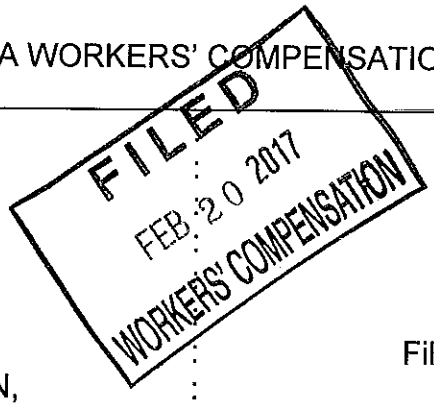
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



JEREMY WINTERS, Claimant, vs. TRILLIUM CONSTRUCTION, Employer, and XL SPECIALTY INSURANCE COMPANY, Insurance Carrier, Defendants.	File No. 5057395 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, Jeremy Winters.

The alternate medical care claim came on for hearing on February 20, 2017. 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 and 2; defendants' exhibits A and B. Claimant alleges an injury of June 28, 2016. During the course of hearing, defendants admitted the occurrence of a work injury on June 28, 2016, and liability for the conditions sought to be treated by this proceeding. Both parties agreed that through this petition for alternate medical care the claimant was not seeking treatment for Post-traumatic Stress Disorder; therefore, it was not necessary for defendants to admit or deny liability for this condition. Counsel offered oral arguments to support their positions; no witnesses testified.

ISSUE

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

FINDINGS OF FACT

Claimant, Jeremy Winters, sustained an injury arising out of and in the course of his employment with Trillium Construction on June 28, 2016. The relief claimant is seeking through his alternate medical care petition is, "Claimant requests referrals to pain management, physical therapy, and physical medicine and rehabilitation providers as recommended by his physician." (Alt. Care Pet., p. 1)

It should be noted that claimant previously filed another alternate care petition on October 4, 2016. Claimant's October petition for alternate medical care sought the following relief, "Defendant failed to authorize a return visit to Dr. Schmitz or another authorized provider. Claimant requests a return visit to Dr. Schmitz or another provider." (Alt. Care Pet., p. 1) The matter proceeded to an alternate care hearing on October 18, 2016; the undersigned issued an alternate care decision on that same date. In the alternate care decision claimant's alternate care petition was granted. The Order stated: "The claimant's petition for alternate medical care is granted. Defendants shall select and authorize a medical provider to determine if claimant is at MMI or if additional treatment, such as pain management, is recommended." (Alt. Care Dec., p. 5)

Since the time of the October 18, 2016, alternate care petition, defendants have not authorized claimant to see any physician. Rather, defendants sent a letter to Trevor R. Schmitz, M.D. at Iowa Ortho. On November 14, 2016, Dr. Schmitz responded to the defendants' letter. He stated that it would not be necessary for him to examine Mr. Winters again in order to answer the questions posed by the defendants. Dr. Schmitz placed claimant at MMI as of the last date he saw him which was September 19, 2016. The doctor stated that claimant had sustained 0 percent permanent impairment as a result of the work injury. (Ex. A)

Mr. Winters continued to have ongoing symptoms. He sought treatment on his own at Mercy Urbandale Aurora Medical Clinic. He saw Koby Anderson, PA-C on January 12, 2017. PA-C Anderson placed restrictions on Mr. Winters' activities and recommended referral to physical medicine and rehab, physical therapy, and pain management. On January 19, 2017, claimant's counsel wrote to defendants' counsel and requested that defendants authorize the referrals. (Ex. 1 and 2) Claimant did not receive a response and therefore, filed the pending alternate care petition.

Claimant would like defendants to authorize the referrals. Claimant also contends that defendants have failed to comply with the undersigned's October 18, 2016 order and thus, defendants should lose their right to control the medical care. Additionally, claimant argues that defendants are offering no care and therefore, have abandoned care.

Defendants contend that by sending the letter to Dr. Schmitz they did in fact comply with the October 18, 2016 order. Dr. Schmitz placed Mr. Winters at MMI and stated that no further treatment was necessary. Dr. Schmitz also stated that it was not necessary to see Mr. Winters again.

Although my October 18, 2016 order did not specifically state that defendants should have the claimant examined by a physician it was the undersigned's intent that he be examined by a physician. I find that by failing to have the claimant examined by any medical provider defendants have failed to provide reasonable care. However, defendants did facially comply with my previous order and therefore I find that they did not abandon care. Because defendants have failed to provide reasonable care I find that it is appropriate to grant claimant's petition for medical care. I find that defendants shall authorize a qualified physician to physically examine the claimant; this physician shall also have the authority to treat Mr. Winters if it is determined that additional treatment is necessary. I find that because Dr. Schmitz has already stated that he does not need to examine Mr. Winters it is not reasonable for the defendants to send the claimant back to him. Therefore, the defendants shall authorize a doctor other than Dr. Schmitz.

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.

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).

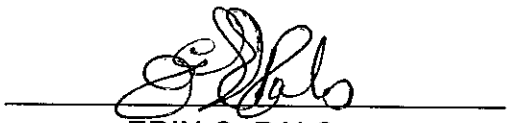
Based on the above findings of fact, I conclude that the defendants' failure to authorize claimant to see any physician since September 19, 2016, is not reasonable treatment. I further conclude that because defendants facially complied with my October 18, 2016, order they have not abandoned care and should not lose the right to direct medical treatment.

ORDER

THEREFORE IT IS ORDERED:

Defendants shall authorize a qualified physician to physically examine the claimant for his ongoing complaints. Defendants shall authorize this physician to also treat Mr. Winters if it is determined that additional treatment is necessary. For the reasons stated above, the defendants shall authorize a doctor other than Dr. Trevor Schmitz.

Signed and filed this 20th day of February, 2017.



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