

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KASANDRA CEJVANOVIC,

Claimant,

vs.

OLIVE GARDEN,

Employer,

and

XL INSURANCE AMERICA, INC.,

Insurance Carrier,
Defendants.

File No. 5066584.03

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

STATEMENT OF THE CASE

On November 11, 2020, Kasandra Cejvanovic filed an application for alternate care under Iowa Code section 85.27 and rule 876 IAC 4.48. The defendants, employer Olive Garden and insurance carrier XL Insurance America, Inc., filed an answer on November 20 2020. The agency scheduled the matter for a telephone hearing and gave the parties due notice.

The undersigned presided over an alternate care hearing held by telephone and recorded on November 23, 2020. The audio recording constitutes the official record of the proceeding under rule 876 IAC 4.48(12). Cejvanovic participated through attorney Gary Nelson. The defendants participated through attorney Bill Lamson. The record consists of:

- Claimant's Exhibits 1 through 3; and
- Defendants' Exhibits A and B.

ISSUE

The issue under consideration is whether Cejvanovic is entitled to alternate care in the form of follow-up care with Stanley Mathew, M.D.

FINDINGS OF FACT

On May 21, 2018, a 14-pound bucket of garlic fell on Cejvanovic's head while she was working at Olive Garden. Cejvanovic sustained an injury to her head, neck and whole body. Cejvanovic consequently experiences headaches, neck pain, and post-concussive syndrome.

The defendants provided care with Dr. Mathew, who found Cejvanovic had reached maximum medical improvement (MMI) on March 12, 2020. Effective that day, Dr. Mathew prescribed Cejvanovic the permanent work restrictions of no lifting more than 20 pounds and no repetitive overhead activities. He also opined that Cejvanovic may need to wear sunglasses and earplugs while working, have the ability to go on break for frequent stretching, and be able to alternate body positions. Dr. Mathew recommended ongoing care for pain management, medication management, and oversight of injection therapies.

On May 15, 2020, Cejvanovic saw Dr. Mathew. The visit was part of her follow-up care for continuing headaches and bilateral neck pain, with worsening neck pain radiating down the left arm. Cejvanovic rated her pain at a seven of a scale of one through ten, with one being the lowest and ten being the highest level of pain. Dr. Mathew noted that Cejvanovic "[a]mbulates functional distances." (Exhibit 2)

Dr. Mathew administered injections. He reiterated the permanent work restrictions he had previously given Cejvanovic. Dr. Mathew opined that the future plan for Cejvanovic's ongoing care would include trigger point injection therapy, Botox injections, and occipital nerve blocks.

On August 21, 2020, the defendants conducted video surveillance of Cejvanovic at a house. The defendants submitted video taken in surveillance of Cejvanovic as Exhibit B. The video shows Cejvanovic walking in a way consistent with Dr. Mathew's note from May that she "[a]mbulates functional distances." It also shows her taking items to a trash or recycling bin, lifting items such as cushions for outdoor furniture, and, with the help of another individual, a fire pit. Taken together, the evidence establishes it is more likely than not that the items Cejvanovic lifted individually or with the help of the other individual did not require her to lift more than 20 pounds in violation of Dr. Mathew's work restriction.

The video also shows Cejvanovic pushing a lawn mower with it turned off from her neighbor's yard to her yard. Then Cejvanovic turned on the mower. Cejvanovic mowed her lawn with her neighbor's mower. The mower appeared to be of the self-propelling variety. It is unclear whether Cejvanovic wore earplugs while mowing. It appears Cejvanovic wore regular prescription glasses as opposed to sunglasses while mowing, though it was not particularly bright outside, based on the video.

On September 21, 2020, Cejvanovic saw Robert L. Broghammer, M.D., for an independent medical examination (IME) at the request of the defendants. Dr. Broghammer explained to Cejvanovic that they were not establishing a doctor-patient relationship. He was only performing the IME in order to author a report at the defendants' request due to her workers' compensation claim. The bulk of the report is in evidence as Exhibit A.

In the IME report, Dr. Broghammer detailed Cejvanovic's history of care for her work injuries. This included the following description regarding a recommendation of Botox for cervical dystonia from June 24, 2019:

Ms. Waterbury's documented physical examination was unchanged. Ms. Waterbury recommended continued physical therapy as well as medication use. She also ordered 200 units of Botox for cervical dystonia *[Reviewer's Note: There is nothing in Ms. Waterbury's clinical examination suggestive of cervical dystonia.]*

(Def. Ex. A-3) (italics in original).

