

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DONALD DECHANT,

Claimant,

vs.

LRS OF IOWA, LLC d/b/a JOHNSON
COUNTY REFUSE,

Employer,

and

AMERICAN ZURICH INS. CO.,

Insurance Carrier,
Defendants.

File No. 22003161.01

ALTERNATE MEDICAL CARE
DECISION

Head Note: 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, Donald DeChant.

This alternate medical care claim came on for hearing on June 2, 2022. 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 by a petition for judicial review under Iowa Code section 17A.19.

The claimant properly served notice of this petition for alternate medical care on the defendant insurer and the insurer's third-party administrator (TPA) by certified mail. The record shows claimant's attorney received a return receipt of service of the petition and original notice indicating defendant received those documents on or about May 23, 2022. (Exhibit 5) Claimant's counsel indicated he had not been contacted by anyone on behalf of the employer or insurer in regard to this petition.

No answer to the petition for alternate medical care was filed by the employer, insurer, or attorney representing the employer/insurer. A copy of the return receipt of service of the petition and original notice indicates defendant insurer and TPA received those documents on or about May 23, 2022. (Ex. 5)

The undersigned examined the file for this petition and there is no answer from the employer or its insurance carrier on file. There is no indication that anyone

representing the employer, or its insurance carrier called into the agency to provide a phone number to be called during the hearing. No phone calls were received by the agency during the hearing inquiring why the employer was not called at the time designated for the hearing.

Thus, a finding was made that the claimant had properly served notice of the petition for alternate medical care on the defendants; that the defendants had not filed an answer or otherwise appeared; and that the defendants had not provided this agency with a phone number or person to be contacted for its participation in the hearing. The defendants were found to be in default for purposes of this alternate medical care proceeding, and the defendants are found to have abandoned the care of the claimant by their refusal to respond to claimant regarding further treatment or participate in this alternate medical care proceeding.

The record in this case consists of claimant's exhibits 1-5, and the testimony of claimant. Defendants did not participate in the hearing.

ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of authorization and scheduling shoulder surgery for claimant.

FINDINGS OF FACT

Claimant was employed by Johnson County Refuse. Claimant said Johnson County Refuse was bought by LRS of Iowa.

On or about January 3, 2022, claimant testified he was pushing dumpsters through ice. He said that because the dumpsters were in ice, they were difficult to push. He said that during the course of pushing dumpsters he began to feel pain in his shoulder. He said he pushed one dumpster through ice and felt an immediate pain in his left shoulder.

Claimant testified he told his employer about his injury on January 4, 2022. He said he completed an injury report with his employer. Claimant said his employer told him to go through his personal primary care provider for treatment for the work injury. Claimant said his employer told him they would reimburse claimant for any co-pays or deductibles for treatment and that he should pay for care through his health insurance. Claimant said he saw Kristen Wagaman, ARNP, for his left shoulder condition. He said Nurse Practitioner Wagaman prescribed physical therapy.

Claimant said he told his employer he was getting physical therapy for his shoulder injury. He said his employer helped accommodate claimant with work because of his injured shoulder.

On or about March 3, 2022, claimant again gave notice of his injury to his employer. It is claimant's understanding that at or about that time, defendant employer completed an injury report and sent it to the insurer. Claimant indicated it is his understanding that Cottingham and Butler is the TPA for defendant insurer. Claimant said he contacted the TPA several times and was eventually sent a packet of information. He said he contacted the TPA but was told that since he had an attorney, the attorney should contact the TPA.

Claimant said his shoulder symptoms did not improve. He said that, as a result, Nurse Practitioner Wagaman recommended claimant have an MRI. He said that after claimant had his MRI, Nurse Practitioner Wagaman referred claimant to Physicians Clinic of Iowa Orthopedics (PCI) for an orthopedic consultation.

Claimant said he was evaluated by Matthew White, M.D. at PCI. He said Dr. White recommend he have shoulder surgery. Claimant said he has not yet scheduled that surgery. Claimant said he wants to have that surgery.

On May 2, 2022, claimant's counsel's office contacted defendant insurer's TPA indicating representation of claimant. The email indicated claimant had been referred for shoulder surgery and asked for authorization for the surgery. (Ex. 2)

Similar emails were sent to defendant insurer's TPA on May 4, 2022 and May 6, 2022. (Ex. 3)

On May 20, 2022, claimant's attorney wrote defendant insurer notifying the insurer claimant had requested authorization of surgery on three occasions and had not received a response. The letter indicated claimant was dissatisfied with this lack of care. (Ex. 4)

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 Rule of Appellate Procedure 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. 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.

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.

When a designated physician refers a patient to another physician, that physician acts as the defendant employer’s agent. Permission for the referral from defendant is not necessary. Kittrell v. Allen Memorial Hospital, Thirty-fourth Biennial Report of the Industrial Commissioner, 164 (Arb. November 1, 1979) (aff’d by industrial commissioner). See also Limoges v. Meier Auto Salvage, Iowa Industrial Commissioner Reports 207 (1981).

Claimant’s counsel sent defendants at least three emails and a letter requesting authorization for surgery. There is no evidence in the record defendants responded to the emails, the letter, or any communication. Defendants received the alternate medical care petition in this matter. Defendants did not file an answer, did not respond to the petition, and failed to appear at hearing.

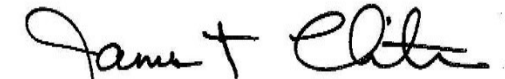
Defendants have not communicated with the claimant or his attorney regarding claimant’s requests for the recommended care. Defendants did not participate in the hearing on this alternate medical care petition. Based on this, it is found defendants have abandoned the claimant’s care. There is evidence indicating the treatment provided by defendants was not appropriate or adequate. Defendants’ failure to provide any care in this case is found to be unreasonable. Claimant seeks authorization for shoulder surgery with Dr. White. The petition for alternate medical care is granted.

ORDER

THEREFORE, IT IS ORDERED:

That claimant’s petition for alternate medical care is granted. Defendants are ordered to immediately authorize and pay for the surgery and treatment with Dr. White.

Signed and filed this 2nd day of June, 2022.



JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Dillon Besser (via WCES)

LRS of Iowa LLC d/b/a Johnson Co. Refuse (via certified and regular mail)
6132 Oakton St
Morton Grove, IL 60053

American Zurich Ins. Co. (via certified and regular mail)
1400 American Lane, Tower 1, 19th Floor
Schaumburg, IL 60196-5452