

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DELORIES BOLINGER,

Claimant,

vs.

TRILLIUM HEALTHCARE GROUP, LLC,

Employer,

and

AMERICAN HOME ASSURANCE CO.,

Insurance Carrier,
Defendants.

FILED

APR 11 2018

WORKERS COMPENSATION

File No. 5060856

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, Delories Bolinger. Claimant appeared telephonically and through her attorney, Gary Mattson. Defendants appeared through their attorney, Jean Dickson.

The alternate medical care claim came on for hearing on April 9, 2018, and was 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 7 and Defendants' Exhibits A through C. Claimant provided testimony. No other witnesses were called.

ISSUE

The issue presented for resolution is whether claimant is entitled to alternate medical care consisting of left reverse shoulder replacement surgery as recommended by Steven A. Aviles, M.D.

FINDINGS OF FACT

Claimant sustained a left shoulder injury on October 21, 2017, when she slipped and fell at work. Defendants admitted liability for this injury and the current left shoulder condition for which claimant seeks alternate medical care.

Claimant initially presented at the emergency room on October 21, 2017, for what she believed to be a dislocated shoulder. (Claimant's Testimony) After undergoing a reduction, claimant was discharged from the emergency room with some pain medication and an arm sling. (Cl. Testimony) She was instructed to follow up with an orthopedic provider in a few days. (Cl. Testimony) Claimant was then seen by Nurse Practitioner Jake Davis at Greater Regional Medical Center. (Cl. Testimony) When Mr. Davis discovered on exam that claimant was unable to move her shoulder, he recommended an MRI study. (Cl. Testimony) After the MRI revealed a rotator cuff tear, Mr. Davis referred claimant to Dr. Aviles. (Cl. Testimony)

Claimant was evaluated by Dr. Aviles on December 13, 2017. (Cl. Exhibit 1:1) Dr. Aviles discussed with claimant the option of undergoing a reverse shoulder replacement, and claimant indicated she wished to proceed. (Cl. Ex. 1:3) Claimant testified Dr. Aviles told her this procedure was her best option. (Cl. Testimony)

Claimant filed her first petition for alternate medical care on January 17, 2018, after defendants failed to authorize the surgery. On January 23, 2018, defendants communicated to claimant that defendants wished to seek a second opinion before authorizing the surgery recommended by Dr. Aviles. (Cl. Ex. 2:1) In a letter signed by Dr. Aviles on January 29, 2018, Dr. Aviles agreed that obtaining a second opinion was "reasonable." (Defendants' Ex. A:1) In response, on January 30, 2018, claimant dismissed her petition for alternate medical care.

Defendants initially sought a second opinion from Dr. Ash, but Dr. Ash was unwilling or unable to see claimant. (Cl. Testimony) On February 26, 2018, claimant requested authorization to return to Dr. Aviles because the delay in scheduling the second opinion was unreasonable. (Cl. Ex. 3:1) Claimant then followed up with an e-mail to defendants on March 2, 2018, and was told in response that an appointment was being set up with Dr. Schulte. (Cl. Ex. 5:2) On March 9, 2018, claimant sent another e-mail requesting an update on the status of Dr. Schulte's appointment. (Cl. Ex. 6:1) On March 13, 2018, defendants told claimant that defendants were in the process of forwarding the records to Dr. Schulte. (Cl. Ex. 7:1)

On April 6, 2018, after claimant filed the petition for alternate medical care invoking this proceeding, defendants sent a letter to claimant indicating claimant was scheduled for an independent medical examination (IME) with Dr. Schulte on April 16, 2018. (Def. Ex. C:4)

Claimant testified she wishes to forego the IME with Dr. Schulte and wants to instead proceed with surgery as originally recommended by Dr. Aviles because she has been in a sling, at least part-time, since the date of injury, has been working in a light-duty capacity since December of 2017, and is losing muscle tone in her left arm. (Cl. Testimony).

It is claimant's position that defendants' failure to schedule an appointment in the four months since her last visit with Dr. Aviles is unreasonable. Defendants argue the

delay is justified by their attempts to get an appointment scheduled, as documented in Claimant's Exhibits 2, 4, 5, 6, and 7.

Defendants authorized care with Dr. Aviles. However, defendants declined to authorize the reverse shoulder replacement surgery recommended by Dr. Aviles. While Dr. Aviles indicated—in response to defendants' prompting—that seeking a second opinion was a "reasonable" option, he did not indicate it was necessary. Further, per claimant's testimony, Dr. Aviles also told claimant the recommended surgery was her best option. As a result, it is found that defendants are interfering with the treatment recommendations of their chosen treating physician by denying authorization for the shoulder surgery. Offering an IME instead of authorizing surgery under these circumstances is unreasonable.

Additionally, claimant originally indicated she wished to proceed with surgery on December 13, 2017. In the interim, defendants failed to provide any medical care for claimant. While scheduling plights can be a frustrating hurdle for defendants in workers' compensation cases, defendants did not provide an adequate justification as to why it took nearly four months to obtain an appointment for claimant, especially in light of the fact that claimant's care related to this injury is in its early stages and there is a single accepted body part at issue. Therefore, it is found that defendants denied claimant prompt medical care, and such a delay is unreasonable.

REASONING AND CONCLUSIONS OF LAW

Iowa Code section 85.27(4) provides, in relevant part:

For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. . . . The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

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., 562 N.W.2d at 433, 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.

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. Assmann 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 their own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening Decision June 17, 1986).

As explained above, defendants are interfering with the treatment recommendations of Dr. Aviles, the authorized treating physician, by offering an IME instead of authorizing surgery. While defendants were entitled to select Dr. Aviles, they are not entitled to interfere with his medical judgment. See Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988); Pote v. Mickow Corp., File No. 694639 (Review-Reopening Decision June 17, 1986).

Additionally, even if offering an IME in lieu of surgery is reasonable, defendants failed to provide prompt medical care to claimant when they failed to obtain an appointment for claimant for nearly four months. The statute requires care to be “offered promptly.” See Iowa Code § 85.27(4).

For these reasons, claimant has satisfied her burden to prove she is entitled to alternate medical care.

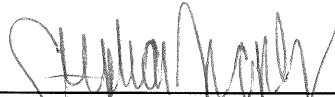
ORDER

THEREFORE IT IS ORDERED:

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

Defendants shall immediately authorize and timely pay for the left reverse shoulder replacement surgery recommended by Dr. Aviles and any treatment incidental thereto.

Signed and filed this 11th day of April, 2018.



STEPHANIE J. COPLEY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Gary G. Mattson
Attorney at Law
1820 NW 118th St., Ste. 200
Clive, IA 50325-8259
gary@lamarcalandry.com

Jean Z. Dickson
Attorney at Law
1900 E. 54th St.
Davenport, IA 52807
jzd@bettylawfirm.com

SJC/srs