On July 17, 2019, Cejvanovic followed up with Dr. Mathew, which Dr. Broghammer recounts in his IME report that, "Dr. Mathew noted continued severe headaches and neck pain as well as cervical dystonia." Id. Dr. Broghammer did not include a reviewer's note regarding Dr. Mathew's note referencing cervical dystonia as he did with respect to Ms. Waterbury's.

Dr. Broghammer's IME report documents Botox injections in October of 2019 for Cejvanovic's cervical dystonia and spasmodic torticollis, without a reviewer's note. He goes on to recount her follow-up visit about six weeks later with Dr. Mathew as follows:

On November 1, 2019, the worker followed up with Dr. Mathew. Dr. Mathew noted the first two weeks of Botox increased her pain and now she felt her headaches had improved, but she continued to have moderate to severe neck pain. He noted the worker had returned to work with rest breaks and was working full-time. Dr. Mathew's documented examination was unchanged.

(Def. Ex. A-4)

Dr. Broghammer details Cejvanovic's care from then into the summer of 2020, stating:

On May 15, 2020, the worker followed up with Dr. Mathew for headache and neck pain. Dr. Mathew noted the worker presented for Botox injections for cervical dystonia and headaches. Dr. Mathew completed Botox injections to the cervical and thoracic paraspinals as well as the temporalis and frontalis muscle under EMG guidance. Dr. Mathew

restarted the worker on amitriptyline and recommended continued cyclobenzaprine as well as use of Topamax and gabapentin. Dr. Mathew continued to opine that the worker was at maximum medical improvement.

(Def. Ex. A-5)

Dr. Broghammer performed an examination of Cejvanovic. He notes in his IME report that she reported no changes since her prior appointment with Dr. Mathews. Dr. Broghammer noted the following in his IME report:

When initially seated, the worker was noted to be tilting her head to the left. During our evaluation, she was not, however, noted to be squinting. After getting up on the examination table, the worker's head tilt posture normalized, and she was able to hold her head in a normal and erect manner. Palpation about the upper back revealed subjective tenderness throughout the bilateral trapezius as well as the cervical spine. However, muscles of the upper back were soft and supple in nature with no evidence of spasm and no trigger points noted. The posterior cervical musculature was also supple and soft and with no evidence of spasm and no evidence of trigger points. Neck range of motion was reduced in all planes secondary to subjective complaints of discomfort. The sternocleidomastoid muscles were normal, soft, and supple bilaterally with no evidence of spasm or trigger points. There was no evidence of cervical dystonia or torticollis on examination with a normal erect cervical spine and no retrocollis or other abnormality with head posturing.

(Def. Ex. A-7)

In the section of Dr. Broghammer's IME report that follows, he answers a series of questions posted to him by the defendants. The first such question seeks Dr. Broghammer's diagnosis of Cejvanovic's current medical condition or injuries. Further, it asks that, if Dr. Broghammer's diagnosis differs from that of Dr. Mathews, he explains why. Dr. Broghammer opined in pertinent part as follows:

In my medical opinion, Ms. Cejvanovic's ongoing symptom complex is not related to her remote injury. In this regard, I stand by my opinions previously authored in my November 5, 2018 report issued to you. As noted in my prior report, head contusions without loss of consciousness are universally better within 90 days, and after 90 days, the issues are behavioral rather than medical. Ms. Cejvanovic has completed multiple interventions without any significant improvement in her subjective symptoms. This makes one question whether or not anything can truly help her. She has completed multiple trigger point injections, Botox injections, she has had an MRI of the cervical spine in addition to an MRI of the head and a CT scan of the head. She has completed both upper

and lower extremity EMGs, all of which have been negative. In fact, her cervical spine MRI was remarkably completely normal without any abnormalities whatsoever without even any slight degenerative changes.

Dr. Mathews diagnosed multiple conditions and most recently cervical torticollis/cervical dystonia. Please note that there is no clinical evidence of any cervical torticollis or dystonia on examination. These are very specific medical conditions with the head in an extremely abnormal position due to extremely tight and spasmodic cervical musculature. My clinical examination of Ms. Cejvanovic does not disclose any significant spasm and only subjective complaints of pain. She does not present with a true cervical dystonia. I disagree with this diagnosis.

