

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KENNETH BURSELL,

Claimant,

vs.

LYNCH LIVESTOCK, INC.,

Employer,

and

NATIONWIDE AGRIBUSINESS
INSURANCE,Insurance Carrier,
Defendants.

File No. 5032265

R E M A N D

D E C I S I O N

Head Note Nos.: 2501, 2503

Upon written delegation of authority by the Workers' Compensation Commissioner under Iowa Code section 86.3, I render this decision as a final agency decision on the behalf of the Workers' Compensation Commissioner.

STATEMENT OF THE CASE

This matter is before the Iowa Workers' Compensation Commission on remand from the Court of Appeals following a decision entered March 6, 2019.

An alternate medical care proceeding was initially heard in this case on April 19, 2010. That alternate medical care decision found claimant proved entitlement to alternate medical care consisting of a laparoscopic lumbar sympathectomy.

A petition for judicial review was filed regarding the alternate medical care decision. A District Court decision, dated June 16, 2014, determined the Iowa Workers' Compensation Commission failed to apply the correct legal test in granting claimant's petition for alternate medical care.

The alternate medical care matter was appealed to the Iowa Supreme Court. In a May 20, 2015 decision, the Iowa Court of Appeals affirmed the District Court's remand decision. It remanded the case back to the District Court, to remand the case back to the agency, to apply the correct legal standard to determine if claimant had carried his burden of proof he is entitled to alternate medical care.

An August 2, 2016 remand decision, concerning the alternate medical care petition, found claimant failed to carry his burden of proof the care authorized by the employer was not effective, that it was inferior, or less extensive, or that the care recommended by the defendants was unreasonable. Claimant's petition for alternate medical care, on remand before the agency, was denied.

Claimant did not appeal that decision regarding his petition for alternate medical care.

As detailed in the Court of Appeals March 6, 2019 decision, while the alternate medical care case was proceeding through the courts on judicial review, an arbitration hearing was held. The arbitration decision found claimant was entitled to weekly benefits and payment of medical bills.

In a December 2, 2014 appeal decision, the agency ruled claimant was entitled to medical benefits for the treatment that was unauthorized. The appeal decision, citing to Bell Bros. Heating v. Gwynn, 779 N.W.2d 193 (Iowa 2010), found the unauthorized care was reasonable and beneficial when compared to the treatment offered by defendants.

Defendants filed a petition for judicial review regarding the agency arbitration decision. Defendants argued the award for benefits for the unauthorized care was contrary to the holding in Bell Bros.

The District Court agreed with defendants. The District Court held that substantial evidence did not support the agency finding that the unauthorized care received by claimant was reasonable and beneficial as per Bell Bros.

However, the District Court also concluded claimant should not be liable for the medical expenses incurred because, at the time Bursell underwent the sympathectomy, alternate medical care had been authorized by the Workers' Compensation Commission, as per the alternate medical care decision. The District Court concluded neither party was liable for the medical expenses. However, the District Court found that, as between the employee and the employer, the employer should bear the costs of the medical expenses, in this situation, where the employee sought and received unauthorized medical care pursuant to an alternate medical care agency decision that was later remanded.

Lynch Livestock filed an appeal to the District Court ruling finding defendants were liable for the medical expenses. Claimant did not cross-appeal.

The Iowa Court of Appeals found that, in this situation, claimant was responsible for the payment of the unauthorized care if he failed to carry his burden of proof under Bell Bros.

ISSUES

Are defendants liable for the unauthorized medical expenses?

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

Under Iowa Code section 85.27, the employer has the right to choose medical care as long as it is offered promptly and reasonably suited to treat the injury without undue inconvenience to the employee. The employer is not responsible for the costs of medical care not authorized by section 85.27. A claimant may seek payment of unauthorized medical care by a preponderance of the evidence if the care was reasonable and beneficial. Bell Bros. Heating v. Gwinn, 779 N.W.2d 193, 206 (Iowa 2010). To be beneficial, the medical care must provide a more favorable medical outcome than would have likely been achieved by the care authorized by the employer. Id. at 206. The claimant has a significant burden to prove that care was reasonable and beneficial. Id. at 206

This agency found the unauthorized treatment for claimant was reasonable and beneficial. That decision was overruled by the District Court. The District Court found there was not substantial evidence to support the agency's finding that Bursell's unauthorized care was reasonable and beneficial as per the Bell Bros. decision.

Claimant did not cross-appeal that decision. An issue must be appealed in order to preserve the issue. Beef Products v. Rizvic, No. 10-2083, filed August 24, 2011 (Iowa Ct. App.), unpublished, 806 N.W.2d 294 (Table).

The Iowa Court of Appeals, in an independent review, also found there was not substantial evidence supporting the finding that claimant's unauthorized treatment was reasonable and beneficial.

Given this record, claimant has failed to carry his burden of proof the unauthorized medical care was reasonable and beneficial within the law. Bell Bros., 779 N.W.2d 206. Based on this, defendants are not liable for the unauthorized medical care.

ORDER

Therefore, it is ordered:

That defendants are not liable for the unauthorized medical care.

Signed and filed this 15th day of October, 2019.



JAMES F. CHRISTENSON
DEPUTY WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Rick Crawl (via WCES)
Jeffrey Lanz (via WCES)