BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KYLE STURTZ, Claimant, vs. MIDTOWN TOWING REPAIR, LLC, Employer, and WEST BEND MUTUAL INS. CO., Insurance Carrier, Defendants.	File No. 23008714.02 ALTERNATE MEDICAL CARE DECISION Head Note: 2701

On November 21, 2023, claimant filed an original notice and petition for alternate medical care under Iowa Code section 85.27, invoking the provisions of rule 876 IAC 4.48. Defendants filed an answer accepting that claimant sustained an injury on July 31, 2023, which arose out of and in the course of employment.

This alternate medical care claim came on for hearing on December 8, 2023, at 1:30 p.m. The proceedings were recorded digitally and constitute the official record of the hearing.

The record consists of Claimant's Exhibits 1 through 10, which include a total of 10 pages. Defendants offered Exhibits A through B, which include a total of 5 pages. Mr. Sturtz was the only witness to provide testimony. Counsel for both parties provided argument.

ISSUE

The issue presented for resolution is whether claimant is entitled to alternate medical care consisting of a second opinion evaluation with a physician other than Steven Boardman, M.D.

FINDINGS OF FACT

Having considered all evidence and testimony in the record, the undersigned finds:

On July 31, 2023, Kyle Sturtz injured his neck, left knee, left hip, and left shoulder when he was struck by a delivery van. (Exhibit A, page 1)

Defendants authorized treatment through Steven Boardman, M.D. (See Exhibit A; Claimant's Testimony). Dr. Boardman ordered diagnostic imaging of the neck and left knee. He also ordered an EMG of the left upper extremity and vestibular studies. (Claimant's Testimony; see Ex. A, p. 1) Despite conservative treatment, claimant continues to report neck, arm, knee, and leg pain, as well as migraines. (Claimant's Testimony) Following a November 9, 2023, examination, Dr. Boardman returned claimant to work without restrictions and recommended he return for a follow-up appointment in four to six weeks. (Ex. A, p. 1) Dr. Boardman believed claimant's condition would continue to improve with time. (Id.)

Defendants scheduled claimant to return to Dr. Boardman on January 8, 2024.

One day prior to his appointment with Dr. Boardman, claimant presented to his primary care physician, Michael Maharry, M.D. (See Ex. 5) Dr. Maharry prescribed the claimant some pain medication and provided him with a medical excuse for work. (Claimant's Testimony; Ex. 5) While the evidentiary record does not contain a referral from Dr. Maharry, claimant contends Dr. Maharry referred him to a specialist at the University of Iowa Hospitals & Clinics. It appears claimant requested additional care on or about November 15, 2023; however, the evidentiary record only contains defendants' response to the same. (Ex. 3)

In response to claimant's request, defendants reminded claimant of his upcoming appointment with Dr. Boardman, scheduled for January 8, 2024, and relayed that if claimant needed to be seen earlier he could reach out to Dr. Boardman's office and schedule an earlier appointment. (Ex. 3) The correspondence notes that the rescheduled appointment would be authorized by defendants. (Id.)

Claimant contacted Dr. Boardman's office in an attempt to secure an earlier appointment; however, Dr. Boardman's office declined to reschedule the January 8, 2024, appointment. (Claimant's Testimony) The reason for the denial is unclear; however, it was suggested that Dr. Boardman simply did not have any availability prior to the January 8, 2024, appointment.

Claimant objects to returning to Dr. Boardman as he has lost confidence in Dr. Boardman's ability to serve as a treating physician. Claimant contends that Dr. Boardman has yet to conduct a comprehensive physical examination and shows little interest in addressing his ongoing complaints of pain.

The undersigned is concerned with claimant's allegations that Dr. Boardman's office has been less than cooperative when scheduling claimant's appointments. Given claimant's complaints of significant ongoing pain, it is also somewhat concerning Dr. Boardman is not recommending anything for pain management outside of "ice, heat,

activity modification, and over-the-counter pain medication." (Ex. A, p. 1) However, I am not a physician. Perhaps additional recommendations for pain can be addressed with Dr. Boardman at the January 8, 2024, appointment.

While I understand claimant's desire for a second opinion and believe his desire is reasonable, I find that defendants are offering reasonable medical care at this time. Specifically, I find that claimant has failed to prove the care offered by defendants is unreasonable. Claimant has failed to prove that alternate, or superior, care is available for his conditions.

CONCLUSIONS OF LAW

The employer has the right to select the medical care an injured worker receives as a result of an injury occurring in the course and scope of employment. See Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193 (Iowa 2010).

Iowa Code section 85.27(4) provides, in relevant part:

> For purposes of this section, the 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); R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 196-96 (Iowa 2003). Determining what care is reasonable under the statute is a question of fact. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 436 (Iowa 1997) (quoting Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (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).

