BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SHAWN STEPHENSON, Claimant, vs. DB & J ENTERPRISE, INC., Employer, and SFM INSURANCE, Insurance Carrier, Defendants.	File No. 20004139.01 ALTERNATE MEDICAL CARE DECISION

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, Shawn Stephenson. Claimant appeared personally and through his attorney, Eric Loney. Defendants appeared through their attorney, Lee Hook.

The alternate medical care claim came on for hearing on August 23, 2021. 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 evidentiary record consists of Claimant's Exhibit 1-3 and Defendants' Exhibit A, and the testimony of Ms. Michele Metz during the telephonic hearing. During the course of the hearing defendants accepted liability for the August 14, 2019, work injury and for the left foot and neck conditions for which claimant is seeking treatment.

ISSUE

The issue for resolution is whether the claimant is entitled to alternate medical care.

FINDINGS OF FACT

Claimant, Shawn Stephenson, sustained a work-related injury on August 14, 2019. Via his petition for alternate medical care, Mr. Stephenson seeks return-to-work hardening/conditioning sessions at Elevate Physical Therapy. The alternate care petition states claimant is seeking treatment for his neck. However, at the beginning of the hearing claimant's counsel clarified that the treatment sought is actually for the left foot.

On July 23, 2021, Paul D. Butler, M.D. recommended physical therapy for the left foot. (Cl. Ex. 1) On August 3, 2021, Becky Roush, the Controller for the employer, authored a "To whom it may concern" letter, wherein she gave authorization for Mr. Stephenson to seek physical therapy for his return-to-work hardening/conditioning sessions at Elevate Physical Therapy. (Cl. Ex. 2)

Michele Metz, the claims representative on this case for the workers' compensation carrier, testified at this alternate care hearing. Ms. Metz testified that defendants have authorized physical therapy for the left ankle. However, they have authorized the therapy with Athletico in Ankeny. They have selected Athletico because they have had excellent outcomes with Athletico and they want the best possible outcome for Mr. Stephenson. (Testimony)

Prior to August 5, 2021, Athletico made 4 phone calls to Mr. Stephenson in an attempt to schedule his therapy; however, Mr. Stephenson did not respond. On August 5, 2021, Ms. Metz sent an email to claimant's counsel advising that Athletico was trying to schedule work conditioning for Mr. Stephenson. Claimant's counsel advised Ms. Metz that his client had already started work hardening at Elevated [*sic*]. (Cl. Ex. 3; Metz Testimony)

At the time of the alternate care hearing, Mr. Stephenson's work-hardening was put on hold until he completes physical therapy at DMOS for his neck. (Def. Ex. A) Because the medical providers have placed the treatment claimant seeks on hold, there is no treatment that may be ordered at this time. (Def. Ex. A; Metz Testimony)

REASONING AND CONCLUSIONS OF LAW

Under Iowa law, the employer is required to provide care to an injured employee and is permitted to choose the care. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

> [T]he 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. 6.904(3)(e); 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., 562 N.W.2d at 433, 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.

The commissioner is justified in ordering alternate care when employer-authorized care has not been effective and evidence shows that such care is "inferior or less extensive" care than other available care requested by the employee. Long; 528 N.W.2d at 124; Pirelli-Armstrong Tire Co.; 562 N.W.2d at 437.

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).

In the present case, the treatment claimant seeks via his petition for alternate medical care cannot be offered until he completes other treatment. I conclude that because there is no care that can be offered at this time, claimant has failed to carry his burden to prove the authorized care is unreasonable. Therefore, I conclude claimant's petition for alternate medical care is denied.

ORDER

THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care is denied.

Signed and filed this ___23rd_____ day of August, 2021.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Eric Loney (via WCES)

Lee P. Hook (via WCES)