BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JODI LYNN TELFER, Claimant, vs. MATHY CONSTRUCTION COMPANY, Employer, and ZURICH NORTH AMERICA, Insurance Carrier, Defendants.	File No. 5058111 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. Claimant sustained a stipulated work injury in the employ of defendant Mathy Construction Company on June 2, 2016. She now seeks an award of alternate medical care under Iowa Code section 85.27 and 876 Iowa Administrative Code 4.48.

The case was heard by telephone conference call and fully submitted on February 2, 2017. The record consists of claimant's exhibits 1-2, and the testimony of the claimant. The hearing was recorded via digital tape, which constitutes the official record of proceedings. By standing order of the workers' compensation commissioner, the undersigned was delegated authority to issue final agency action.

ISSUE

Liability is admitted on this claim. The sole issue presented for resolution is whether or not Telfer is entitled to an award of alternate medical care.

FINDINGS OF FACT

The claimant was employed by Mathy Construction Company on June 2, 2016 when she suffered a head, neck, and left shoulder injury. Treatment was approved with Charles D. Mooney, M.D. On November 2, 2016 Dr. Mooney noted, "It is my opinion that neuropsychological testing must be performed in order to verify her cognitive complaints." (Exhibit 1, page 1) The claimant moved to Florida for the winter

approximately 3 weeks later, as she does every winter. She returns to Iowa in April or May when she is recalled to work. The defendants have not scheduled neuropsychological testing as recommended by their own selected doctor even after 3 months. The claimant desires the testing be approved in Florida where she currently resides. The defendants asserted at hearing that the testing is not critical and can be scheduled after claimant returns to Iowa.

CONCLUSIONS OF LAW

[T]he 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.

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" 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 question of reasonable care is a question of fact. An application for alternate medical care is not granted simply because the employee is dissatisfied with the care the employer has chosen. Mere dissatisfaction with the care is not sufficient grounds to grant an application for alternate medical care. The employee has the burden of

proving that the care chosen by the employer is unreasonable. Unreasonableness can be established by showing 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 Company, 528 N.W. 2d 122 (Iowa 1955). Unreasonableness can be established by showing that the care authorized by the employer has not been effective and is "inferior or less extensive" than other available care requested by the employee. Pirelli-Armstrong, at 437.

An employer's statutory right is to select the providers of care and the employer may consider cost and other pertinent factors when exercising its choice. Long, at 124. An employer (typically) is not a licensed health care provider and does not possess medical expertise. Accordingly, an employer does not have the right to control the methods the providers choose to evaluate, diagnose and treat the injured employee. An employer is not entitled to control a licensed health care provider's exercise of professional judgment. Assmann v. Blue Star Foods, Declaratory Ruling, File No. 866389 (May 18, 1988). An employer's failure to follow recommendations of an authorized physician in matters of treatment is commonly a failure to provide reasonable treatment. Boggs v. Cargill, Inc., File No. 1050396 (Alt. Care Dec. January 31, 1994).

Defendants have the right to choose the medical care but only if that care is offered promptly, reasonably suited to treat the injury and offered without undue inconvenience to the injured worker. West Side Transport v. Cordell, 601 N.W.2d 691 (Iowa 1999).

Care should be provided within a reasonable distance from claimant's residence. Trade Professionals, Inc. v. Shriver, 661 N.W.2d 119, 124 (Iowa 2003). (more than 100 miles and 3 hours driving time is an undue inconvenience to the injured worker); Schrock v. Corkery Waste Disposal, Inc. File No. 1133725 (Alt Care Decision 6/26/96) (120 mile round trip excessive); Cordero v. Florilli Corp., File No. 1084577 (Alt Care Decision 9/5/96) (care ordered within 50 mile radius of claimant's home); Schulte v. Vocational Services of Area Residential Care, File No. 1134342 (Alt Care Decision 9/6/96) (care more than 70 miles away unreasonable).

The medical treatment provided by the defendants is not reasonably suited to treat the claimant. To delay testing recommended by their own selected doctor by up to 6 months (or more) is unreasonable. So is the failure to authorize care within a reasonable distance of claimant's current residence.

ORDER

THEREFORE, IT IS ORDERED:

Telfer's application for alternate medical care is approved. Defendants will immediately schedule claimant for neuropsychological testing as recommended by

Dr. Mooney within a convenient distance (approximately 100 miles round trip or less) from claimant's current Florida residence.

Signed and filed this 3rd day of February, 2017.

STAN MCELDERRY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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