

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TEREASA RAFDAL,

Claimant,

vs.

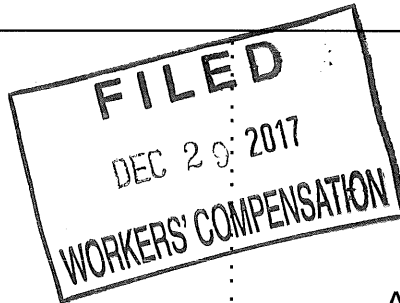
HILLYARD, INC.,

Employer,

and

GRANITE STATE INSURANCE
COMPANY,

Insurance Carrier,
Defendants.



File No. 5063740

ALTERNATE MEDICAL
CARE DECISION

HEAD NOTE NO: 2701

This is a contested case proceeding under Iowa Code chapters 85 and 17A. The expedited procedures of rule 876 IAC 4.48, the "alternate medical care" rule, are invoked by claimant, Tereasa Rafdal.

This alternate medical care claim came on for hearing on December 29, 2017. The proceedings were recorded digitally and constitute the official record of the hearing. By an order filed by the workers' compensation commissioner, this decision is designated final agency action. Any appeal would be a petition for judicial review under Iowa Code section 17A.19.

The record in this case consists of Claimant's Exhibits 1-3, Defendants' Exhibits A-C, and the testimony of claimant.

ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of treatment with Paul Babikian, M.D.

FINDINGS OF FACTS

Defendants admit liability for an injury occurring on November 3, 2016.

On November 3, 2016 claimant was evaluated by Richard Bratkiewicz, M.D. Claimant was evaluated as having a cervical strain and a closed head injury with a concussion. Claimant was recommended to see a neurologist. (Exhibit 1)

On November 14, 2016 claimant was evaluated by Brach Jones, APRN. Claimant had fallen at work and had a concussion. Claimant had memory loss, speech impairment and sensitivity to light. A CT scan of the brain was recommended. (Ex. B, pp. 4-6)

On November 22, 2016 claimant returned in follow-up with Nurse Jones. Claimant had memory issues. Claimant was referred for a neurological evaluation and treatment. (Ex. B, p. 7)

On December 27, 2016 claimant was evaluated by Dr. Babikian. Claimant was seen for headaches and memory loss. Claimant indicated sensitivity to light, poor memory and difficulty with balance. Claimant had a normal CT scan. Claimant was assessed as having a post-concussive headache and vertigo, memory loss, and sensitivity to light. Claimant was told she would benefit from physical therapy for vestibular rehabilitation, and speech therapy evaluation (Ex. 2)

In an October 30, 2017 email, defendants' counsel indicated Dr. Babikian did not want to be involved in workers' compensation matters and would not address workers' compensation issues. As a result claimant's care was being transferred to Michael Jacoby, M.D., a neurologist. Dr. Babikian was in agreement with this change in providers. (Ex. A p. 3)

In a November 30, 2017 email, claimant's counsel indicated claimant would be willing to treat with Dr. Jacoby. (Ex. A, pp. 1-2)

In a December 14, 2017 email defendant insurer indicated claimant was not authorized to see Dr. Babikian but was allowed to be treated by Dr. Jacoby. (Ex. 3)

Claimant testified she treated with Dr. Babikian for approximately one year. She said that in most of the appointments she treats with Dr. Babikian's physician assistant. Claimant testified she wants to continue to treat with Dr. Babikian.

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).

Iowa Code section 85.27(4) provides, in relevant part:

For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. . . . The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited

to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See Iowa R. App. P 14(f)(5); Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). 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). In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

The employee requesting the care has the burden to prove the care being offered by the employer is unreasonable. R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 196–96 (Iowa 2003); Lynch Livestock v. Bursell, No. 14-1133, Filed May 20, 2015 (Iowa Ct. App).

The record indicates claimant treated with Dr. Babikian for approximately a year. Dr. Babikian is a board certified neurologist. Defendants have authorized most of the treatment claimant has had with Dr. Babikian.

In an October 20, 2017, email defendants' counsel indicated defendants wanted to transfer claimant's care from Dr. Babikian to Dr. Jacoby. This is because Dr. Babikian does not address issues concerning workers' compensation. Dr. Jacoby is a board certified neurologist. Dr. Jacoby works with Dr. Babikian in the same practice, Mercy Ruan Neurology.

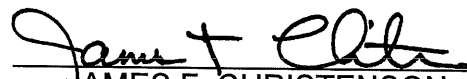
In an October 30, 2017 email, claimant's counsel agreed to the transfer of care to Dr. Jacoby.

Defendants want to transfer care to Dr. Jacoby, as Dr. Babikian will not deal with workers' compensation issues. Claimant's counsel agreed to that change. Dr. Jacoby is a board certified neurologist. He works with Dr. Babikian at Mercy Ruan Neurology. There is no evidence in the record the care being offered by Dr. Jacoby is unreasonable. Given this record claimant has failed to carry her burden of proof she is entitled to the requested alternative medical care. Claimant's petition is denied.

ORDER

THEREFORE it is ordered, that claimant's petition for alternate medical care is denied.

Signed and filed this 29th day of January, 2018.


JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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