

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JONI L. KALKAS,

FILED

Claimant,

MAY 24 2018

vs.

WORKERS COMPENSATION

SEQUEL YOUTH & FAMILY
SERVICES,

File No. 5061548

Employer,

ALTERNATE MEDICAL

and

CARE DECISION

TRAVELERS INDEMNITY
COMPANY OF CT,

Insurance Carrier,
Defendants.

HEAD NOTE NO: 2701

This is a contested case proceeding under Iowa Code chapters 17A and 85. Claimant Joni Kalkas alleges she sustained an injury to her back while working for the defendant, Sequel Youth & Family Services ("Sequel") on October 1, 2017. On May 14, 2018, Kalkas filed an application for medical care alleging the authorized treating physicians had exhausted all medical treatment, and requesting alternate medical care be provided with Steven Gogela, M.D., a neurosurgeon.

On May 15, 2018, the Division of Workers' Compensation served a notice of telephone hearing, scheduling a hearing for May 25, 2018, at 8:30 a.m. The parties agreed the hearing would be held on May 24, 2018, at 2:00 p.m.

A telephone hearing was held on May 24, 2018, at 2:00 p.m. Attorney Edward Noethe represented Kalkas. Kalkas appeared and testified. Attorney Julie Burger represented Sequel and its insurer, the defendant, Travelers Indemnity Company of Ct. ("Travelers") Exhibits A through D and 1 and 2 were admitted into the record, and a brief from Kalkas was also received.

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

Kalkas testified she sustained an injury to her back while working for Sequel on October 1, 2017. (Kalkas Testimony) Sequel and Travelers authorized care with Scott Haughawout, D.O., Eric Phillips, M.D., and Keith Lodhia, M.D. (Kalkas Testimony) Kalkas testified the authorized treating physicians have informed her they have no further treatment to offer her. (Kalkas Testimony)

Kalkas attended an appointment with Steven Gogela, M.D., a neurosurgeon, on May 3, 2018, complaining of “[b]ack and left worse than right buttock and thigh pain.” (Exhibit C) Dr. Gogela recommended Kalkas proceed with a “left SI joint block under the direction of Dr. Diamant with a dedicated evaluation by Dr. Diamant following the injection,” and to proceed with treatment accordingly. (Ex. C) Kalkas has requested Sequel and Travelers authorize the care. The request was denied.

Kalkas testified she remains symptomatic. (Kalkas Testimony) Kalkas has been unable to return to work and she struggles to hold and play with her child who is three. (Kalkas Testimony) Kalkas has a difficult time standing up from the ground, and she continues to have pain. (Kalkas Testimony)

On May 23, 2018, Sequel and Travelers scheduled an appointment for Kalkas with Daniel Tomes, M.D., a neurosurgeon, on June 1, 2018, at 9:00 a.m., to provide additional care to Kalkas. (Ex. 2)

CONCLUSIONS OF LAW

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 the workers’ compensation law. Iowa Code § 85.27(1) (2017). 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 determination of whether care is reasonable is a question of fact. Long v. Roberts Dairy Co., 528 N.W.2d 122 (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).

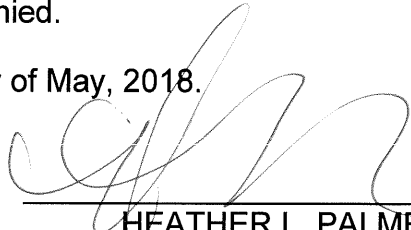
This is an accepted claim. After Kalkas filed her application for alternate medical care, Sequel and Travelers authorized care with Dr. Tomes, a neurosurgeon on June 1, 2018. The appointment with Dr. Tomes is scheduled a week from the hearing. Kalkas has not proven the care being offered by Sequel and Travelers is unreasonable, inferior, or less extensive than the care requested by Kalkas.

ORDER

THEREFORE IT IS ORDERED:

The application for alternate care is denied.

Signed and filed this 24th day of May, 2018.



HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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