BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JUAN FRANCISCO "FRANK" RAMOS,

Claimant,

vs.

PERFORMANCE CONTRACTORS,

Employer,

and

ARCH INSURANCE GROUP,

Insurance Carrier,
Defendants.

File No. 5056744

MEMORANDUM OF

ALTERNATE CARE DECISION

Head Note No.: 2701

On June 1, 2016, claimant filed an application for alternate medical care under Iowa Code section 85.27, invoking the provisions of rule 876 IAC 4.48. Defendants filed an answer requesting a hearing of the matter. A hearing was held on June 13, 2016.

During the hearing, the defendants denied liability for the claimant's ongoing pain and discomfort in his left wrist.

Before any benefits can be ordered, including medical benefits, compensability of the claim must be established, either by admission of liability or by adjudication. The summary provisions of Iowa Code section 85.27 as more particularly described in rule 876 IAC 4.48 are not designed to adjudicate disputed compensability of a claim.

The Iowa Supreme Court has held:

> We emphasize that the commissioner's ability to decide the merits of a section 85.27(4) alternate medical care claim is limited to situations where the compensability of an injury is conceded, but the reasonableness of a particular course of treatment for the compensable injury is disputed. . . .
>
> Thus, the commissioner cannot decide the reasonableness of the alternate care claim without also necessarily deciding the ultimate disputed issue in the case: whether or not the medical condition Barnett was suffering at the time of the request was a work-related injury.

. . . .

> Once an employer takes the position in response to a claim for alternate medical care that the care sought is for a noncompensatory injury, the employer cannot assert an authorization defense in response to a subsequent claim by the employee for the expenses of the alternate medical care.

R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 197-198 (Iowa 2003).

Thus, the claimant's petition seeking medical treatment must be dismissed because the defendants are denying liability for the conditions she seeks to have treated. The defendants thereby lose their right to control the claimant's medical care and the claimant is free to choose her own medical care.

As a result of their denial of liability for the condition sought to be treated in this proceeding, claimant may obtain reasonable medical care from any provider for this condition but at claimant's expense and seek reimbursement for such care using regular claim proceedings before this agency. Haack v. Von Hoffman Graphics, File No. 1268172 (App. July 31, 2002); Kindhart v. Fort Des Moines Hotel, I Iowa Industrial Comm'r Decisions No. 3, 611 (App. March 27, 1985).

IT IS THEREFORE ORDERED that this case should be and is hereby dismissed without prejudice.

It is further ordered that if claimant seeks to recover the charges incurred in obtaining care for a condition for which defendants denied liability, defendants are barred from asserting lack of authorization as a defense to those charges.

Signed and filed this 14th day of June, 2016.

JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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