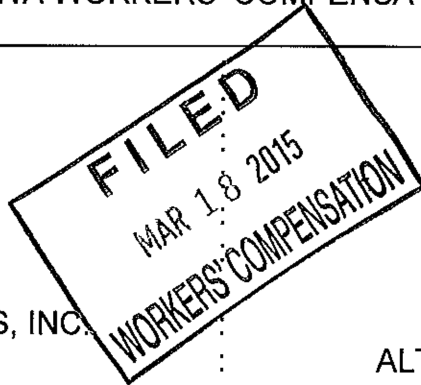
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER




DAVID HUBLER,

Claimant,

vs.

COLE'S QUALITY FOODS, INC.,

Employer,

and

AMERICAN COMPENSATION INS.,

Insurance Carrier,
Defendants.

File No. 5052325

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

Claimant has filed an application for alternate medical care under Iowa Code section 85.27, invoking the provisions of rule 876 IAC 4.48. A hearing was scheduled for March 19, 2015. Defendants filed an answer to the application disputing liability for the condition for which claimant sought care.

Before any benefits can be ordered, including medical benefits, compensability of the claim must be established, either by admission of liability or by adjudication. The summary provisions of Iowa Code section 85.27, as more particularly described in rule 876 IAC 4.48, are not designed to adjudicate disputed compensability of a claim.

The Iowa Supreme Court has held:

> We emphasize that the commissioner's ability to decide the merits of a section 85.27(4) alternate medical care claim is limited to situations where the compensability of an injury is conceded, but the reasonableness of a particular course of treatment for the compensable injury is disputed. . . .
>
> Thus, the commissioner cannot decide the reasonableness of the alternate care claim without also necessarily deciding the ultimate disputed issue in the case: whether or not the medical condition Barnett was suffering at the time of the request was a work-related injury.

. . . .

> Once an employer takes the position in response to a claim for alternate medical care that the care sought is for a noncompensatory injury, the employer cannot assert an authorization defense in response to a subsequent claim by the employee for the expenses of the alternate medical care.

R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 197-198 (Iowa 2003).

Thus, the claimant's petition seeking medical treatment must be dismissed because the defendants are denying liability for the conditions he seeks to have treated. The defendants thereby lose their right to control the claimant's medical care and the claimant is free to choose his own medical care.

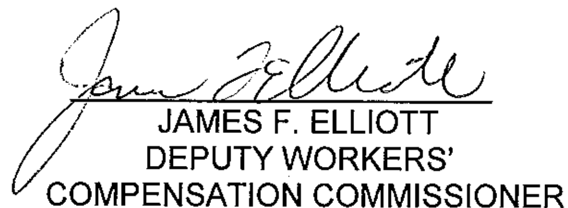
As a result of their denial of liability for the condition sought to be treated in this proceeding, claimant may obtain reasonable medical care from any provider for this condition but at claimant's expense and seek reimbursement for such care using regular claim proceedings before this agency. Haack v. Von Hoffman Graphics, File No. 1268172 (App. July 31, 2002); Kindhart v. Fort Des Moines Hotel, I Iowa Industrial Comm'r Decisions No. 3, 611 (App. March 27, 1985).

IT IS THEREFORE ORDERED that this case should be and is hereby dismissed without prejudice.

It is further ordered, if defendants have not already done so, defendants are ordered to file a Subsequent Report of Injury "denial of liability," through the EDI system and a letter to the claimant which states the reasons for the denial under 876 IAC 3.1(2).

It is further ordered that if claimant seeks to recover the charges incurred in obtaining care for a condition for which defendants denied liability, defendants are barred from asserting lack of authorization as a defense to those charges

Signed and filed this 18th day of March, 2015.



JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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