BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KIM WETTER, Claimant, vs. TARGET CORP., Employer, Self-Insured, Defendant.	:	File No. 5046166.01 ALTERNATE MEDICAL CARE DECISION

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, Kim Wetter.

This alternate medical care claim came on for hearing on October 18, 2021. 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 employer by certified mail. The record shows claimant's attorney received a return receipt of service of the petition and original notice indicating defendant employer received those documents on October 6, 2021. (Exhibit 6) Claimant's counsel indicated he had not been contacted by anyone on behalf of the employer or the third-party administrator (TPA) in regard to this petition.

No answer to the petition for alternate medical care was filed by the employer or attorney representing the employer. A copy of the return receipt of service of the petition and original notice indicates defendant employer received those documents on October 6, 2021. (Ex. 6)

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. The file does not show that this agency's notice of the hearing, sent to the employer and requesting a phone number to be called, was returned as undelivered. 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 defendant employer; that the employer had not filed an answer or otherwise appeared; and that the employer had not provided this agency with a phone number or person to be contacted for its participation in the hearing. The employer was found to be in default for purposes of this alternate medical care proceeding, and the employer is found to have abandoned the care of the claimant by its 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 through 6. 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 claimant getting prescription medications for her eye condition.

FINDINGS OF FACT

Claimant sustained a work-related injury to her left eye on or about October 31, 2011.

On March 12, 2015, claimant was evaluated by David Auer, O.D. Claimant had pain and redness in her eye. Claimant was assessed as having keratoconjunctivitus, moderate to severe in the left eye. Claimant was prescribed ointments and drops for her condition. (Exhibit 2)

In a November 29, 2016, letter Mark Wilkinson, O.D., indicated claimant's condition was a chronically dry left eye and photophobia. He indicated claimant would require continued treatment for her dry eye and photophobia for the rest of her life, and would require lubricating drops for her eye for the rest of her life. (Ex. 3)

An undated independent medical evaluation (IME) report indicated claimant would require continued treatment for her eye condition including, but not limited to, appropriate eye drops. (Ex. 4)

In a December 21, 2018, email, claimant's counsel indicated claimant was having difficulty getting prescription medication for her eyes due to insurance issues. (Ex. 5)

In a June 11, 2021, email claimant's counsel wrote to defendant's third-party administrator (TPA) indicating claimant was again having difficulty getting prescription

medications for her eyes due to insurance issues. There is no evidence in the record defendant's TPA responded to the email or the request. (Ex. 1)

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.

Claimant is prescribed three medications for her eye condition by authorized providers. The record indicates claimant has routine difficulty getting those medications from the pharmacy due to delays caused by either the employer/insurer or defendant's TPA.

Claimant's counsel sent defendant employer an email requesting claimant's prescription be filed. There is no evidence in the record defendant or their TPA responded to that email. Defendant employer received the alternate medical care

petition in this matter. Defendant employer did not file an answer, did not respond to the petition, and failed to appear at hearing.

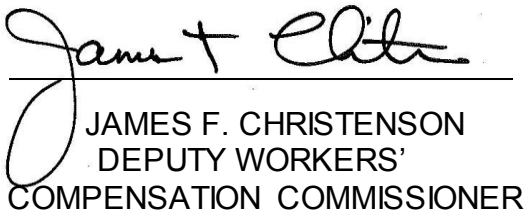
Defendants have not communicated with the claimant or his attorney regarding claimant's requests for the prescribed medications. Defendants did not participate in the hearing on this alternate medical care petition. Based on this, it is found defendants have abandoned the claimant's care. There is evidence indicating the treatment provided by defendants was not appropriate or adequate. Claimant seeks the medications for her eyes prescribed by authorized physicians. 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 make the prescription medications available to claimant.

Signed and filed this 18th day of October, 2021.



JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Zeke McCartney (via WCES)

Target Corporation (via regular and certified mail)
3500 Dodge St.
Dubuque, IA 52001