

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ROGER ZIMMERMAN,

Claimant,

vs.

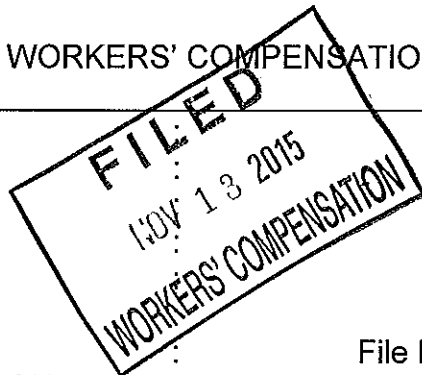
LOVE'S TRAVEL STOPS & COUNTRY
STORES,

Employer,

and

BROADSPIRE,

Insurance Carrier,
Defendants.



File No. 5054720

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, Roger Zimmerman. Claimant appeared personally and through his attorney, Eric Loney. Defendants appeared through their attorney, Lee Hook. 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 November 12, 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 through 5, and defendants' exhibits A and B. All exhibits were offered without objection and received into evidence.

FINDINGS OF FACT

Claimant sustained a work-related injury to his neck on March 30, 2015. Huy D. Trinh, M.D., an orthopedist, treated claimant with conservative modalities. X-rays and MRI testing of the cervical spine showed evidence of moderate disc arthrosis at C6-7 without any stenosis or herniation. (Exhibit A, page 1) On June 29, 2015, Dr. Trinh placed claimant at maximum medical improvement. (Ex. B, p. 1)

Claimant continued to experience difficulties with his cervical spine. He returned to Myrtue Medical Center, an authorized treating clinic. Denise Luna, P.A., referred claimant to Ric E. Jensen, M.D., Ph.D., a neurosurgeon at Neurosurgical Associates of Nebraska. Dr. Jensen most recently examined claimant on September 11, 2015.

In his report of September 24, 2015, Dr. Jensen wrote the following to Ms. Luna:

At this point, Roger has reached a point where his functional capacity has significantly declined and he is unable to perform his normal activities within the workplace. Roger was given a 1 month extension of his current workplace activity restrictions. Further, he was encouraged to maintain his efforts at independent physical therapy for paracervical muscle strengthening. Despite this, and due to the chronicity of his pain and symptom complex, Roger has requested that he be considered for operative therapy per an anterior cervical interbody discectomy/decompression and arthrodesis at his C6-7 cervical segment. I discussed the nature of this procedure with Roger in some detail. Roger understands that any form of surgical therapy will be performed at his discretion. Further, submission of a request for potential surgical therapy would have to be undertaken with regards to his Workman's Compensation carrier. He has request [sic] that I move forwards [sic] with submission of a request for potential surgical therapy.

(Exhibit 4, page 3)

The surgery was not approved. Counsel for claimant requested authorization for the surgery via a letter that was dated October 15, 2015. (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).

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).

Dr. Jensen is an authorized treating physician. His references to surgery are ambiguous. It is difficult to determine whether Dr. Jensen is recommending cervical surgery for claimant or whether the surgery is purely elective.

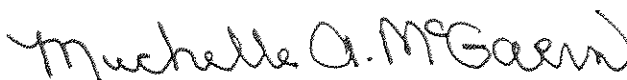
Because Dr. Jensen was not clear with respect to the issue of surgery, defendants shall schedule another appointment for claimant with Dr. Jensen for the express purpose of determining whether Dr. Jensen is specifically recommending cervical surgery for claimant.

ORDER

THEREFORE, IT IS ORDERED:

As soon as practicable, defendants shall schedule another appointment for claimant with Dr. Jensen for the express purpose of determining whether Dr. Jensen is specifically recommending cervical surgery for claimant.

Signed and filed this 13th day of November, 2015.



MICHELLE A. MCGOVERN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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