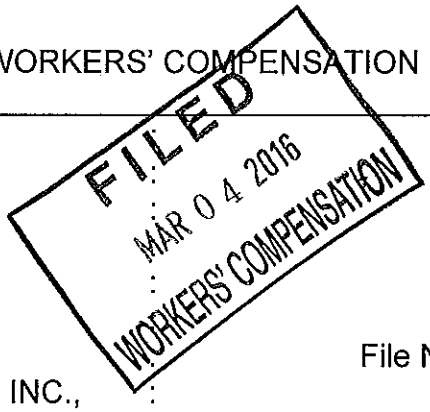
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



CORENA L. CARR, Claimant, vs. ACCORD HUMAN SERVICES, INC., Employer, and LUMBERMAN'S UNDERWRITING ALLIANCE, Insurance Carrier, Defendants.	File No. 5054295 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, Corena Carr.

The alternate medical care claim came on for hearing on March 4, 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 claimant's exhibits 1 through 5 and defendants' exhibits A through G.

ISSUE

Defendants admitted to an injury to claimant's right elbow. Defendants denied liability for claimant's bilateral carpel tunnel syndrome. As a result of the denial for the bilateral carpel tunnel syndrome this agency has no authority to rule in this expedited procedure on alternate care for bilateral carpal tunnel to the claimant's wrists. Defendants may not raise authorization as a defense to any claim for medical expense for the bilateral carpal tunnel injuries.

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of referral to an upper extremity specialist for claimant's right elbow.

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 September 27, 2012 to the right elbow. Claimant hit her right elbow while operating a carpet cleaner. The defendants provided treatment for this injury. Claimant has had two EMGs of upper extremities. (Exhibit A & 1) On March 20, 2013 Brian Adams, M.D. wrote:

> I reviewed the medical records you provided regarding patient Corena Carr. I believe she has been provided appropriate care by Dr. Irey. I found no evidence that surgical management is indicated for her current complaints and findings. Therefore, I recommended continued nonoperative management. An option would be for her to see Dr. Eric Aschenbrenner for further nonoperative management.

(Ex. D, p. 1) Claimant had a Tenex procedure. Claimant said that it did not provide relief. Claimant has also had physical therapy and occupational therapy. On April 8, 2014 Mederic Hall, M.D. said that claimant was at maximum medical improvement and had a zero percent impairment rating according to the AMA Guides. Dr. Hall stated, "Future treatment for this injury could include non-steroidal anti-inflammatory medications, corticosteroid injections and physical therapy." (Ex. F, p. 1) On October 15, 2014, James Lyles, M.D. wrote:

> PLAN: I have explained that since she has failed all conservative treatments it is not likely that surgery will help. Typically the non-surgical treatments are more successful with this type of injury. I do not have much to offer in terms of additional treatment options. I will defer to occupational health for permanent work restrictions. She is to follow up p.r.n.

(Ex. G, pp. 1, 2)

On August 8, 2015 claimant had her second EMG. The EMG was abnormal and showed claimant had bilateral carpal tunnel syndrome with the left side more affected than the right. (Ex. 1, p. 2) On October 12, 2015, Robert Milas, M.D. reviewed the EMG. He stated the EMG documented a bilateral carpal tunnel syndrome. He causally related this injury to her work injury of 2012. (Ex. 2, p. 1) On December 11, 2015 Dr. Milas said that while claimant could consider conservative treatment for her bilateral carpal tunnel it may not be effective... "in which case the patient would require a bilateral carpal tunnel release performed in staged procedures." (Ex. 3, p. 1)

Claimant testified that she currently has pain in her right elbow. She also testified she has pain in both wrists and forearms with the left more painful than the right.

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 question that must be answered is whether the claimant had proven that the defendants are not providing reasonable care for her right elbow. Dr. Milas recommended care for claimant's bilateral carpal tunnel problems. I do not see a

medical recommendation that claimant have additional care for her right elbow. I do not doubt the testimony that she has pain in her right elbow. However, that fact does not mean that defendants have failed to offer reasonable care. Based upon the evidence present at the hearing, claimant failed to prove by a preponderance of the evidence that defendants are not providing reasonable care for her right elbow.

ORDER

Therefore it is ordered:

The claimant's petition for alternate medical care is denied

Signed and filed this 4th day of March, 2016.

JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Matthew A. Leddin
Attorney at Law
5108 Jersey Ridge Rd.
Davenport, IA 52807
matt@soperlaw.com

Paul E. Larson
Attorney at Law
17021 Lakeside Hills Plaza, Ste. 202
Omaha, NE 68130
paul@lkwfirm.com

JFE/sam