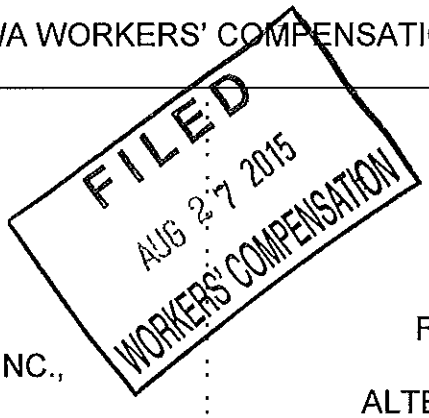
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



JENNIFER MOE,

Claimant,

vs.

NORTHWOOD ANCHOR, INC.,

Employer,

and

GRINNELL MUTUAL REINSURANCE,

Insurance Carrier,
Defendants.

File No. 5052883

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, Jennifer Moe.

The alternate medical care claim came on for hearing on August 26, 2015. 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 Exhibits A, B and C and defendants' Exhibit 1.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of physical therapy and an MRI.

The parties resolved the issue of a referral to Dr. Rattay for an orthopedic evaluation. Claimant has an appointment on September 8, 2015.

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 April 2, 2014.

Claimant was referred to Howard Kim M.D. by a claims adjuster for Grinnell Mutual Reinsurance (Grinnell) for her bilateral elbow pain. On June 17, 2015 Dr. Kim recommended x-ray, MRI and physical therapy of three times a week for 12 treatments. (Exhibit A, page 1) Dr. Kim also prescribed medication and recommended a five pound lifting restriction.

On June 16, 2014 Joanne Philbin, Claims Adjuster for Grinnell wrote Dr. Kim requesting a report on his findings. On June 24, 2015 Dr. Kim responded and stated that the claimant's symptoms of bilateral elbow pain were a result of her work. (Ex. A, p. 4) Grinnell did not find the response by Dr. Kim satisfactory and referred claimant to Kenneth McMains, M.D. Defendants would not authorize any treatment for the claimant at this time. (Ex. B, p. 1)

On July 9, 2015 Dr. McMains examined claimant. He found claimant had bilateral medial epicondylosis. He did not find a direct causation from claimant's work for her condition. (Ex. 1, p. 2) He did not recommend any treatment other than some braces for her arms. (Ex. 1, p. 3) If claimant wanted an MRI or other treatment it was due to a chronic condition and not due to an injury of April 2, 2014. (Ex. 1, p. 3)

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 have agreed to and have arranged claimant to be seen by Dr. Rattay for additional orthopedic evaluation. Defendants assert that since claimant is going to be evaluated by Dr. Rattay the claimant should not have an MRI or physical therapy until the evaluation is complete. Defendants assert that the care they have provided is reasonable and that claimant is only entitled to alternate medical care if defendants are not providing reasonable care.

Here the authorized treating physician ordered physical therapy and an MRI. At that point it is the defendants' obligation to provide such care. In this case they have not. Dr. McMains stated that if claimant wishes an MRI or other treatment it would be for her chronic condition. Defendants have admitted liability for this case, so Dr. McMains' opinion concerning causation is not material to the provision of care in the case.

In this case I have a clear physician opinion to provide physical therapy and an MRI. I have an opinion from Dr. McMains that states claimant could pursue an MRI and other treatment for her condition. (Ex. 1, p. 3) Defendants have accepted claimant's condition is work related.

I have no evidence in the record that Dr. Rattay believes physical therapy or an MRI order by Dr. Kim is inappropriate or premature. Defendants argue that such treatment should be held off, but have not submitted any evidence from Dr. Rattay to support that contention. As defendants have accepted this condition as work related Dr. McMains' conclusion that the treatment claimant is seeking is for a chronic non-work related condition is not convincing or consistent with the defendants' posture in this case.

There are many times that injured workers receive medical services from a treating authorized physician while awaiting additional evaluation by another physician.

I find that defendants have interfered with the medical treatment by an authorized physician. I find the lack of care to be unreasonable. Dr. Kim ordered the physical

therapy and MRI on June 17, 2015. It is two months later, and claimant has not had physical therapy or an MRI. This delay is unreasonable, and defendants have failed to provide reasonable care.

The defendants shall immediately provide physical therapy and an MRI ordered by Dr. Kim.

ORDER

Therefore it is ordered:

The claimant's petition for alternate medical care is granted

Signed and filed this 27th day of August, 2015.

JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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