

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JENNIFER M. WYANT,	FILED	File No. 5067437
Claimant,	FEB 27 2019	
vs.	WORKERS COMPENSATION	ALTERNATE MEDICAL
JOHN DEERE WATERLOO WORKS,	:	CARE DECISION
Employer,	:	
Self-Insured,	:	
Defendant.	:	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, Jennifer Wyant. Claimant appeared through her attorney, Benjamin Roth. Defendants appeared through their attorney, James Kalkhoff.

The alternate medical care claim came on for a telephonic hearing on February 27, 2019. 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 record consists of claimant's exhibits 1-4, which include four pages and defendants' exhibits A through D, which consist of seven pages. All exhibits were received without objection. Neither party elected to call any witnesses to testify live. However, counsel presented cogent and helpful argument. The evidentiary record closed at the conclusion of the telephonic hearing.

ISSUE

The issue presented for resolution is whether claimant has proven the treatment offered by defendant with a hand specialist in Iowa City is unduly inconvenient such that alternate medical care should be ordered.

FINDINGS OF FACT

The undersigned having considered all the evidence in the record finds:

Jennifer Wyant sustained an injury to her right wrist on August 3, 2018, which arose out of and in the course of her employment with John Deere Waterloo Works. (Claimant's Exhibit 4) Ms. Wyant requires the care of a hand specialist for this injury.

At the time of the injury, Ms. Wyant lived in the Waterloo area. By November 2018, claimant moved to Altoona, Iowa, where she currently resides. On November 27, 2018, claimant gave notice of her move and requested that care be transferred to Des Moines. (Claimant's Ex. 3)

Defendants scheduled claimant for medical care with a hand specialist in Iowa City. Claimant attended that appointment with Rhonda J. Dunn, ARNP, at the University of Iowa Work Injury Recovery Center. Ms. Dunn ordered physical therapy for 8 weeks. (Defendant's Ex. C) Defendants apparently provided the physical therapy in the Des Moines area but did not agree to transfer care to a physician in the Des Moines area.

Claimant returned for follow-up care with an orthopaedic surgeon, Lindsey S. Caldwell, M.D., at the University of Iowa Hospitals and Clinics on January 30, 2019. Dr. Caldwell diagnosed claimant with a right TFCC injury. Dr. Caldwell recommended eight more weeks of physical therapy and a return evaluation at the University of Iowa after the completion of the course of therapy. (Defendant's Ex. D) Claimant must travel 105 miles from her residence to attend appointments at the University of Iowa Hospitals and Clinics. (Claimant's Ex. 4)

On February 18, 2019, claimant began working for a new employer. She does not have any paid time off, or leave time, available because she just started working for the new employer. (Claimant's Ex. 4) Claimant would not qualify for FMLA leave because she has not worked for her current employer for sufficient time.

Given the distance between her residence and her currently authorized physician, claimant would have to take an entire day off work to attend an appointment. Claimant is concerned that she will lose her current job if she takes time off work to attend the upcoming medical appointment in Iowa City. (Claimant's Ex. 4) Claimant's concern is reasonable and realistic given her recent start date with a new employer.

Claimant concedes that the care offered in Iowa City is reasonable. However, she contends that the travel requirements to attend that treatment is unduly inconvenient given her current residence in Altoona. Ms. Wyant requests that defendant transfer care from Iowa City to Des Moines. She asserts that a hand specialist is available in Des Moines. (Claimant's Ex. 4) The experience of this agency confirms that there are hand specialists available to treat work injuries in the Des Moines area.

John Deere is not willing to transfer care to Des Moines. John Deere asserts that it has offered a specialist and reasonable care. It has offered physical therapy locally in the Des Moines area. It contends that it is not unreasonable to require claimant to travel back to Iowa City at least one more time for follow-up evaluation with the orthopaedic specialists that has already established care.

John Deere points out that claimant had to drive 90-95 miles from Waterloo to Iowa City for care. The increased burden on claimant at the present time is only another 10-15 miles, which John Deere contends is not unreasonable. At hearing, John Deere argued that claimant has only had to travel from Altoona to Iowa City one time since care was established. However, it appears claimant moved to Altoona by November 2018 and has actually traveled to Iowa City twice since then.

John Deere also points out that claimant is only undertaking physical therapy at the present time and may only require one additional follow-up appointment in Iowa City. They contend it would be expensive and result in duplicative care to transfer care now. John Deere argues it is offering reasonable care and that it is not unduly inconvenient to expect claimant to travel to Iowa City one more time for a follow-up evaluation with the hand specialist. John Deere argues that claimant elected to move and that the care it is offering remains reasonable. Therefore, John Deere argues that this alternate medical care request is premature and should be dismissed.

