BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MAURICE CANTRELL, Claimant, vs. HILTON WORLDWIDE, INC., Employer, and INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, Insurance Carrier, Defendants.	File No. 5055733 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, Maurice Cantrell.

The alternate medical care claim came on for hearing on November 16, 2016. The proceedings were digitally recorded, which constitutes 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 1-2; defendants' exhibits A-G. Unfortunately, claimant was not available to participate in his alternate care hearing. Claimant's counsel did not provide a reason as to why his client was not available; he simply stated that he did not ask his client why he was not available for the agency proceeding. There was no testimony taken at the hearing. Each counsel did provide arguments.

Claimant alleges an injury of September 25, 2015. During the course of hearing and in their answer defendants admitted the occurrence of a work injury on September 25, 2016.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care.

FINDINGS OF FACT

Claimant, Maurice Cantrell, sustained an injury arising out of and in the course of his employment with Hilton Worldwide, Inc. on September 25, 2015. Claimant is seeking treatment which was recommended by the authorized treating physician, Shirley J. Pospisil, M.D. Specifically, claimant is requesting that defendants authorize a referral to a physiatrist to manage ongoing treatment in the form of medications and pain management procedures, a new MRI of his cervical spine, and referral to a primary care physician until a physiatrist is authorized. (Alt. Care Petition)

Defendants have accepted that claimant sustained an injury to his neck which arose out of and in the course of his employment on September 25, 2015. As a result of that injury claimant underwent surgery with Chad Abernathey, M.D.; the surgery was authorized by the defendants. Following surgery defendants authorized treatment with Dr. Pospisil, an occupational health physician.

On September 26, 2016, Dr. Pospisil recommended an MRI of claimant's cervical spine and a referral to a pain clinic for a cervical ESI. (Ex. 1, p. 1)

Mr. Cantrell saw Dr. Pospisil again on July 7, 2016, for re-evaluation of neck pain with right upper and left upper extremity radiating pain. The doctor noted that it appeared that his tingling was from his carpal tunnel syndrome. The notes state that an independent medical examination would be in order. (Ex. A, pp. 1-2)

On October 17, 2016, Dr. Pospisil again recommended a cervical MRI; she also recommended a referral to a physiatrist. (Ex. 1, p. 2) In the clinical note Dr. Pospisil stated:

> Mr. Cantrell returns today for re-evaluation of neck and bilateral hand pain. He states that the gabapentin has not helped him. He does not want to increase the dose and prefers to discontinue it. He has not had a C-spine MRI. They are looking at an FCE at the insurance company; however, this has still not been done. He has not had a physiatry referral. Dr. Abernathey in a letter to Sedgewick on August 18, 2016, did state that the bilateral numbness of Mr. Cantrell's hands was related to his neck injury. Because of this, I have ordered a new MRI of his C-spine. This has not been done. Mr. Cantrell rates his pain today at 7 to 8/10.

(Ex. 1, p. 3)

Dr. Pospisil also noted the presence of a Waddell sign. In the "Plan" portion of her notes, the doctor stated that Mr. Cantrell was to obtain his narcotics from his primary care provider because it was taking a while to get a physiatrist appointment. She explained to Mr. Cantrell that her office does not manage long-term care. He was to return to her on an as-needed basis. (Ex. 1, p. 3)

On October 25, 2016, Exam Works sent a letter to claimant's counsel advising that an independent evaluation had been scheduled by the third party administrator in this matter. The IME was set for November 9, 2016 at 8:45 a.m. at the University of Iowa Hospitals and Clinics in Iowa City. (Ex. C) Defense counsel also sent a letter to claimant's counsel regarding the IME on October 28, 2016. (Ex. D)

On October 26, 2016, claimant's counsel sent a missive to defense counsel requesting the care and testing recommended by Dr. Pospisil. He expressed the claimant's dissatisfaction of care. (Ex. 2)

Claimant's counsel advised defense counsel on November 1, 2016 that claimant needed the November 9, 2016, IME with Cassim Igram, M.D. to be rescheduled for a later date. Despite defendants' request, no reason was provided as to why the appointment had to be rescheduled. (Ex. E, p. 1) Claimant's counsel requested that the IME appointment be set for some time after Thanksgiving. (Ex. E, p. 2) On November 9, 2016, Exam Works sent a letter to claimant's counsel advising that the IME with Dr. Igram had been rescheduled for November 30, 2016. (Ex. F) Defense counsel also advised claimant's counsel of this appointment on November 14, 2016. (Ex. G)

On November 10, 2016, Dr. Pospisil signed what is commonly referred to as a "check-the-box letter" that was authored by defense counsel. The doctor indicated that she had reviewed the alternate care petition filed by Mr. Cantrell. She had also reviewed correspondence regarding the scheduling, cancellation, and rescheduling of an evaluation with Dr. Igram. Dr. Pospisil indicated that an evaluation with Dr. Igram to obtain his opinions and recommendations would be beneficial. The doctor further agreed that she has "no objection to holding off on your recommendations (including any referrals or additional testing) until after Mr. Cantrell is evaluated by Dr. Igram, Dr. Igram has provided his opinions/recommendations, and you have had an opportunity to consider Dr. Igram's opinions/recommendations." (Ex. B, p. 2)

Claimant argues that the IME is merely a red herring in this case and should not be considered. Rather, the focus should be on the recommendations of the authorized treating physician. In this instance, the most recent information from the authorized treating physician is that she believes an IME would be beneficial and has no objection to holding off on her recommendations until after the IME. As defendants point out, there currently is no recommendation for treatment or testing of the claimant to occur prior to Dr. Igram's IME. The treatment and testing that claimant is seeking was recommended by Dr. Pospisil. However, the doctor has most recently indicated that she has no objection to holding off on her recommendations until after Dr. Igram's IME

and report and until she has had an opportunity to consider Dr. Igram's opinions and recommendations. I find that in light of Dr. Pospisil's recent opinions it is reasonable for the defendants to wait until after Dr. Igram's IME. I find that claimant has failed to carry his burden of proof to show that the authorized care is unreasonable.

REASONING AND CONCLUSIONS OF LAW

Under Iowa law, the employer is required to provide care to an injured employee and is permitted to choose the care. Pirelli-Armstrong Tire Co. v. Reynolds, 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., 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.

In an alternate care preceding the claimant assumes the burden of proving the authorized care is unreasonable. Based on the evidence before the undersigned, I conclude that it is reasonable for the defendants to hold off on Dr. Pospisil's recommendations until she has the opportunity to consider the opinions and recommendations of Dr. Igram following his IME. Based on the above findings of fact, I conclude claimant failed to carry his burden of proof to show the authorized care is unreasonable.

ORDER

THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care is denied.

Signed and filed this 18th day of November, 2016.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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