

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KENNETH BIDDLE,

Claimant,

vs.

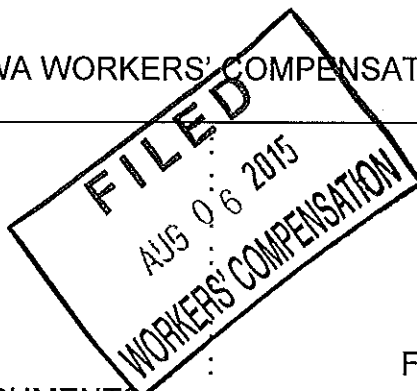
LEEDS PRECISION INSTRUMENTS,

Employer,

and

TRAVELERS INSURANCE,

Insurance Carrier,
Defendants.



File No. 5040591

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE: 2701

STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapters 85 and 17A. The expedited procedure of rule 876 IAC 4.48 is invoked by claimant, Kenneth Biddle.

The alternate medical care claim came on for hearing on August 4, 2015. The proceedings were digitally recorded, which constitutes the official record of this proceeding. This ruling is designated final agency action, and any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code 17A.

The record consists of claimant's exhibits 1 through 7 and defendants' exhibits A through H. Defendants were granted permission to submit additional exhibits related to the cost of an alternate vehicle. This was submitted and is Exhibit I¹. All exhibits were admitted into the record.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of purchase and payment for a power wheelchair, purchase of a vehicle, purchase of a chair lift for the vehicle and completion of home modifications.

¹ Ex. I is labeled as follows; Price quote Ex. I, p. 1; emails re van options Ex. I, pp. 2 – 4; Second price quote Ex. I, pp. 5 – 8; Third price quote Ex. I, pp. 9, 10; Lift quote Ex. I, p.11 .

FINDINGS OF FACT

The undersigned having considered all of the testimony and evidence in the record finds:

Defendants admitted liability for an injury occurring on February 4, 2008. As a result of this injury claimant's left leg was amputated below the knee. On September 12, 2013 Phinit Phisitkul, M.D., a staff physician at the University of Iowa Hospitals and Clinics Orthopedic Department recommended a custom power chair for claimant. (Exhibit 2, pages 1 – 3) As of the date of this decision defendants had not provided the custom power wheelchair that was ordered by an authorized physician. **Six hundred ninety five (695) days have passed from Dr. Phisitkul's recommendation.** The claimant and his authorized physical therapist agreed that a Permobil power chair would be the correct power wheelchair for claimant. (Ex. 3, pp. 1 -5) The cost of the chair as of September 26, 2013 was \$16,182.00.

Claimant and his physical therapist determined that a Bruno lift was the appropriate lift to move the Permobil chair. (Ex. 4, pp. 41 – 4) The information concerning the Permobil chair and the Bruno lift was sent to defendants by claimant's counsel on September 30, 2013. (Ex. 5, p. 1)

Claimant testified he needs a full-sized vehicle to accommodate his power wheelchair and the chair lift. He travels all over the state for work in all weather and also travels on dirt and gravel roads when visiting farmers. Claimant testified that his driveway is steep, and he needs a good vehicle to be able to get up his driveway. Claimant obtained estimates for the purchase of a Ford Expedition with a manufacturer's suggested retail price of \$55,136.00. (Ex. 7, p. 4)

I find that claimant needs a vehicle that is four-wheel drive and large enough to accommodate his power wheelchair and the chair lift due to his work injury.

The defendants have agreed to do home modification. On June 4, 2014 defendants received a bid for home modification and outdoor concrete pad, handicap accessible ramp, remodel the bathroom, build a bump-out shower and ADA sink and toilet. (Ex. B and C)

The record shows that in October 2014 defendants contacted claimant about having another contractor provide a bid for home modifications. (Ex. E, p. 1) Thereafter the record is less clear as to when or if the claimant was contacted to arrange a second contractor to come over to make a bid. Thereafter it appears to be miscommunication about contacting the contractor. Claimant testified that the contractor did not call and leave him any voicemail messages about arranging a time for a bid. Defendants have submitted some information that claimant would not return the contractor's calls. (Ex. p. 6; Ex. F, p. 1) On March 4, 2015 defendants received a second bid for construction

work. This bid noted that a building variance would need to be obtained in order to do some of the work. (Ex. F, p. 5; Ex. G, p.1)

Claimant, prior to filing the petition for alternate medical care, expressed his dissatisfaction with the care provided by defendants.

REASONING AND 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-reopen 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 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" 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.

Reasonable care includes care necessary to diagnose the condition, and defendants are not entitled to interfere with the medical judgment of its own treating physician. Pote v. Mickow Corp., File No. 694639 (review-reopening decision June 17, 1986).

The Iowa Supreme Court determined that the purchase of a vehicle, a van for an injured worker, constituted medical care. Manpower Temporary Services v. Sioson, 529

N.W.2d 259 (Iowa 1995). Home modifications were allowed in Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996).

The defendants have agreed that claimant is entitled to a power wheelchair, a vehicle that will accommodate claimant's wheelchair, a lift that will place the wheelchair in the vehicle, and home modification. Defendants do not agree to the purchase of a new Ford Expedition and want to find a contractor for the home modifications. Defendants do not want to provide the power wheelchair until the home modifications are completed so that the power wheelchair can be kept in claimant's house rather than in his vehicle.

It is most likely that both claimant and defendants were less than zealous at resolving having a contractor provide a second bid. The fact remains that there is an injured worker who needs additional services, home modifications, and is not receiving them. It is remarkable how long this has drug out for an admitted liability case.

Travelers is a sophisticated insurance company. Certainly within all of Travelers they should have the resources to hire a contractor to work on claimant's home. If they cannot obtain a contractor to perform the needed modification, then they may need to obtain a home that is usable for the claimant. Presumably, the defendants would rather just provide the home modification.

Defendants shall enter into a contract regarding the interior and exterior work within 60 days of this order. The defendants and claimant shall work with the contractor to obtain any necessary building variance and to allow the contractor access to the property. The defendants shall have the contractor promptly begin work on the variance issues and construction after the contract is signed.

Defendants shall purchase a vehicle for the claimant within 45 days of this order. The defendants shall provide a Permobil 350 power wheelchair to the claimant within 70 days of this order. The defendants shall purchase and arrange for the installation of a Bruno lift within 25 days of the purchase of the vehicle.

I am not ordering any specific make or model of a vehicle. The vehicle must be able to accommodate the power wheelchair and power lift. The vehicle need not be new, but should be low mileage (under 25,000) in good condition and still under factory warranty. The vehicle should also be four-wheel drive. Given claimant's medical condition he needs a very dependable vehicle that can drive through adverse road conditions.


If both parties agree, they may agree in writing to different time frames or equipment that is set forth in this decision. Otherwise, the time frames apply and equipment ordered apply.

ORDER

Therefore it is ordered:

The claimant's petition for alternate medical care is granted as set forth above.

Signed and filed this 6th day of August, 2015.



JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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