

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SHELLEY HESS,

Claimant,

vs.

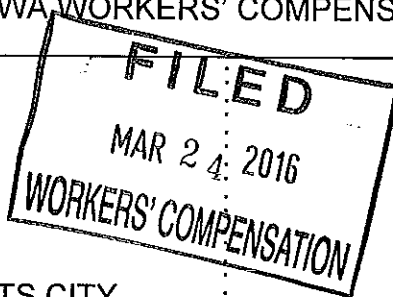
SPIRIT LAKE AUTO PARTS CITY,

Employer,

and

SFM MUTUAL INSURANCE,

Insurance Carrier,
Defendants.



File No. 5052990

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, Shelley Hess. Claimant appeared through attorney, Janece Valentine. Defendants appeared through their attorney, Caitlin Kilburg.

The alternate medical care claim came on for hearing on March 23, 2016. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's 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 5 and defendants' exhibits A through T.

ISSUE

The issue presented for resolution is whether the claimant is entitled to medications as recommended by the authorized treating physician.

FINDINGS OF FACT

The claimant suffered an injury in April 2015, which arose out of and in the course of employment. Defendants have accepted the injury as compensable, although there may be some dispute about the precise date in April the injury occurred. This

injury has caused the need for the claimant to seek medical treatment. Defense counsel acknowledged that there are four different physicians authorized to treat the claimant: Timothy D. Blankers, DPM, Steven Baskerville, M.D., Timothy Metz, M.D., and Douglas Martin, M.D.

Claimant was initially seen in the emergency room at Lakes Regional on April 22, 2015. (Defendants' Exhibit A) At that time, she was instructed to rest, ice and elevate her injured right foot. She was provided medications, crutches, work restrictions and instructed to follow up with a "workman's comp" doctor within a week. (Def. Ex. A, p. 5)

She followed up with Timothy D. Blankers, DPM, on April 24, 2015. (Def. Ex. B) He placed her in a CAM boot. He recommended additional scans and testing. In May, claimant followed up with Dr. Blankers who opined, based upon the new scans, that there were no fractures or surgical issues. He recommended keeping her in the CAM boot. (Def. Ex. C)

In June 2013, when the pain had not improved, Dr. Blankers recommended a bone scan. (Def. Ex. D) On July 1, 2015, Dr. Blankers diagnosed possible "chronic regional pain syndrome." (Def. Ex. E) He ordered physical therapy at that time.

The insurance carrier's nurse case manager then referred the claimant to Douglas Martin, M.D., in late August 2015. (Def. Ex. H) He diagnosed right/mid foot contusion and disuse atrophy, further stating, "I can not [sic] support a diagnosis of 'Complex Regional Pain Syndrome.' The entire concept of that disorder is not valid." (Def. Ex. H, p. 3) He further stated that the claimant may have an "opioid hypersensitivity situation going on." (Def. Ex. H, p. 3) He recommended she cease taking the Hydrocodone.

In September 2015, Dr. Blankers referred claimant to Timothy Metz, M.D., at Avera Interventional Pain Services in Sioux Falls, South Dakota. Dr. Metz is a pain specialist. He evaluated claimant on September 30, 2015, and diagnosed complex regional pain syndrome (CRPS) and initiated CRPS treatment, including 3 lumbar sympathetic blockades which definitively diagnosed CRPS. He prescribed gabapentin for neuropathic pain and meloxicam. (Def. Ex. J, p. 2) He recommended she follow up with Dr. Blankers and Steven Baskerville, M.D., for further physical therapy and medication management. She was to return to Dr. Metz if her condition worsened to the point she needed further injections.

In November 2015, claimant visited Dr. Baskerville with complaints of "blurry vision, feeling weak & drowsy, short term memory issues . . ." (Def. Ex. K) He diagnosed chronic fatigue. In December 2015, Dr. Martin wrote a letter regarding claimant's use of opioids. "It is clear, in my mind, that the risks would outweigh any benefits that opioid medications would have in this lady." (Def. Ex. N, p. 2)

On January 8, 2016, Dr. Baskerville wrote a letter requesting authorization for three medications: Oxycodone, Lyrica and Meloxicam. (Cl. Ex. 3) He stated that all of the medications are to treat the claimant's work injury.

