BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

GREGORY SPECHT,

Claimant,

vs.

EMERSON PROCESS MANAGEMENT/ FISHER CONTROLS,

Employer,

and

OLD REPUBLIC INS. CO.,

Insurance Carrier,
Defendants.

File No. 5066994

ALTERNATE MEDICAL CARE DECISION

HEAD NOTE NO: 2701

This case 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. The undersigned has been delegated final agency action in this decision. Iowa Code section 17A.15(1); Order of Delegation, February 15, 2015. Any appeal of the decision will be to the Iowa District Court.

Claimant appeared through his attorney, James M. Ballard. Defendants appeared through their attorney, Joseph A. Quinn.

The alternate medical care claim came on for hearing on April 5, 2019 at 8:30 a.m. The proceedings were digitally recorded. The recording constitutes the official record of this proceeding.

At the commencement of the proceedings, claimant offered: Exhibit 1-1; and Exhibit 2-2; 2-3; 2-4; and 2-5. Defendants offered Exhibit 1-1. All proffered exhibits were admitted as evidence in the hearing.

Both attorneys were given opportunities to provide oral arguments. Claimant was not present during the hearing.

The parties agreed Daniel C. Miller, M.D., at Occupational Medicine Plus, PC, was an authorized treating physician. On February 5, 2019, Dr. Miller recommended claimant be seen by an orthopedist. (Exhibit 2, page 3) As of the date of the alternate

medical hearing, no appointment had been scheduled. However, defense counsel had tried to schedule an evaluation with Joshua D. Kimmelman, D.O. (It should be noted, Dr. Kimmelman no longer treats patients. He performs evaluations, and independent medical evaluations). Defense counsel was unaware of Dr. Kimmelman's status at the time, Mr. Quinn contacted Dr. Kimmelman's office on March 26, 2019.

During the hearing, defense counsel readily agreed to contact Iowa Ortho and schedule an appointment for claimant with an orthopedist who performs active treatment of patients.

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-reopen October 16, 1975).

Under Iowa law, the employer is required to provide care to an injured employee and is permitted to choose the care. Pirelli-Armstrong Tire So. V. Reyonds, 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 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 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.

Defendants shall contact Iowa Ortho within ten (10) days and schedule an appointment for claimant with a treating orthopedist. In addition, defendants shall forward claimant's medical records relating to his left shoulder injury to the orthopedist.

ORDER

THEREFORE, IT IS ORDERED:

Within ten (10 days, defendants shall schedule an appointment for claimant with an orthopedist at Iowa Ortho who engages in the active treatment of patients.

Additionally, defendants shall forward claimant's medical records relating to his left shoulder to the orthopedist.

Signed and filed this 5th day of April, 2019.

Michelle A. McGovern

MICHELLE A. MCGOVERN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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