BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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| SAM SCOTT, | : | |
| | : | File No. 5059103.01 |
| Claimant, | : | |
| | : | ALTERNATE MEDICAL |
| vs. | : | |
| | : | CARE DECISION |
| CITY OF WEST DES MOINES, IOWA, | : | |
| | : | |
| Employer, | : | |
| Defendant. | : | Head Note No. 2701 |

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, Sam Scott.

This alternate medical care claim came on for hearing on April 22, 2020. 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 a petition for judicial review under Iowa Code section 17A.19.

The record in this case consists of Claimant's Exhibits 1-5 and Defendant's Exhibits A-E.

## ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of authorization of care with Justin Wikle, M.D. with the University of Iowa Hospitals and Clinics (UIHC) Pain Management Clinic.

## FINDINGS OF FACT

Defendant accepts liability for a work-related injury to claimant occurring on March 4, 2015.

On October 13, 2017 claimant was evaluated by Jeffrey Rodgers, M.D. for right upper extremity pain. Claimant was told the best treatment for hand pain was therapy and time. Claimant was encouraged to be diligent with hand therapy. (Exhibit A)

A January 9, 2019 arbitration decision found, in part, claimant had a work-related complex regional pain syndrome (CRPS) to his upper extremity that resulted in a

permanent disability. That decision was affirmed on intra-agency appeal on February 14, 2020.

In a November 13, 2019 email, claimant's counsel asked for authorization for claimant to see his personal physician, Thomas Woodard, D.O. to get a referral to a pain management specialist. (Ex. 1, p. 1)

On November 25, 2019 claimant was evaluated by Dr. Woodard. Claimant was assessed as having CRPS in the right upper extremity. Dr. Woodard referred claimant to George Lederhaas, M.D. with Central States Pain Management. (Ex. 2)

On January 9, 2020, claimant's counsel again emailed defendant's counsel asking for continued care for claimant. (Ex. 1, p. 1)

In a January 9, 2020 response, defendant's counsel indicated claimant had an appointment with UnityPoint Occupational Medicine. (Ex. B, p. 4)

In a January 22, 2020 letter, defendant's counsel notified claimant's counsel claimant had an appointment with Sara Glover, PA-C on January 29, 2020. Physician Assistant Glover specializes in occupational medicine. (Ex. C)

In a January 29, 2020 email to claimant's counsel, defendant's counsel wanted to know why claimant failed to attend the appointment with Physician Assistant Glover. (Ex. D, p. 6) In a February 17, 2020 email, defendant's counsel again asked for explanation why client failed to attend the appointment with Physician Assistant Glover. (Ex. D, p. 6)

In an April 9, 2020 letter, Dr. Woodward indicated he recommended claimant to see a pain management specialist. He indicated a physician assistant would be appropriate to treat claimant. (Ex. 3)

In an April 20, 2020 letter, defendant's counsel again asked for an explanation why claimant failed to attend the authorized appointment with Physician Assistant Glover. The letter confirms claimant was still authorized to treat with Physician Assistant Glover. The letter indicates, in the alternative, defendant was willing to authorize claimant's treatment with Daniel Moyse, M.D. Dr. Moyse specializes in pain management. (Ex. E)

## CONCLUSION OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

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.

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).

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 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.

In November of 2019, claimant's counsel asked for authorization for claimant to see his family doctor, Dr. Woodard. Authorization was not given. Dr. Woodard recommended Dr. Lederhaas for pain management. (Exs. 1 and 2)

On January 9, 2020, claimant's attorney again requested care for claimant. On the same day defendant indicated they were trying to set up an appointment for claimant with an occupational medicine specialist. (Exs. 1 and B) In a January 22, 2020 letter defendant informed claimant's counsel claimant had an appointment with Physician Assistant Glover. (Ex. C) Claimant did not object to that appointment. Claimant failed to attend that appointment. (Ex. D)

At the time of hearing defendant was still authorizing claimant to see Physician Assistant Glover, or, in the alternative, Dr. Moyse, a pain specialist. (Ex. E)

Claimant was not authorized to treat with Dr. Woodard. Dr. Woodard recommended claimant treat with Dr. Lederhaas. Claimant requests treatment with Dr. Wikle, a pain specialist who was not recommended by Dr. Woodard. Defendant has authorized claimant to treat with Physician Assistant Glover, who specializes in occupational medicine. In the alternative, they have authorized claimant to treat with Dr. Moyse, a pain specialist.

I appreciate that the record indicates claimant's counsel requested a referral in November of 2019 and that a response was not made by defendant until early January of 2020. The record also reflects claimant has not objected to treatment with Physician Assistant Glover and that defendant has authorized claimant to treat with a pain specialist.

Given the record as detailed above, it is found that defendant's offered care is not unreasonable. Claimant has failed to carry his burden of proof he is entitled to the requested alternate medical care.

ORDER

Therefore, it is ordered:

That claimant's petition for alternate medical care is denied.

Signed and filed this 22nd day of April, 2020.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Andrew Tice (via WCES)
Matthew Sahag (via WCES)