On February 19, 2016, defendants denied the Oxycodone "based on Dr. Martin's opinion regarding the reasonableness and necessity of a narcotic at this point." (Cl. Ex. 4)

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. Iowa Code section 85.27 (2013).

An employer's statutory right is to select the providers of care and the employer may consider cost and other pertinent factors when exercising its choice. Long, at 124. An employer (typically) is not a licensed health care provider and does not possess medical expertise. Accordingly, an employer does not have the right to control the methods the providers choose to evaluate, diagnose and treat the injured employee. An employer is not entitled to control a licensed health care provider's exercise of professional judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988). An employer's failure to follow recommendations of an authorized physician in matters of treatment is commonly a failure to provide reasonable treatment. Boggs v. Cargill, Inc., File No. 1050396 (Alt. Care January 31, 1994).

The claimant asserts that her authorized treating physician has recommended three medications: Oxycodone, Lyrica and Meloxicam. The defendants have only authorized two of the three medications, but have denied the Oxycodone. Claimant cites numerous cases which hold that an employer has the right to select the care, but not the treatment. (Cl. Ex. 5)

In its answer, defendants argued the following:

The longstanding precedent has been that when an authorized treating physician recommends treatment that treatment is deemed to be authorized under 85.27(4) of the Iowa Code. However, in Lynch Livestock v. Bursell, No. 14-1133 (Iowa App. May 20, 2015), the Iowa Court of Appeals turns this longstanding agency rule on its head and concluded that in the context of an alternate medical care proceeding, the claimant must demonstrate that the care offered by the employer is unreasonable, notwithstanding that the care sought is recommended by the authorized treating physician.

The employer's defense is best characterized by the Meatloaf classic "Two Out of Three Ain't Bad." In the song, Meatloaf is a damaged man who pleads with his lover not to kick him out, singing, "I want you, I need you but there ain't no way I'm ever gonna love you, don't be sad, 'cause two out of three ain't bad." The employer, relying upon the flawed medical opinion of Dr. Martin, similarly pleads with the agency that it has provided reasonable treatment by authorizing two out of the three medications prescribed by the authorized treating doctor. The employer asserts that providing two out of three, in light of Dr. Martin's opinion, is a reasonable alternative.

I agree that two out of three ain't bad, however, I also find that it is not reasonable in this case. It is not actually an alternative treatment at all. It is merely an unreasonable denial of a portion of the recommended treatment.

I do agree with the defendants that it is the claimant's burden to prove that the care offered by the defendants is not reasonable. I do not believe that Lynch Livestock v. Bursell, an unpublished Court of Appeals opinion, changed that standard. This agency has long held that the refusal to authorize the treatment recommended by its own physician is almost always unreasonable even if some or even a majority of the recommended treatment is authorized.

The fact that another physician, who is also authorized in some capacity, disagrees with the authorized treating doctor's recommendation does not make the employer's denial of the medication reasonable. In this case, I find that the opinion of Dr. Martin, who has opined that the "entire concept" of CRPS is not valid, is given little weight. The diagnosis of CRPS is widely accepted in the medical and workers' compensation communities, including by the defendants' own expert pain specialist, Dr. Metz. Furthermore, Dr. Martin has not evaluated the claimant since the August 2015, and apparently did not know that the medication had been switched from Hydrocodone to Oxycodone.

Based upon the record before me, it is not entirely clear why the defendants refused to authorize the Oxycodone instead of facilitating communication between the medical providers. Nothing in this decision should be used to suggest that I believe Dr. Martin's opinion that the claimant may have some type of opioid sensitivity should be ignored. It, however, should be reviewed and addressed by the other physicians rather than a summary denial of the treatment prescribed by the employer and the insurance carrier.


After reviewing the entire record, I conclude the employer's summary denial of the Oxycodone prescription amounts to an unreasonable interference with Dr. Baskerville's medical judgment.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is GRANTED. All medications prescribed by Dr. Baskerville, including Oxycodone, are authorized. Dr. Baskerville, and other authorized treating physicians should review and consider the opinion of Dr. Martin, when prescribing future treatment.

Signed and filed this 24th day of March, 2016.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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