

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SHAWN LOWE,

Claimant,

vs.

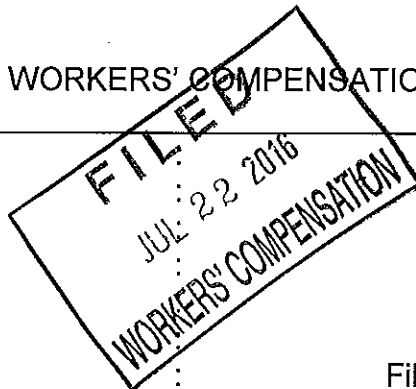
BENNETT FARM EQUIPMENT INC.
d/b/a PLANK EQUIPMENT,

Employer,

and

TECHNOLOGY INSURANCE
COMPANY,

Insurance Carrier,
Defendants.



File No. 5043971

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, Shawn Lowe.

The alternate medical care claim came on for hearing on July 21, 2016. The proceedings were digitally recorded which constitutes the official record of this proceeding. This ruling is designated final agency action and any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code 17A.

The record consists of claimants' exhibits 1 – 4 and defendants' exhibits A – E.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of three prescriptions recommended by treating physicians; a topical cream prescribed by Frederick Dery, M.D., and Naloxegol Oxalate¹ (Trade name MOVANTIK) and testosterone prescribed by Maruti R. Kari, M.D.

¹ MOVANTIK is indicated for the treatment of opioid-induced constipation (OIC) in adult patients with chronic non-cancer pain. <https://www.movantikhcp.com/> (Visited 7/21/2016)

FINDINGS OF FACT

The undersigned having considered all of the testimony and evidence in the record finds:

Defendants admitted liability for an injury occurring on January 3, 2012 to the claimant's right leg. Defendants do deny any liability for the claimant's claimed back injury or for any CRPS.

Claimant injured his right leg in an auger accident on January 3, 2012. (Exhibit A) Claimant had two surgeries to his right leg as a result of this injury. He also has had a spinal cord stimulator and a pain pump implanted.

Both Dr. Dery and Dr. Kari are physicians authorized by the defendants. Both physicians have been treating claimant for a number of years.

Claimant had been receiving a topical compounded cream² that was paid for by the defendants. Dr. Dery on July 27, 2016 prescribed a compounded cream for claimant's knee. (Ex. 2, p. 1) Claimant testified that he has been out of this prescription for about three months. He credibly testified that it helps with his pain. When asked what he was doing in place of using the topical cream, he said he was using the boost button on his pain pump more often.

Defendants denied the topical cream. The defendants obtained a report from a third party reviewer, Anjali Kalra, M.D. (Ex. A, pp. 1 -3) Dr. Kalra has never examined claimant, never spoke to claimant and never spoke to Dr. Dery.

Claimant testified that Dr. Kari has prescribed MOVANTIK due to constipation and urinary problems caused by the narcotic prescriptions he has in his pain pump. Claimant testified that over-the-counter medicines did not work. He said that the note on March 31, 2013 that his bowel movements were better with Metamucil and a stool softener was inaccurate. (See Ex. C, p. 1) I found his testimony convincing that the medical record was inaccurate for a number of reasons. First, Dr. Kari prescribed the MOVANTIK. It does not make sense he would do so if claimant was not having difficulty. Notes by the third party administrator show that claimant was having problems with constipation. (Ex. D, pp.1, 3) Additionally, claimant's testimony was credible that the pain medicine he is on causes constipation problems.

Dr. Kari also prescribed testosterone. Claimant testified that the testosterone was prescribed for a number of reasons, including mood, fatigue and, sexual function. The claimant credibly testified that the prescription was authorized by Dr. Kari to counter some to the side effects of his pain medication.

² The compound topical medicine contains, Ketamine, Bupivacaine, Diclofenac, Doxepin, Gabapentin, Orphenadrine, Pentoxifylline and Amitriptyline. (Ex. A, p. 1; Ex. 2, p. 1)

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-reopen 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). 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.

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).

The defendants offered no credible reason for not providing the testosterone and MOVANTIK. Both these have been prescribed by an authorized treating physician. The evidence shows claimant has problems with constipation and low testosterone due to his pain medication.

The evidence also shows the topical cream has been helpful, and the defendants have offered no other specific treatment or substitute treatment for the topical cream.

The defendants are interfering with the medical treatment of physicians that they have authorized to provide care. The defendants by failing to provide prescriptions that are medically necessary are not providing reasonable medical care.

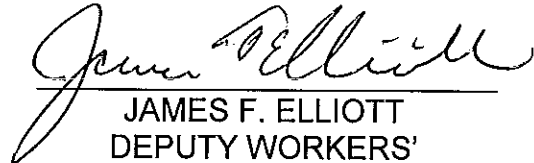
ORDER

Therefore it is ordered:

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

Defendants shall authorize the three (3) prescriptions within three (3) business days of this decision and shall continue to provide such prescriptions so long as the authorized physicians prescribe them.

Signed and filed this 22nd day of July, 2016.


JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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