

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RASEMA HADZIC,

Claimant,

vs.

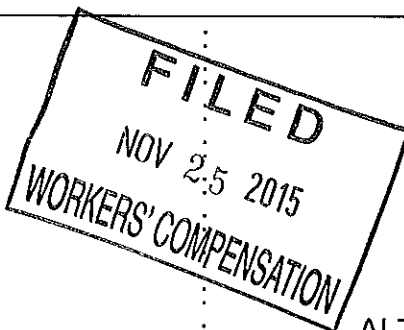
DRAKE UNIVERSITY,

Employer,

and

TRAVELERS INDEMNITY COMPANY,

Insurance Carrier,
Defendants.



File No. 5055016

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NOS: 2701, 2907

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, Rasema Hadzic. Claimant appeared personally and through her attorney, Richard Schmidt. Defendants appeared through their attorney, Tonya Oetken.

The alternate medical care claim came on for hearing on November 25, 2015. The proceedings were 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 1-4, which include a total of 11 pages. Claimant's exhibits were received over the objection of defendants. Defendants offered no exhibits. No witnesses testified at the hearing.

Claimant's original notice and petition for alternate medical care requests an order granting authorization for a right shoulder surgery to be performed by Scott A. Meyer, M.D. At the commencement of the hearing, defense counsel notified the undersigned that defendants have authorized the requested surgery. Both parties

acknowledge that the request for alternate medical care is now moot and that no further order or action is required by the undersigned on that issue.

However, claimant requests the assessment of a four hundred dollar (\$400.00) charge incurred to obtain a report from Dr. Meyer. Claimant's counsel explained that he obtained claimant's exhibit 4 as a result of defendants' attempts to secure a second opinion before authorizing the recommended surgery. Claimant requests the charges for obtaining that report be assessed as a cost in this alternate medical care proceeding.

ISSUE

The issue presented for resolution is whether costs should be assessed as part of this alternate medical care proceeding.

FINDINGS OF FACT

The undersigned having considered all the evidence in the record finds:

Claimant sustained a right shoulder injury as a result of her work duties on January 16, 2015. Defendants authorized treatment through an orthopaedic surgeon, Scott A. Meyer, M.D. Dr. Meyer recommended surgery on claimant's right shoulder.

Before agreeing to authorize the recommended right shoulder surgery, defendants requested a second opinion evaluation be performed. Claimant gave notice of her dissatisfaction with the defendants' refusal to authorize the recommended right shoulder surgery without the second opinion. Nevertheless, pursuant to comments of counsel at hearing, it appears claimant attended the second opinion evaluation and pursuant to defense counsel's statement, defendants have now authorized the recommended surgery through Dr. Meyer. Defendants' authorization resolves the pending alternate medical care dispute and the request for an order authorizing the right shoulder surgery is now moot.

Claimant's counsel represented at the alternate medical care hearing that his client incurred a four hundred dollar (\$400.00) charge to secure exhibit 4 from Dr. Meyer. Claimant's counsel requested that charge be assessed against defendants as a cost. Defendants resisted the request for assessment of costs. No evidence of the actual cost of Dr. Meyer's report is in the evidentiary record. Proof of payment of the requested cost is not in the evidentiary record.

REASONING AND CONCLUSIONS OF LAW

Iowa Code section 86.40 governs the assessment of costs in proceedings before this agency. Section 86.40 provides, "All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner." Agency rule 876

IAC 4.33(6) implements that statutory section and provides, "Costs taxed by the workers' compensation commissioner or a deputy commissioner shall be ... (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports."

The plain language of rule 876 IAC 4.33 appears to permit the assessment of costs in an alternate medical care proceeding. There is some agency precedent that assesses costs in alternate medical care proceedings. See Rydberg v. Decker Truck Line, Inc., File No. 5016965 (Alternate Medical Care, July 2006); Meek v. American Built, Inc., File No. 5015262 (Alternate Medical Care, May 2005); Kuster v. Rose Acre Farms, File No. 969141 (Alternate Medical Care, April 1993).

However, rule 876 IAC 4.33 also provides, "Proof of payment of any cost shall be filed with the workers' compensation commissioner before it is taxed." In this situation, no evidence is introduced to establish the cost of obtaining the report from Dr. Meyer and proof of payment has not been filed with this agency.

Claimant has not complied with 876 IAC 4.33. Given that the disputed issue is now moot and that claimant has not complied with the requirements of the rule that permits assessment of costs, I exercise this agency's discretion and conclude that it is not appropriate to assess the requested costs as part of this alternate medical care proceeding. However, claimant should be permitted to submit the cost and proof of payment for Dr. Meyer's report as part of the arbitration hearing.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is dismissed as the pending dispute is now moot.

Claimant's request for assessment of costs is denied.

Claimant may submit proof of payment of the medical cost of obtaining a report from Dr. Meyer as a cost pursuant to 876 IAC 4.33(6) at the arbitration hearing.

Signed and filed this 25th day of November, 2015.



WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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