

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BRIAN DENEMARK,

Claimant,

vs.

ARCHER DANIELS MIDLAND
COMPANY,Employer,
Self-Insured,
Defendant.

File No. 20001051.02

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO.: 2701

Claimant Brian Denemark filed an Original Notice and Petition Concerning Application for Alternate Care ("Application for Alternate Care") on November 3, 2020, alleging he sustained an injury to his left upper extremity, TFCC of the left wrist on December 16, 2019, and noting the defendant, Archer Daniels Midland ("ADM") had interfered with treating physician, Meiying Kuo, M.D.'s recommendation of a left wrist arthroscopy and debridement of the TFCC for the claimant, and requesting the "[a]bility to select care providers given the intentional interference with the medical care recommended by defendant's selected authorized treating provider. ADM filed an answer admitting liability for the condition.

On November 17, 2020, a hearing was held on the Application for Alternate Care by telephone conference call. Attorney Dennis Currell represented Denemark. Denemark appeared and testified. Attorney Peter Thill represented ADM. Exhibits 1 through 8 and A through D were admitted into the record. The proceeding was recorded digitally by iPhone and the digital record is the official record of the proceeding.

The undersigned has been delegated with the authority to issue final agency action in this matter. Appeal of this decision, if any, is to the district court pursuant to Iowa Code section 17A.19.

FINDINGS OF FACT

Denemark injured his left wrist while working for ADM on December 12, 2019. Denemark alleges ADM has interfered with his medical care and treatment since he sustained his work injury. Denemark reported Carl Schewe, a safety manager for ADM, attended his medical appointments until January 2020, when Denemark told him he did not want him to attend his sessions with his treating physician. Denemark reported in

January 2020 he told his authorized treating physician, Dr. Kuo he was in constant pain and that Schewe interrupted him and tried to change his story. Denmark testified Schewe did not attend any additional sessions he had with Dr. Kuo after January 2020.

On August 18, 2020, Denmark attended an appointment with Dr. Kuo. (Exhibit 1) Dr. Kuo noted Denmark had undergone a left ulnocarpal joint injection more than two months ago and that he received near full resolution of his wrist pain for one month, and then the pain returned and was worse than before and interfered with all activities. (Ex. 1, p. 1) Dr. Kuo assessed Denmark with injury of the triangular fibrocartilage complex ("TFCC") of the left wrist, extensor tendinitis of the hand, left wrist pain, ECU tendinitis, and a longitudinal TFCC tear. (Ex. 1, p. 2) Dr. Kuo noted Denmark complained of persistent left ulnar wrist pain that had worsened. (Ex. 1, p. 2) Dr. Kuo recommended "a left wrist arthroscopy, debridement of the TFCC" and discussed the risks of surgery with Denmark. (Ex. 1, p. 2) Dr. Kuo documented Denmark wished to proceed with surgery and she noted she needed to wait for approval from workers' compensation and that Denmark needed to wait another month to come off his anticoagulation medication and that he would need preoperative cardiac clearance. (Ex. 1, p. 2)

September 11, 2020 Denmark called Dr. Kuo's office and reported he had not taken his blood thinner for 21 days and he wanted to schedule his surgery. (Ex. 2, p. 1) Dr. Kuo's office returned a call to Denmark on September 14, 2020 and noted Denmark had a cardiology appointment scheduled. (Ex. 2, p. 1) Dr. Kuo's office received a call on September 18, 2020, and documented "[p]t is not auth for surgery at this time per Haley at ESIS w/c. They have some concerns about the pt and are going to ask for a causation. Will wait until we have further information to schedule surgery." (Ex. 2, p. 1) On October 2, 2020, Dr. Kuo's office documented the office was waiting for authorization for surgery. (Ex. 2, p. 1)

Denmark's attorney sent an e-mail to ADM's attorney on October 7, 2020, stating Dr. Kuo had recommended surgery on August 18, 2020, the surgery had not been scheduled, and that Dr. Kuo's office had received information ADM was seeking a causation opinion. (Ex. 5, p. 1) Denmark's attorney noted his client was dissatisfied with the medical care he was receiving and delay. (Ex. 5, p. 1)

On October 16, 2020, Denmark called Dr. Kuo's office and reported he was experiencing constant pain and pressure in his wrist and requesting pain medication. (Ex. 6, p. 1) Dr. Kuo's office documented "the pain is effecting him so much that he has lost 60 lbs" and the pain was interfering with his sleep. (Ex. 6, p. 1) Dr. Kuo's office recommended Denmark discuss his pain with his primary care physician and documented Denmark relayed he did not have a primary care physician. (Ex. 6, p. 1) Denmark requested to schedule his surgery and Dr. Kuo's office reported it was not authorized, so the surgery could not be scheduled. (Ex. 6, p. 1) Dr. Kuo declined to authorize pain medication. (Ex. 6, p. 1)

