BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JUSTIN BECK,	
Claimant,	File No. 22701126.01
vs.	
HAWKEYE ELECTRIC,	ALTERNATE MEDICAL CARE
Employer,	DECISION
and	
NEW HAMPSHIRE INS. CO.,	
Insurance Carrier, Defendants.	Headnote: 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, Justin Beck.

The alternate medical care claim came on for hearing on December 1, 2022. 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.

Claimant testified on his own behalf. Defendants did not participate at the hearing. The evidentiary record closed at the conclusion of the hearing.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of a referral back to authorized treating physician Shirley Pospisil, M.D. for additional care and medical treatment.

FINDINGS OF FACT

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

On November 16, 2022, claimant filed a petition for alternate medical care. Claimant sent copies of the petition for alternate medical care via certified mail to the defendant employer and defendant insurer. At hearing, claimant's counsel confirmed that he sent the petition to 1710 Hawkeye Drive, Hiawatha, Iowa 52233. Claimant's counsel asserts that he received confirmation that the defendant employer was served with a copy of the petition on November 17, 2022. Based upon the above information, I find that claimant properly served notice of the petition for alternate medical care on the defendant employer and defendant insurer.

The defendant employer did not answer or otherwise plead or appear, nor provide this agency with a phone number or person to contact for the hearing. The defendants are therefore found to be in default concerning this alternate medical care proceeding.

Claimant did not submit any exhibits prior to the December 1, 2022, hearing. At the start of the hearing, claimant's counsel was asked whether the claimant would be appearing personally. Counsel for the claimant answered in the negative. When the undersigned pointed out that Iowa Code section 85.27 requires both a showing of dissatisfaction of the care provided along with communication of that dissatisfaction to the employer, counsel for the claimant called Mr. Beck as a witness.

Claimant sustained a work-related injury on March 10, 2022. According to claimant, the defendants authorized medical treatment through Shirley Pospisil, M.D. Dr. Pospisil eventually referred claimant to "Dr. Nassif" for additional treatment. Dr. Nassif recommended and administered a cortisone injection in claimant's left shoulder. The injection provided claimant with relief for about a month. Following the injection, Dr. Nassif apparently released claimant and advised that he could return for treatment on an as needed basis. According to claimant, he has not received any additional treatment since his last appointment with Dr. Nassif. There is no evidence of any outstanding recommendations for additional medical treatment at this time.

At some point in October 2022, claimant logged into Sedgwick's online portal to review his workers' compensation claim and noticed that his claim had been closed following his most recent appointment with Dr. Nassif. After discovering that his claim had been closed, claimant sent a text message to a human resources representative for the defendant employer. The text messages were not produced as evidence or read into the record. In the text message, claimant asserts that told the HR representative that he was still having issues with his left shoulder. He testified that the HR representative, "kind of didn't respond" to his text message, so he called and spoke with her on the phone later that day. According to claimant, the HR representative told him that there was nothing she could do, and that he needed to contact Sedgwick directly about his issues. There is no indication that claimant ever contacted Sedgwick directly,

as recommended by the HR representative.

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. 6.904(3)(e) ; Bell Bros. Heating and Air Conditioning 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).

By rule, it is a mandatory requirement that claimant communicate the basis of dissatisfaction of care before commencing litigation. Bueoy v. Aalfs Manufacturing Co., File Nos. 1050308 and 1050309 (Alternate Medical Care Decision March 6, 1995) and Avalos v. IBP, Inc., File No. 5007745 (Alternate Medical Care Decision April 3, 2003)

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).

There is little evidence that claimant expressed his dissatisfaction with the employer-furnished care (or lack thereof) prior to filing the current petition for alternate medical care. After learning that his claim had been closed by Sedgwick, claimant contacted an HR representative for the defendant employer. Claimant asserts that he told the representative that he was still having issues with his left shoulder. However, the remainder of claimant's testimony regarding his conversation with the HR representative was vague. Claimant did not testify as to whether he definitively relayed his displeasure or dissatisfaction with care to the HR representative.

In response, the HR representative told claimant to contact Sedgwick directly. Claimant testified that he has never spoken to a representative from Sedgwick and

implied he did not know who to contact at Sedgwick. Instead of contacting Sedgwick directly, it appears claimant filed the current petition for alternate medical care. I do not find the defendant employer's request that claimant contact Sedgwick directly to be unreasonable. I do, however, find claimant's inaction to be unreasonable. Obtaining the contact information for the Sedgwick representative would not be an onerous task. Indeed, claimant provided testimony to suggest the HR representative possessed Sedgwick's contact information.

Considering the lack of evidence in the record showing claimant communicated the basis of his dissatisfaction with the employer-furnished care (or lack thereof), I find claimant has not complied with Iowa Code section 58.27(4) and Rule 876 4.48(4) of the Iowa Administrative Code. Therefore, the petition for alternate medical care is hereby denied.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's petition for alternate medical care is denied.

Signed and filed this ___2nd___ day of December, 2022.

MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Nate Willems (via WCES)

Hawkeye Electric (via US Mail)
1710 Hawkeye Dr.
Hiawatha, IA 52233

New Hampshire Insurance Co. (via US mail)
1271 Avenue of the Americas, Fl. 37
New York, NY 10020-1304