

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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 IVAN RIEDL,

Claimant,

vs.

RENT-A-CENTER,

Employer,

and

EVEREST PREMIER INSURANCE CO.,

Insurance Carrier,  
Defendants.

File No. 21014939.02

ALTERNATE MEDICAL CARE  
DECISION

Head Note: 2701

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This is a contested case proceeding under Iowa Code chapters 85 and 17A. The expedited procedures of rule 876 IAC 4.48, the "alternate medical care" rule, are invoked by claimant, Ivan Riedl.

This alternate medical care claim came on for hearing on January 24, 2022. The proceedings were recorded digitally and constitute the official record of the hearing. By an order filed by the workers' compensation commissioner, this decision is designated final agency action. Any appeal would be by a petition for judicial review under Iowa Code section 17A.19.

The claimant properly served notice of this petition for alternate medical care on the defendant employer by certified mail. The record shows claimant's attorney received a return receipt of service of the petition and original notice indicating defendant employer received those documents on January 13, 2022. (Exhibit 2) Claimant's counsel indicated she had not been contacted by anyone on behalf of the employer or a third-party administrator (TPA) in regard to this petition.

No answer to the petition for alternate medical care was filed by the employer or attorney representing the employer. A copy of the return receipt of service of the petition and original notice indicates defendant employer received those documents on January 13, 2022. (Ex. 2)

The undersigned examined the file for this petition and there is no answer from the employer or its insurance carrier on file. There is no indication that anyone representing the employer or its insurance carrier called into the agency to provide a

phone number to be called during the hearing. The file does not show that this agency's notice of the hearing, sent to the employer and requesting a phone number to be called, was returned as undelivered. No phone calls were received by the agency during the hearing inquiring why the employer was not called at the time designated for the hearing.

Thus, a finding was made that the claimant had properly served notice of the petition for alternate medical care on the defendant employer; that the employer had not filed an answer or otherwise appeared; and that the employer had not provided this agency with a phone number or person to be contacted for its participation in the hearing. The employer was found to be in default for purposes of this alternate medical care proceeding, and the employer is found to have abandoned the care of the claimant by its refusal to respond to claimant regarding further treatment or participate in this alternate medical care proceeding.

The record in this case consists of claimant's exhibits 1-2, and the testimony of claimant. Defendants did not participate in the hearing.

### ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of an MRI for claimant's right foot and a referral to a foot and ankle specialist.

### FINDINGS OF FACT

Claimant sustained a work-related injury to his right foot on or about November 30, 2021.

Claimant testified his employer sent him the emergency room at Mercy Hospital in Dubuque, Iowa. Claimant said the emergency room staff treated him and sent him to Tri-State Occupational Health (Tri-State) in Dubuque.

Claimant said he received treatment from Emily Armstrong, PA-C at Tri-State. Claimant was recommended to have an ankle MRI. Claimant testified that after the ankle MRI was reviewed, PA Armstrong recommended claimant have a MRI of the right foot and that claimant be referred to a foot and ankle specialist.

Claimant said he did not receive authorization from his employer or his employer's TPA to have the care recommended by PA Armstrong. Claimant said he contacted the TPA and the insurer several times to have the recommended care authorized, but that the insurer and the TPA failed to respond to any communications.

Claimant said Tri-State also tried to contact the TPA and that Tri-State's requests for authorization for the recommended care have gone unanswered.

On December 29, 2021, claimant's attorney wrote to defendants' TPA requesting, in part, that defendants authorize the MRI for claimant's foot and refer claimant to a foot and ankle specialist. (Ex. 1) There is no evidence that defendants or defendants' TPA have responded to that request for authorization of the recommended care.

### 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 Rule of Appellate Procedure 6.904(3)(e); 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" 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 authorized provider, PA Armstrong, recommended claimant have a MRI of the right foot and that claimant be referred to a foot and ankle specialist. The record indicates that claimant, claimant's attorney and Tri-State have contacted defendants and their TPA on numerous occasions. The record indicates that defendants and their TPA have failed to respond in any way to the requests for authorized care.

Claimant's counsel sent defendants' TPA a letter requesting authorization for an MRI for claimant's foot and that claimant be referred to a foot and ankle specialist. There is no evidence in the record defendants or their TPA responded to that letter, or any communication. Defendant employer received the alternate medical care petition in this matter. Defendant employer did not file an answer, did not respond to the petition, and failed to appear at hearing.

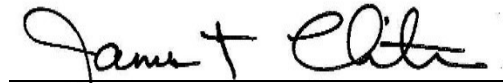
Defendants have not communicated with the claimant or his attorney regarding claimant's requests for the recommended care. Defendants did not participate in the hearing on this alternate medical care petition. Based on this, it is found defendants have abandoned the claimant's care. There is evidence indicating the treatment provided by defendants was not appropriate or adequate. Claimant seeks authorization for a MRI for the right foot and a referral to a foot and ankle specialist. The petition for alternate medical care is granted.

ORDER

THEREFORE, IT IS ORDERED:

That claimant's petition for alternate medical care is granted. Defendants are ordered to immediately authorize an MRI for claimant's foot and to authorize claimant's treatment with a foot and ankle specialist.

Signed and filed this 24<sup>th</sup> day of January, 2022.

  
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JAMES F. CHRISTENSON  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

MaKayla Augustine (via WCES)

Rent-A-Center (via certified and regular mail)  
1660 JFK Rd.  
Dubuque, IA 52002-5106

Everest Premier Insurance Company (via regular and certified mail)  
P.O. Box 830  
Liberty Corner, NJ 07938-0830