BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LANCE BUSHBAUM, Claimant, vs. CUSTOM WOOD PRODUCTS, Employer, and CINCINNATI INSURANCE COMPANIES, Insurance Carrier, Defendants.	FILED AUG 03 2017 WORKERS COMPENSATION	File No. 5061186 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, Lance Bushbaum.

The alternate medical care claim came on for hearing on August 3, 2017. The proceedings were digitally recorded which constitutes the official record of this proceeding. This ruling is designated final agency action and any appeal of the decision would be to the Iowa district court pursuant to Iowa Code 17A.

The record consists of Claimant's Exhibits 1 and 2, Defendants' Exhibit A, the testimony of claimant and administrative notice was taken of the previous alternate medical care proceeding file.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of an MRI and referral to a spine specialist.

FINDINGS OF FACT

The undersigned, having considered all of the testimony and evidence in the record, finds:

Defendants admitted liability for an injury occurring on December 12, 2014 and that claimant's request for medical care is related to that injury. Claimant has expressed dissatisfaction of the care being offered by defendants. (Exhibit 1, page 1)

Claimant testified that he wants to be seen by a physician who is a specialist in spine care.

The claimant's medical history as it relates to his work injury is summarized in Exhibit A, a report from the University of Iowa Hospital and Clinics (UIHC). Approximately one month after his injury claimant was examined by a workers' compensation authorized physician for his back injury. Physical therapy was ordered and an MRI was performed on February 23, 2015. (Ex. A, p. 1) The MRI showed multilevel degenerative changes without significant canal stenosis and some mild neural foraminal stenosis. (Ex. A, p. 1) The UIHC report states claimant was evaluated by a neurosurgeon who did not recommend surgical intervention. Claimant was referred to pain management and received injections. In October 2015 he received another injection which did not alleviate his pain. (Ex. A, p. 1)

On December 8, 2016, claimant filed his first petition for alternate care. Based upon the recommendations of his primary care physician, Mark Haganman, D.O. the claimant requested evaluation at a spine center at UIHC or the Mayo Clinic.

A decision was issued on December 20, 2016 requiring defendants to pay for treatment at the UIHC. (December 20, 2016 decision)

On March 24, 2017, claimant was examined at the UIHC by Joseph Chen, M.D. Dr. Chen reviewed the February 2015 MRI. Dr. Chen wrote, "I explained to him [claimant] that these incidental imaging abnormalities when coupled to his physical examination today which shows normal in strength, reflexes and negative nerve provocative maneuvers, he does not have a specific, treatable nerve root abnormality or radiculopathy that would explain the extent and intensity of his pain." (Ex. A, p. 4)

Dr. Chen discussed with claimant utilizing the spine clinic at UIHC. (Ex. A, p. 4) Claimant described the spine clinic as one day of testing and then a week long program that uses physical therapy, exercises and psychologists to manage and minimize pain.

Claimant was invited to the spine clinic. An appointment appears to have been set up, but it was not communicated to claimant by his prior counsel so claimant never attended.

On June 26, 2017 Dr. Haganman wrote,

> Unfortunately, the patient has not been afforded the opportunity to see a spine specialist. It has been my recommendation in the past, (see the letter dictated 09/26/2016), that he be evaluated by a specialist in spine disorders.

> His prior evaluation to date has not been reasonable in light of his subjective complaints and objective findings by MRI. In addition, it appears as though Mr. Bushbaum would benefit from a repeat MRI given the great delay of his care. Prompt attention to this matter is indicated. I would expect an evaluation of an expert of the spine such as Summitt Orthopedics in the Twin Cities, the Spine Center of Minneapolis, or the Spine and Brain Clinic in Burnsville, Minnesota.
>
> The next step for Mr. Bushbaum is a repeat MRI and a specialist that deals with spine disorders.

(Ex, 2, p. 1)

Claimant testified that he did not believe Dr. Chen provided an appropriate evaluation and that Dr. Chen only provides non-surgical care. Claimant testified that he wants care to get better.

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.

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). Iowa Code section 85.27 provides, in relevant part:

> For purposes of this section, this 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 therefore, allow and order other care.

The question of reasonable care is a question of fact. An application for alternate medical care is not granted simply because the employee is dissatisfied with the care the employer has chosen. Mere dissatisfaction with the care is not sufficient grounds to grant an application for alternate medical care. The employee has the burden of proving that the care chosen by the employer is unreasonable. Unreasonableness can be established by showing 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 Company, 528 N.W.2d 122 (Iowa 1955). Unreasonableness can be established by showing that the care authorized by the employer has not been effective and is "inferior or less extensive" than other available care requested by the employee. Pirelli-Armstrong, at 437.

The issue that needs to be determined is whether or not the defendants are offering or providing reasonable care.

Claimant has requested a new MRI and a referral to one of three spine specialists recommended by Dr. Haganman. There was no evidence that the defendants had any medial professional evaluate this recommendation. Given the time of the last MRI, February 2015, and claimant's current symptoms and recommendation by Dr. Haganman, I find that the defendants are not offering reasonable care at this time. The defendants have not offered additional care after Dr. Haganman on June 26, 2017 stated claimant needed medical care.

Defendants shall promptly arrange for an MRI and for the claimant to be evaluated by a spine specialist. The defendants shall provide care recommended by a spine specialist. I decline to order any particular spine specialist and defendants continue to have the authority to choose the provider(s) of medical care.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is granted in part and denied in part.

Signed and filed this 3rd day of August, 2017.

JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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