Determining what is reasonable under the statute is a question of fact. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). "[W]hen evidence is presented to the commissioner that the employer-authorized medical care has not been effective and that such care is 'inferior or less extensive' than other available care requested by the employee ... the commissioner is justified by section 85.27 to order the alternate care." Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997).

While not specified in the petition or at hearing, it appears claimant is asserting entitlement to alternate medical care under two possible avenues.

First, claimant asserts there has been a breakdown in the physician-patient relationship.

This agency has held that a breakdown in the physician-patient relationship is sufficient reason and basis to find offered medical care is no longer reasonable. Alternate care includes alternate physicians when there is a breakdown in a physician/patient relationship. Seibert v. State of Iowa, File No. 938579 (September 14, 1994); Neuaone v. John Morrell & Co., File No. 1022976 (January 27, 1994); Williams v. High Rise Const., File No. 1025415 (February 23, 1993); Walech v. FDL Foods, Inc., File No. 1020245 (September 3, 1992) (aff'd Dist Ct June 21, 1993).

Based on the evidentiary record before me, it is concluded that claimant failed to prove a breakdown in the physician-patient relationship with Dr. Boardman. Claimant offered little evidence of a breakdown in the physician-patient relationship. Claimant asserts Dr. Boardman has done nothing to treat his conditions; however, the evidentiary record shows Dr. Boardman has ordered an MRI of claimant's neck, an MRI of claimant's knee, an EMG of claimant's left upper extremity, and vestibular studies. It cannot be said that Dr. Boardman is not treating claimant's conditions. Dr. Boardman's treatment recommendations appear reasonable. There is no evidence in the record that Dr. Boardman is not providing care reasonably suited to treat claimant's conditions. For these reasons, it is found that there has not been a sufficient breakdown in the physician-patient relationship to warrant an order of alternate medical care.

Second, claimant asserts the authorized care being provided by defendants is unreasonable.

Claimant seeks an order authorizing a second opinion with an orthopedic specialist. Claimant does not request to be seen by a specific specialist; rather, he only desires to be evaluated by a specialist other than Dr. Boardman.

Claimant's rationale for desiring a second opinion is logical and reasonable. Claimant continues to experience ongoing pain and discomfort in his neck, left upper extremity, and left lower extremity. He is frustrated by his ongoing symptoms and he desires additional, definitive treatment in hopes of obtaining relief of his symptoms. I understand claimant's desire for a second opinion; however, desirability of a certain

course of action is not the legal standard utilized in an alternate medical care proceeding. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

By challenging the employer's choice of treatment, claimant assumes the burden of proving the authorized care is unreasonable. While it is unfortunate that Dr. Boardman cannot see claimant before the currently scheduled January 8, 2024, appointment, I do not find the timing of the appointment amounts to defendants failing to offer prompt medical care. This is particularly true given the time of year. While I have no reason to doubt claimant's testimony, there is no objective medical evidence in the record of a referral from Dr. Maharry for a second opinion. Similarly, there is no evidence Dr. Maharry or any other physician has suggested or recommended any alternative treatment. Claimant desires ongoing treatment and defendants have offered and scheduled claimant for the same. Having found it reasonable to offer a follow-up appointment with Dr. Boardman, I conclude that claimant has not proven entitlement to alternate medical care at this time.

No active treatment recommendations are pending. Based on the record before me, I conclude the treatment provided by defendants to date has been reasonable. While it would be reasonable for defendants to offer a second opinion, the inverse is not necessarily true. It is not unreasonable to decline to offer a second opinion absent medical evidence that a second opinion is necessary. See e.g., Edwards v. Luke's Waste Mgmt., File No. 5062483 (Alt. Care, April 27, 2017); Badker v. Woodharbor Molding and Millworks, File No. 5045169 (Alt. Care, Sept. 26, 2013).

Importantly, although Iowa Code section 85.27 gives the employer the right to direct care, an injured worker is always free to direct his or her own medical care at his or her own expense. The injured worker may subsequently seek reimbursement for such treatment at the time of hearing. Alternatively, given a defendant's obligation to continuously investigate a claim, the claimant could file a subsequent petition for alternate medical care if he obtains a favorable opinion recommending additional treatment.

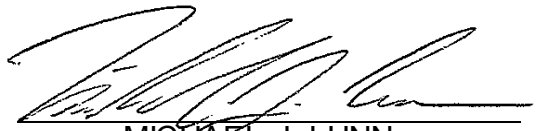
I understand claimant's dissatisfaction and desire for a second medical opinion. His request is reasonable. However, at this time, I find defendants are providing reasonable care.

ORDER

THEREFORE, IT IS ORDERED,

Claimant's petition for alternate medical care is denied.

Signed and filed this ____8th____ day of December, 2023.



MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Jon Hoffmann (via WCES)

James Ballard (via WCES)