On October 21, 2020, Haley Finley issued a facsimile to an individual named “Ann” that the surgery recommended by Dr. Kuo was authorized. (Ex. A, p. 1) On October 22, 2020, an Employer Authorization for Employee Procedure form was completed, noting it was sent by facsimile by “J.E. RN” for “[r]eferral to UIHC hand department for transfer of care for L wrist pain, ECU tendonitis and L wrist [sic] longitudinal TFCC tear,” and requesting authorization for the referral to be sent to “Dr. Kuo/Ann B. WC”). (Ex. B, p. 2) On November 1, 2020, Finley sent a facsimile to “Ann” stating “[t]he transfer of care to University of Iowa as recommend [sic] by Dr. Kou [sic] is authorized under workers [sic] compensation. (Ex. C, p. 3)

On November 3, 2020, Denmark’s attorney sent an e-mail to ADM’s attorney stating he had not seen a referral from Dr. Kuo in the documentation he received pursuant to a subpoena and that ADM was unilaterally refusing to abide by the recommendations of Dr. Kuo, the authorized treating physician, by unilaterally transferring care to the University of Iowa Hospitals and Clinics (“UIHC”). (Ex. 7, p. 1)

On November 15, 2020, ADM’s attorney sent Denmark’s attorney a letter via e-mail stating Denmark was scheduled for an appointment with Ericka Lawler, M.D., an upper extremity orthopedic surgeon with UIHC, for November 24, 2020, at 7:45 a.m. (Ex. D, p. 4) During the hearing, ADM’s attorney noted the UIHC had rescheduled the appointment for December 3, 2020, at 1:00 p.m.

Denmark testified he has continued to experience pain in his left wrist and that he has been unable to obtain any pain medication to help with the pain. Denmark reported he went to a primary care provider and because he experienced a work injury, the primary care provider refused to authorize any pain medication.

Denmark seeks to direct his own care. He did not request an order that the surgery recommended by Dr. Kuo be scheduled, that ADM be ordered to schedule the cardiology appointment or other pre-surgical appointment, or that an appointment be scheduled for pain management.

CONCLUSIONS OF LAW

Under Iowa Code section 85.27 (2019), an employer is required to furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under Iowa Code chapters 85 and 85A. The employer has the right to choose the provider of care, except when the employer has denied liability for the injury. Id.

“The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee.” Id. § 85.27(4). If the employee is dissatisfied with the care, the employee should communicate the basis for the dissatisfaction to the employer. Id. If the employer and employee cannot agree on

alternate care, the commissioner “may, upon application and reasonable proofs of necessity therefore, allow and order other care.” Id.

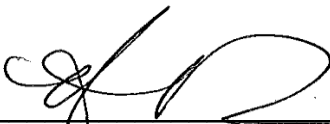
The employee bears the burden of proving the care authorized by the employer is unreasonable. R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 196 (Iowa 2003). “The employer’s obligation under the statute turns on the question of reasonable necessity, not desirability.” Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995). The care authorized by the employer is unreasonable if it is ineffective, inferior, or less extensive than the care requested by the employee. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997). The determination of whether care is reasonable is a question of fact. Long, 528 N.W.2d at 123.

Denemark is experiencing ongoing pain in his left wrist. Dr. Kuo recommended surgery. The surgery had not been scheduled as of the date of the hearing. No appointment had been scheduled for a pre-surgical cardiology exam or other exam. Dr. Kuo recommended surgery in August 2020. It is now November and Denemark is not receiving any pain medication. Dr. Kuo refused to prescribe any pain medication on October 16, 2020, a month ago. However, Denemark is not seeking an order directing ADM to schedule the surgery or any other treatment; he requests to direct his own care based on ADM’s alleged interference with and delays with his care. I do not find the testimony regarding Schewe persuasive to support ongoing interference. Denemark testified the last appointment Schewe attended was in January 2020. Denemark has not established ADM has abandoned care or that the care offered is ineffective, inferior, or less extensive than the care requested by Denemark. I do not find he is entitled to direct his own care.

ORDER

Claimant’s Application for Alternate Care is DENIED.

Signed and filed this 17th day of November, 2020.



HEATHER L. PALMER
DEPUTY WORKERS’
COMPENSATION COMMISSIONER

The parties have been served as follows:

Dennis Currell (via WCES)

Peter Thill (via WCES)