

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DAVID MALUAL,

Claimant,

vs.

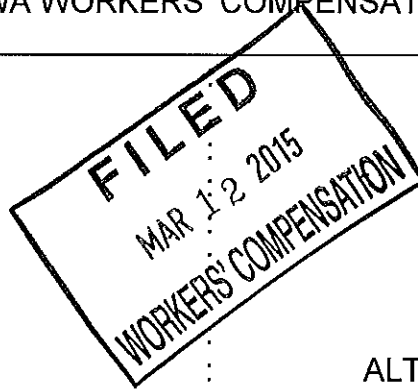
FARMLAND FOODS, INC.,

Employer,

and

SAFETY NATIONAL CASUALTY
CORPORATION,

Insurance Carrier,
Defendants.



File No. 5052300

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, David Malual.

The alternate medical care claim came on for hearing on March 12, 2015. 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 the petition for alternate care and the answer. No testimony was taken at the hearing. Counsel for the parties provided facts about the status of this claim that were undisputed.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of neck surgery to be performed by Grant Shumaker, M.D.

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 October 13, 2014.

The defendants authorized Dr. Shumaker to provide treatment to the claimant for his neck injury.

Dr. Shumaker has recommended surgery. Apparently the full case dictation by Dr. Shumaker was not available to the parties about his recommendation. The parties did agree however, that Dr. Shumaker was the authorizing treating physician and the defendants would provide the care that he recommended including surgery.

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-reopen 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. v. Reynolds, 562 N.W.2d 433 (Iowa 1997), 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" 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.

Reasonable care includes care necessary to diagnose the condition, and defendants are not entitled to interfere with the medical judgment of its own treating

physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening Decision June 17, 1986).

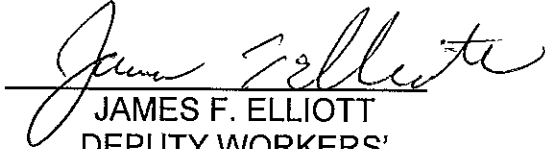
Defendants have agreed to provide the medical care that Dr. Shumaker recommends.

ORDER

Therefore it is ordered:

The claimant's petition for alternate medical care is granted. Defendants shall provide the medical care recommended by Dr. Shumaker.

Signed and filed this 12th day of March, 2015.


JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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