

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

EDUARDO NUNEZ VARELA,

Claimant,

vs.

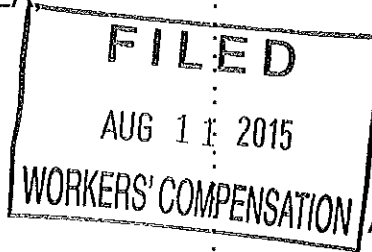
IOWA SELECT FARMS,

Employer,

and

ZURICH NORTH AMERICAN,

Insurance Carrier,
Defendants.



File No. 5049403

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, Eduardo Nunez Varela. Claimant appeared through his attorney, Nicholas Platt. Defendants appeared through their attorney, James Gilliam.

The alternate medical care claim came on for hearing on August 11, 2015. 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 record consists of claimant's exhibits 1 through 3. Defendants did not offer a separate set of exhibits. All exhibits were offered without objection and received into evidence. Neither party elected to call a witness to testify and the case was submitted upon the written exhibits and argument of counsel on August 11, 2015.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care. Claimant seeks an order compelling defendants to authorize and pay for a spinal cord stimulator trial ordered by Shelley M. Wells, D.O.

FINDINGS OF FACT

The undersigned having considered all the evidence in the record finds:

Eduardo Nunez Varela sustained a low back injury that arose out of and in the course of his employment with Iowa Select Farms. As a result of that injury, claimant has required medical treatment. Defendants selected Shelley M. Wells, D.O. as an authorized medical provider and scheduled an appointment for her to evaluate claimant. (Exhibit 1)

Dr. Wells pursued conservative treatment measures but has not been able to sufficiently alleviate claimant's ongoing symptoms as a result of the May 14, 2013 work injury. Therefore, Dr. Wells has recommended a spinal cord stimulator test to determine if it would be helpful to permanently implant a spinal cord stimulator into claimant's spine. Dr. Wells made her recommendation for the spinal cord stimulator trial on June 24, 2015. (Ex. 2)

Defendants have not authorized the recommended spinal cord stimulator. Instead, defendants have scheduled claimant to be evaluated by an alternate medical provider, Dr. Parenteau, for purposes of obtaining a second opinion. Defendants contend that it is appropriate to obtain a second opinion to determine if any additional treatment options are available other than the recommended spinal cord stimulator. Defendants also desire an opinion from Dr. Parenteau regarding whether the recommended care from Dr. Wells is likely to prove beneficial and/or is reasonable. Claimant does not wish to transfer his medical care and seeks an order requiring defendants to authorize and pay for the treatment recommended by the authorized physician, Dr. Wells.

I find that the authorized medical providers have offered reasonable but unsuccessful medical care to date. Claimant has received surgical intervention on his low back. The authorized medical providers have attempted spinal injections. None of the care to date has completely resolved claimant's symptoms.

The only medical opinion in this evidentiary record suggests that the next reasonable medical step is to pursue a spinal cord stimulator trial. (Ex. 2, page 4) No evidence currently exists to suggest this is an inappropriate diagnostic test or that it poses unreasonable risks given claimant's circumstance. I find that defendants are seeking an alternate medical opinion but offer no medical justification for requiring such an opinion at this time.

Claimant is satisfied with the care recommended by the authorized medical provider. Defendants selected that provider. Defendants are now attempting to second guess the medical provider they selected. Defendants are not currently offering reasonable medical care because they have denied the recommended care from their own selected medical specialist. In this sense, defendants are not offering prompt

medical care to treat claimant's work injury. Defendants are essentially attempting to determine how the claimant should be diagnosed, evaluated, and treated. As such, I find that the defendants are now interfering with the medical judgment of the physician they selected.

REASONING AND CONCLUSIONS OF LAW

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).

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).

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).

An employer's right to select the provider of medical treatment to an injured worker does not include the right to determine how an injured worker should be diagnosed, evaluated, treated, or other matters of professional medical judgment. Assman v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988).

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 instance, I found that defendants are now interfering with the medical judgment of Dr. Wells, the physician they selected and authorized to treat claimant. I also found that defendants are attempting to determine how the claimant should be diagnosed, evaluated and treated, rather than solely selecting the authorized medical provider. In undertaking these efforts, defendants have declined to authorize the care recommended by Dr. Wells and I found that they are not currently offering reasonable

and necessary medical care. Given these findings, I conclude that the defendants are not currently offering reasonable medical care and that claimant's petition for alternate medical care should be granted.

ORDER

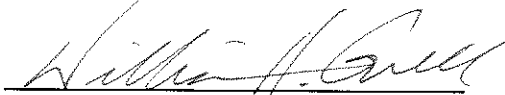
THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is granted.

Defendants should immediately authorize the spinal cord stimulator trial recommended by Dr. Wells and schedule the first available date and time for claimant to proceed with this recommended medical care.

Failure to comply with this order may result in sanctions pursuant to 876 IAC 4.36.

Signed and filed this 11th day of August, 2015.


WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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