

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

HERESA MAE ZINNS,

Claimant,

vs.

MENARD, INC.,

Employer,

and

PRAETORIAN INSURANCE
COMPANY,

Insurance Carrier,
Defendants.

FILED

SEP 08 2015

WORKERS COMPENSATION File No. 5053054

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

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, Theresa Mae Zinns. Claimant appeared personally and through her attorney, Robert Stewart. Defendants appeared through their attorney, Timothy Clarke. All parties were well-represented by counsel, who presented articulate and convincing arguments on behalf of all parties.

The alternate medical care claim came on for hearing on September 4, 2015. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Iowa Workers' Compensation 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 and 2 and defendants' exhibit A. All exhibits were offered without objection and received into evidence. One witness testified electronically. Theresa Zinns testified. Defendants elected not to call any witnesses to testify at the time of hearing.

FINDINGS OF FACT

Claimant sustained a work-related injury to her right shoulder on August 16, 2014. Defendants authorized Steven Stokesbary, M.D., to treat claimant's condition. Dr. Stokesbary performed surgery on the right shoulder on January 23, 2015. The surgery is commonly referred to as a "SLAP repair." Subsequent to the surgery, claimant participated in physical therapy with Megan Snoozie, P.T. Also following the surgery, claimant returned to Dr. Stokesbary's office for routine examinations. Primarily,

claimant saw Ms. Cristin Vander Weerd, PA-C, rather than the orthopedic surgeon, Dr. Stokesbary. Claimant did not feel comfortable discussing her right shoulder condition with the physician's assistant because: 1) claimant felt Ms. Vander Weerd did not listen to claimant's complaints of pain and the need for opioid pain medications; and 2) claimant felt the care she received was "rushed care." In other words, claimant testified, Ms. Vander Weerd rushed claimant out the office door before she had all of her questions answered.

Claimant did not progress to her satisfaction. In May 2015, another MRI was performed. The results established there was a small recurrent tear of the rotator cuff. Dr. Stokesbary performed a second surgery on July 9, 2015. The surgical procedure was described as:

Right shoulder arthroscopy with debridement, repair of labral tear, and biceps tenotomy with mini open rotator cuff repair.

(Exhibit A, page 4)

Once again, claimant participated in follow-up treatment with Ms. Vander Weerd. Claimant testified she and the physician's assistant had a difference of opinion as to the course of treatment claimant should be following. Claimant indicated she did not have a good relationship with Ms. Vander Weerd. One of the primary points of disagreement was the amount and strength of hydrocodone-acetaminophen that should be prescribed to control claimant's pain. Another issue in contention was the length of time claimant had to keep her right arm in a sling every day.

Eventually, claimant exerted her influence as a patient. She informed the orthopedic clinic she would only schedule appointments with Dr. Stokesbary; she would not be examined by Ms. Vander Weerd. As a consequence, claimant did meet with Dr. Stokesbary.

However, during her alternate medical care hearing, claimant testified that despite the fact she is taking hydrocodone-acetaminophen 10-325 mg., 1 to 2 tablets every 4-6 hours, as needed (Ex. 2, p. 1), her level of pain is still a 9 or 10 on an analog scale of 1 to 10 with 10 being the most severe pain imaginable. Claimant also testified she did not feel she was progressing to a point that was sufficient.

Claimant desires to change her care to Russell A. De Groote, M.D., at Tri-State Specialists, LLP. (Ex. 1, p. 1) However, upon reviewing the website for Tri-State Specialists, LLP, there is no physician listed by that name. A search on the World Wide Web, shows there is an orthopedic surgeon by the name of Russell A. De Groote, M.D. He is affiliated with Mercy Hospital in Sioux City, Iowa, but his office address is listed as:

Pro Sports M.D.
2730 Pierce Street
Suite 204
Sioux City, IA 51104

Phone: 712-224-3380

During her hearing, claimant admitted she had no idea whether Dr. De Groote would accept claimant as a patient. Given the fact, there is no Dr. De Groote at Tri-State Specialists, it is impossible to refer claimant to him at the requested orthopedic clinic. (Ex. 1, 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-Reopening 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 Rule of Appellate Procedure 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).

After reviewing Exhibit A, it appears Dr. Stokesbary is addressing all of claimant's concerns. Claimant has failed to prove the medical care she has received has not been reasonably suited to treat her injury. Claimant may have personal differences with the physician's assistant, nevertheless, the orthopedic surgeon has provided reasonable and necessary medical care to claimant.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's petition for alternate medical care is denied.

Signed and filed this 8th day of September, 2015.



MICHELLE A. MCGOVERN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

ZINNS V. MENARD, INC.

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