

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ROBERT PETERSON,

Claimant,

vs.

CURRIES MANUFACTURING,

Employer,

and

TRAVELERS INDEMNITY CO. OF CT.,

Insurance Carrier,
Defendants.

File No. 5061576
ALTERNATE MEDICAL
CARE DECISION

Head Note No.: 2701

FILED
JUN 14 2019
WORKERS COMPENSATION

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, Robert Peterson. Claimant appeared by his attorney, Mr. Jason Neifert. Defendants appeared through their attorney, Mr. James Ballard.

The petition for alternate medical care came on for a telephone hearing on June 12, 2019. 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 contains claimant's exhibits 1 and 2, and defendants' exhibits A and B. No testimony was provided by any witness, because the facts are largely undisputed. Counsel provided argument.

ISSUE

Whether claimant should be granted his request to return to Rene Recinos, M.D., for evaluation of persistent right hand/finger symptoms.

FINDINGS OF FACT

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

On May 31, 2019, claimant filed his application for alternate medical care concerning his right hand/finger injury that occurred on March 25, 2015. Defendants accepted liability for the injury on that date.

The issue in this case relates to claimant's request to return to his long time treating physician, Rene Recinos, M.D., for evaluation of his right hand/finger symptoms. Dr. Recinos had been claimant's authorized treating doctor for years, providing medical care for claimant's bilateral arms and hands.

The records provided in this alternate care matter indicate that claimant saw Dr. Recinos on October 10, 2017 at which time he performed "A1 pulley releases of the left long and small fingers for stenosing tenosynovitis." (Ex. 2-7) The records also state that claimant "saw Dr. Recinos again more recently, now for right index finger triggering," and that "Dr. Recinos has suggested surgery for the right index finger, but nothing has been scheduled at this point." (Ex. 2-7) There is no date referenced in the record as to when this more recent visit occurred with Dr. Recinos, but claimant has apparently not yet had the right index finger surgery.

In response to claimant's request to see Dr. Recinos, defendants have authorized a visit to Dr. Andrew Odland at the Iowa Specialty Clinic. Defendant asserts that Dr. Odland is an "upper extremity orthopedic surgeon." (Ex. B-4) Claimant's counsel disputed to some extent Dr. Odland's specialty noting that the clinic web site indicates that Dr. Odland has areas of specialty, but it does not include the hand/fingers. There is no actual evidence in the record of Dr. Odland's specialty, such as a C.V.

I note from the records provided that Dr. Recinos has performed at least five surgeries along with injections from August 2015 through October 2017. Claimant's counsel indicated that the number of surgeries is actually seven. Whether five or seven, it is clear that Dr. Recinos has a substantial treatment history with claimant and has gained a unique level of knowledge of claimant's condition and enduring complaints.

Claimant, through counsel, did not object to going to the appointment with Dr. Odland, but emphasized his desire to be seen by Dr. Recinos who has a significant familiarity with claimant's history, work injury, and condition.

I find that under the unique circumstances of claimant being treated by Dr. Recinos over a period of years and the fact that he has performed between five and seven surgeries, places him in a unique position of having significant knowledge, experience and understanding of claimant's condition that would be superior to Dr. Odland's initial evaluation.

I find that refusing to allow claimant to return to the long time treating physician, Dr. Recinos for an evaluation, given his substantial history with claimant is unreasonable.

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).

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); Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); 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 court approvingly quoted Bowles v. Los Lunas Schools, 109 N.M. 100, 781 P.2d 1178 (App. 1989):

[T]he words "reasonable" and "adequate" appear to describe the same standard.

[The New Mexico rule] requires the employer to provide a certain standard of care and excuses the employer from any obligation to provide other services only if that standard is met. We construe the terms "reasonable" and "adequate" as describing care that is both appropriate to the injury and sufficient to bring the worker to maximum recovery.

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

An employer's right to select the provider of medical treatment to an injured worker does not include the right to determine how an injured worker should be diagnosed, evaluated, treated, or other matters of professional medical judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988).

Reasonable care includes care necessary to diagnose the condition, and defendants are not entitled to interfere with the medical judgment of its own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening, June 17, 1986).

In order to carry his burden of proof, the injured worked must show that the care being offered by the employer was unreasonable, had not been effective, or was inferior or less extensive. Lynch Livestock, Inc. v. Bursell, 870 N.W.2d 274 (Table)* 3 (Iowa Ct. App. 2015) Concluding that the care being sought is reasonable is not enough. Id.


I conclude that claimant has shown that a return visit to Dr. Recinos who has a substantial history of treating claimant, including many surgeries, is superior to a first time evaluation with Dr. Odland. Although defendants assert that Dr. Odland is an upper extremity orthopedic surgeon, that fact was disputed by defendants and there was no C.V., or other written evidence or testimony confirming his area of specialty. The attorneys for the parties disagree based on limited information as to Dr. Odland's specialty and I have no reason to doubt either attorney. Both attorneys have shown themselves in prior cases to be honest and forthright. Given this discrepancy, and the lack of evidence on the matter, I am unable to determine Dr. Odland's area of specialty. Taking this into consideration along with Dr. Recinos's known history with the patient, it is appropriate to grant claimant's petition for alternate care.

ORDER

THEREFORE IT IS ORDERED:

Defendants shall promptly authorize and timely pay for claimant to be evaluated for his persistent right hand/finger complaints with Dr. Rene Recinos.

Signed and filed this 14th day of June, 2019.



TOBY J. GORDON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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