(Def. Ex. A-8)

Dr. Broghammer further opined in response to a question about whether Dr. Mathew's care has been reasonable and necessary to treat injuries sustained as a result of the work accident on May 21, 2018. He stated that "no treatment is medically necessary or warranted after she reached maximum medical improvement on September 25, 2018" because "the ongoing symptom complex is not relatable to the remote injury for the reasons previously stated" and that it should be noted "torticollis/cervical dystonia is a very specific medical condition and there is no clinical evidence of any such condition existing in Ms. Cejvanovic's cervical spine." (Def. Ex. A-9)

Moreover, Dr. Broghammer concludes that "all medically necessary treatment and workup has already occurred" and "[n]o further treatment is medically warranted or necessary under the auspices of the workers' compensation system." According to Dr. Broghammer, "While Ms. Cejvanovic may have subjective symptoms, her examination and workup are benign and reassuringly normal." (Def. Ex. A-9)

CONCLUSIONS OF LAW

"Iowa Code section 85.27(4) affords an employer who does not contest the compensability of a workplace injury a qualified statutory right to control the medical care provided to an injured employee." Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 769 (Iowa 2016) (citing R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 195, 197 (Iowa 2003)). Under the law, the employer must "furnish reasonable medical services and supplies *and* reasonable and necessary appliances to treat an injured employee." Stone Container Corp. v. Castle, 657 N.W.2d 485, 490 (Iowa 2003) (emphasis in original). Such employer-provided care "must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." Iowa Code § 85.27(4).

An injured employee dissatisfied with the employer-furnished care (or lack thereof) may share the employee's discontent with the employer and if the parties cannot reach an agreement on alternate care, "the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care." Id. "Determining what care is reasonable under the statute is a question of fact." Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995); Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 436 (Iowa 1997). As the party seeking relief in the form of alternate care, the employee bears the burden of proving that the authorized care is unreasonable. Id. at 124; Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 209; Reynolds, 562 N.W.2d at 436; Long, 528 N.W.2d at 124. Because "the employer's obligation under the statute turns on the question of reasonable necessity, not desirability," an injured employee's dissatisfaction with employer-provided care, standing alone, is not enough to find such care unreasonable. Id.

The application for alternate care comes down to whether the ongoing care recommended by Dr. Mathews, a treating physician, is reasonable given the opinion expressed by Dr. Broghammer in the IME report he authored at the request of the defendants. Dr. Broghammer saw Cejvanovic twice, once in November of 2018, after the workplace incident from which the matter stems, and again on September 21, 2020, after her most-recent visit to Dr. Mathews.

At hearing, the defendants zeroed in on the Botox injections Dr. Mathews recommended for what he diagnosed as Cejvanovic's ongoing cervical dystonia. The defendants have denied these injections because of Dr. Broghammer's findings and opinion based on his examination of Cejvanovic. However, Dr. Broghammer's opinions are broader in scope than just the Botox injections for cervical dystonia. He also opined that no further care is necessary based on his examination and review of the medical records.

The agency limits the number of pages of exhibits each party may submit in an alternate care proceeding. The undersigned consequently has a limited evidentiary record upon which to base this decision. Based on review of the evidentiary record, Dr. Broghammer's opinion is more persuasive because of the detailed firsthand observations of Cejvanovic's physical condition, based on his evaluation of her, detailed in his IME report. Consequently, Cejvanovic has failed to show that the defendants' denial of care is unreasonable under the law.


ORDER

Under the above findings of facts and conclusions of law, it is ordered that the application for alternate care is DENIED.

On February 16, 2015, the Iowa workers' compensation commissioner issued an order delegating authority to deputy workers' compensation commissioners, such as the undersigned, to issue final agency decisions on applications for alternate care.

Consequently, there is no appeal of this decision to the commissioner, only judicial review in a district court under the Iowa Administrative Procedure Act, Iowa Code chapter 17A.

Signed and filed this 24th day of November, 2020.


BENJAMIN G. HUMPHREY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Gary B. Nelson (via WCES)

Bill M. Lamson (via WCES)