

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RANDY J. RECTOR,

Claimant,

vs.

LYMAN-RICHEY CORPORATION,

Employer,

and

UNDERWRITERS SAFETY & CLAIMS,

Insurance Carrier,  
Defendants.

**FILED**

MAR 27 2015

WORKERS COMPENSATION

File No. 5049147

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

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, Randy Rector.

The alternate medical care claim came on for hearing on March 26, 2014. The proceedings were digitally recorded and constitute the official record of this proceeding. By order filed February 16, 2015, this ruling is designated final agency action.

The record consists of claimant's exhibits 1-5; defendants' exhibits A-E.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of authorization of a psychologist or psychiatrist, authorization of radiofrequency ablation as recommended by Dr. Jensen, and authorization of prescription medications.

FINDINGS OF FACT

Randy Rector sustained a neck and head injury on January 25, 2013 when he was involved in a serious motor vehicle accident. At the alternate care hearing defendants admitted liability for the neck and head injury. Following the work injury the defendants provided treatment to Mr. Rector.

During his treatment Mr. Rector was seen by authorized clinical psychologist, Clayton J. Toddy, Psy.D. Claimant last saw Dr. Toddy on March 21, 2014. At that time Dr. Toddy stated that Mr. Rector may benefit from outpatient psychotherapy with

Dr. James Snowden, licensed psychologist, to address depression, anxiety, possible post-traumatic stress disorder (PTSD), and post-concussion syndrome. (Exhibit A, page 2) According to Mr. Rector, he never saw Dr. Snowden because he was not available because no one knew where Dr. Snowden was located.

Mr. Rector also treated with authorized physician, Dr. Jensen. The last time he saw Dr. Jensen was June 30, 2014. At that time, Dr. Jensen recommended radiofrequency ablation for his residual neck pain. (Ex. 1, p. 2)

Mr. Rector testified that he has been unable to fill his prescriptions through the workers' compensation carrier since July of 2014. He testified that Jeremy B. Poulsen, D.O., prescribed him three different medications. (Ex. 2, pp. 3-5) He was initially able to fill those three medications, but when he tried to refill them at Hy-Vee they informed him that the insurance was denying the prescriptions. Claimant testified he called the workers' compensation carrier on several occasions but never received a return phone call. Defendants contend that they were unaware that Mr. Rector had difficulty filling his prescriptions. However, I note that defendants were informed of the prescription refill problem by at least February 17, 2015, when Mr. Mahr sent a missive to Mr. Hatch informing him of the problem. (Ex. 5, pp. 9-10)

Mr. Rector testified at the alternate care hearing that the defendants had scheduled an appointment for him to see Dr. Poulsen that afternoon. Mr. Rector planned to attend the appointment with Dr. Poulsen and inquire about treatment with a psychologist or psychiatrist, additional physical therapy, and whether the recommended radiofrequency ablation is still appropriate at this time.

In this case, it appears that there was a breakdown in communications between the parties with regard to ongoing treatment and prescription authorization. Defendants have authorized a follow-up appointment with Dr. Poulsen for the afternoon of the alternate care hearing. At that appointment, Dr. Poulsen will be asked to address the treatment issues set forth in claimant's alternate care petition. At this time, I find that this is reasonable care. Additionally, I find that claimant's inability to obtain his prescription medications since July of 2014 is not reasonable care.

#### 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); 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.

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 Decision June 17, 1986).

Defendants authorized a return visit to Dr. Poulsen to address Mr. Rector's concerns regarding additional treatment. At this time, claimant has not shown that this authorized care is unreasonable.

Unfortunately, claimant has been unable to refill the prescriptions from authorized treaters through the workers' compensation carrier. This is not acceptable and certainly not reasonable care. Defendants shall promptly authorize refills of prescriptions from authorized treaters for his January 25, 2013 injury.


#### ORDER

#### THEREFORE IT IS ORDERED:

Claimant's petition for alternate care shall be granted with regard to prescription refills. Specifically, claimant is entitled to timely authorization without delay of prescriptions ordered by authorized treating physicians in the care and treatment of his January 25, 2013 injury.

The remainder of claimant's petition for alternate medical care is denied because it is found that defendants are currently offering reasonable care that is suited to treat his January 25, 2013 injury.

Signed and filed this 27<sup>th</sup> day of March, 2015.

  
ERIN Q. PALS  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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