was unable to control claimant's pain with alternate medications. At least at the present time, Dr. Bollinger remains willing to treat claimant with opioid medication, but he is no longer authorized by the defendant to provide care. Therefore, I determine that the care presently offered by defendant, is either an invasive procedure, which claimant does not want or non-opioid medication which has not been effective in the past in controlling claimant's pain. I find that the current care being offered is less effective than the care available with Dr. Bollinger and that it is unduly inconvenient to claimant, and not reasonable.

REASONING AND CONCLUSIONS OF LAW

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

> For purposes of this section, the employer is obligated 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.

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); 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. 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). In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997), the court approvingly quoted Bowles v. Los Lunas Schools, 109 N.M. 100, 781 P.2d 1178 (App. 1989):

> [T]he words "reasonable" and "adequate" appear to describe the same standard.
>
> [The New Mexico rule] requires the employer to provide a certain standard of care and excuses the employer from any obligation to provide other services only if that standard is met. We construe the terms "reasonable" and "adequate" as describing care that is both appropriate to the injury and sufficient to bring the worker to maximum recovery.

The commissioner is justified in ordering alternate care when employer-authorized care has not been effective and evidence shows that such care is "inferior or less extensive" than other available care requested by the employee. Long, 528 N.W.2d at 124; Pirelli-Armstrong Tire Co., 562 N.W.2d at 437.

As stated above, I conclude that the care offered by defendants of either an invasive procedure, which claimant does not want, or non-opioid medication treatment which has not been effective in the past, is not reasonable. The opioid treatment with Dr. Bollinger has been effective, and for defendants to de-authorize Dr. Bollinger and offer Dr. Ledet with a treatment plan with known poor results (non-opioid medication) or unknown results (spinal cord stimulator), is not reasonable. Further, the process involved of weaning off opioid medication, undergoing psychological exams, and enduring a trial period for the stimulator represents an undue inconvenience to the claimant when effective treatment is available with Dr. Bollinger, particularly in light of Dr. Ledet's statement that the success or lack of success to be derived from the spinal cord stimulator is unknown.

Also as stated above, the broader issue of the potential consequences of long term opioid medication treatment is best left to the medical experts and is not addressed by this ruling. In this case, a recognized expert in complicated medication management

for chronic pain, Dr. Bollinger, remains willing to prescribe opioid medication, at least for the time being. This method of treatment has been effective in the past at significantly decreasing symptoms and increasing claimant's function of daily living.

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."

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 Decision June 17, 1986).

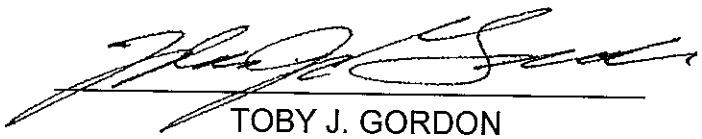
In this case, claimant had been treating with Dr. Bollinger for nearly a year, when defendants de-authorized Dr. Bollinger and transferred authorized care back to Dr. Ledet, in essence interfering with the medical judgment of their authorized provider, Dr. Bollinger.

ORDER

IT IS THEREFORE ORDERED that claimant's petition for alternate medical care is granted.

IT IS FURTHER ORDERED that defendants are ordered to provide treatment with Dr. Bollinger regarding treatment for claimant's chronic pain of the hand/arm injury. Defendant shall arrange for claimant to been seen by Dr. Bollinger at his first available appointment, such that defendant can promptly provide notice to claimant of at least one business day prior to the date of the appointment.

Signed and filed this 28th day of April, 2016.



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