BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DENNIS WASHINGTON,	:	
	:	File No. 20009341.03
Claimant,	:	
vs.	:	ALTERNATE MEDICAL
TYSON FOODS,	:	CARE DECISION
Employer,	:	
Self-Insured,	:	Head Note No. 2701
Defendant.	:	

Dennis Washington filed a petition seeking alternate care under Iowa Code section 85.27 for the injuries of his left hip arising out of an accepted work injury of October 17, 2019. A hearing was scheduled for April 22, 2022. The defendants accepted the left hip injury claim but denied others.

Claimant underwent a total hip replacement surgery over a year ago but still has significant pain and loss of function. While at a medical visit with authorized care provider, James Nepola, M.D., claimant brought up this lingering issue. Dr. Nepola was treating claimant for the shoulder injury and recently released claimant at maximum medical improvement (MMI) on March 29, 2022, for his left shoulder injury. (DE B)

After claimant voiced complaints about the ongoing problems with this left hip, Dr. Nepola issued a recommendation that claimant be seen by Nicolas Noiseux, M.D., a specialist with the UIHC for individuals who have undergone previous hip replacement surgeries as claimant has.

Claimant relayed this request to the defendants and the defendants have resisted, arguing that they are currently providing reasonable care. For instance, on March 13, 2022, Brent Whited, M.D., suggested claimant be sent for an EMG as Dr. Whited believed that there was some element of claimant's groin pain that was nerve related. (DE A:8) Per the testimony, claimant has been scheduled for an EMG.

However, claimant is not satisfied with the care provided by defendants. It has been over a year since his surgery and he is not better. Conversely, his shoulder surgery was undertaken four months ago and he has recovered almost 90 percent of his pre-injury function. He trusts Dr. Nepola and wishes to follow the advice of Dr. Nepola.

Defendants argue that Dr. Nepola's recommendation is not reasonable because Dr. Nepola has reviewed no medical records pertaining to claimant's left hip and Dr. Nepola is unaware of the treatment currently being proffered by defendants.

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).

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.

While claimant's position is understandable and his request for a second opinion by a doctor referred to by another trusted physician, the evidence in the record does not support a finding that the defendant's actions at this time were not reasonable. Claimant's reasonable request does not render defendant's care plan unreasonable. Instead, the burden on claimant is to prove 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.

Care in the form of ongoing testing and treatment is being offered. There is not an opinion from a medical provider that the current care is not reasonably suited to treat the injury or that the care is unduly inconvenient for the claimant. Dr. Nepola did recommend a referral but it does not appear he was fully apprised of all the care claimant had been provided or was in the process of obtaining.

THEREFORE IT IS ORDERED, claimant's alternate medical care petition is denied.

Signed and filed this 26th day of April, 2022.

JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Richard Schmidt (via WCES)

Jason Wiltfang (via WCES)