Considering the entirety of the evidence, circumstances, and arguments of counsel, I find that the care offered by defendant is reasonable and appropriate to treat the injury. However, I find that the care offered by defendant in Iowa City is unduly inconvenient for Ms. Wyant. Claimant recently started new employment. She has no leave time to attend future medical appointments and reasonably fears loss of her job if she takes time off work to attend future medical appointments in Iowa City.

Therefore, I find that it is not reasonable to require Ms. Wyant to travel more than 100 miles one-way to attend medical treatment in Iowa City. Requiring this of Ms. Wyant puts her in a tenuous position with her new employer and requires her to take time off work without any leave. Given the availability of hand specialists in the Des Moines area, it is not reasonable to require Ms. Wyant to travel more than 100 miles one-way for care, require her to take time off work without leave time available, or to risk her current employment to attend medical care such a distance from her residence. I specifically find that the care offered by defendant is unduly inconvenient for Ms. Wyant.

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); Bell Bros. Heating v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); 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. Long v. Roberts Dairy Co., 528

N.W.2d 122 (Iowa 1995). 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).

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

John Deere contends that it has the right to select the authorized medical provider. John Deere is correct in this assertion. Iowa Code section 85.27. However, the right to select the authorized medical provider is a qualified right. West Side Transport v. Cordell, 601 N.W.2d 691 (Iowa 1999). In making its selection of the authorized medical provider, the employer must provide prompt care that is reasonably suited to treat the injury. Id. at 693. The care must also be "without undue inconvenience to the claimant." Id. Distance of travel from the claimant's residence is an appropriate factor to consider when determining if the care offered is unduly inconvenient to the claimant. Id. at 694.

Generally, care should be provided within a reasonable distance from claimant's residence. Trade Professionals, Inc. v. Shriver, 661 N.W.2d 119, 124 (Iowa 2003) (more than 100 miles is an undue inconvenience); Schrock v. Corkery Waste Disposal, Inc., File No. 1133725, (Alt. Care June 26, 1996) (120 mile round trip excessive); Schulte v. Vocational Services of Area Residential Care, File No. 1134342, (Alt. Care September 6, 1996) (care more than 70 miles away unreasonable). A 50-mile radius is generally considered a reasonable distance to travel for treatment in workers' compensation cases. Bitner v. Cedar Falls Construction Co., File No. 5013852 (Alt. Care. September 24, 2004). However, it depends on what is reasonable under the circumstances in a particular case. See Warner v. City of Hawarden, File No. 5039478 (Arb. June 27, 2013).

In Trade Professionals, Inc. v. Shriver, 661 N.W.2d 119, 124 (Iowa 2003), the Iowa Supreme Court indicated that an offer of care approximately 100 miles from claimant's residence failed to meet the standard of offering care "without undue inconvenience" to the claimant. John Deere now asserts that offering care even further than the care found to be inconvenient by the Iowa Supreme Court in Trade Professionals should be found to be reasonable and appropriate in this case since claimant elected to move her residence and since claimant may only need to travel that distance one more time. I disagree.

The facts of this case also make the offer of medical care more than 100 miles from claimant's residence more egregious. Claimant requested a transfer of care but did not seek alternate medical care until she obtained new employment. Claimant's concerns about her current employment are reasonable. She has no leave time and risks losing her new employment if she is required to take a full day off work to attend a medical appointment in Iowa City.

Under these circumstances, I found that it was unduly inconvenient for Ms. Wyant to be required to attend medical treatment in Iowa City. Having reached this finding of fact, I conclude that claimant has established by a preponderance of the evidence that the care offered by defendant at the University of Iowa Hospitals and Clinics in Iowa City is unduly inconvenient. For this reason, I conclude that claimant's petition for alternate medical care should be granted.

Claimant has not identified a specific hand specialist to whom she requests care be transferred. Rather, claimant appears to consent to allow defendant to select such a specialist. She simply wants care in the Des Moines area. Therefore, I conclude it is reasonable and remains defendant's right to select the authorized treating physician in the Des Moines area.

ORDER

THEREFORE, IT IS ORDERED:

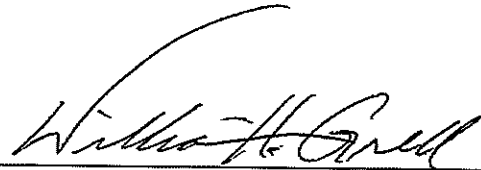
The claimant's petition for alternate medical care is granted.

Within fourteen (14) days of the entry of this decision, John Deere Waterloo Works shall identify an alternate orthopaedic hand specialist in the Des Moines area to assume treatment of Ms. Wyant.

Defendant shall schedule an appointment with the chosen hand specialists in Des Moines at the earliest reasonable date and time consistent with the recommended return evaluation suggested by Dr. Caldwell at the University of Iowa Hospitals and Clinics.

All ongoing care shall be transferred to and directed by the hand specialists in Des Moines and defendants shall hold claimant harmless for all medical charges related to that care.

Signed and filed this 27th day of February, 2019.



WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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