BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JIMMY COCHRAN,

Claimant,

vs.

QUEST-LINER, INC.,

Employer,

and

STANDARD FIRE INSURANCE CO.,

Insurance Carrier,
Defendants.

File No. 5065497

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, Jimmy Cochran.

The alternate medical care claim came on for hearing on July 12, 2018. The proceedings were digitally recorded, which constitutes the official record of this proceeding. By order filed February 16, 2015, this ruling is designated final agency action.

The record consists of claimant's exhibit 1; defendants' exhibits A & B. Claimant alleges a date of injury of February 3, 2017. During the course of the hearing, defendants admitted the occurrence of a work injury on February 3, 2017, and liability for the right hand sought to be treated by this proceeding. Counsel offered oral arguments to support their positions; no witnesses testified.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care.

FINDINGS OF FACT

Claimant, Jimmy Cochran, sustained an injury to his right hand arising out of and

in the course of his employment with Quest-Liner, Inc. on February 3, 2017. Mr. Cochran lives in Scottsbluff, Nebraska. Defendants have accepted the claim and provided treatment.

Most recently, the authorized treatment was with Jeffrey MacMillan, M.D. at RWPC Orthopedics North in Scottsbluff, Nebraska. Dr. MacMillan last saw Mr. Cochran on March 29, 2018. Dr. MacMillan felt that Mr. Cochran had largely exhausted all reasonable diagnostic and treatment options. He noted that all diagnostic testing had been normal and all treatment had been ineffective. Dr. MacMillan placed Mr. Cochran at MMI and he was instructed to follow-up as needed. (Ex. B)

At the request of his attorney, Mr. Cochran underwent an IME with Thomas G. Fry, M.D. at TGF Consulting, LLC in Golden, Colorado on June 7, 2018. Dr. Fry felt that Mr. Cochran had a fairly classic presentation for saddle syndrome involving the long finger, index, and ring finger. He recommended exploration of the second and third webspaces with lysis of adhesions of the intrinsic muscles/tendons and partial resection of the inter-metacarpal ligament. (Ex. 1) Claimant is requesting that defendants authorize treatment with Dr. Fry.

Defendants argue that they should at least be allowed to have the treating physician, Dr. MacMillan, review and comment on Dr. Fry's IME report and treatment recommendations.

I find that defendants giving the treating physician an opportunity to review and comment on the treatment recommendations of Dr. Fry is reasonable. Defendants have the right to control the medical treatment in a workers' compensation claim. In the present case, defendants would like to send the claimant back to the authorized treating doctor and obtain his opinion regarding the recommendations of an IME physician. I find that defendants' authorized care is reasonable.

REASONING AND CONCLUSIONS OF LAW

Under Iowa law, the employer is required to provide care to an injured employee and is permitted to choose the care. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

> [T]he 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.

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., 562 N.W.2d at 433, 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" care 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.

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 shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 16, 1975).

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).

Based on the above findings of fact, I conclude that claimant has failed to carry his burden of proof to show the authorized care is unreasonable. Therefore, claimant's petition for alternate medical care is denied at this time.

ORDER

THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care is denied.

Signed and filed this 13th day of July, 2018.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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