

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ROBERT BOLTZ,

Claimant,

vs.

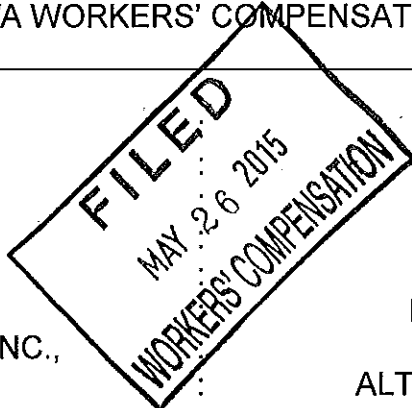
SHARPLESS AUCTIONS, INC.,

Employer,

and

ACCIDENT FUND INSURANCE CO.
OF AMERICA,

Insurance Carrier,
Defendants.



File No. 5054060

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. The expedited procedure of rule 876 IAC 4.48 is invoked by claimant, Robert Boltz.

The alternate medical care claim came on for hearing on May 26, 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 Exhibit 1, two pages. Administrative notice was taken of the alternate medical care file in this case.

The defendants did not file a response. The claimant had not received any indication that either defendant would be participating and did not know of an attorney who was representing the defendants. A check with the Docket Section of the Division of Workers' Compensation at 8:30 a.m. and 9:00 a.m. failed to show any appearance of response has been filed in this case.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of right knee replacement surgery recommended by Mark Mysnyk, M.D.

FINDINGS OF FACT

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

Defendants did not appear. Defendants did not deny the alternate care petition filed by the claimant, which stated that a work-related injury occurred on August 28, 2014 and that the defendants have refused to provide reasonable treatment. Defendants have been paying for and directing claimant's medical care. The administrative file shows that the defendants started paying indemnity benefits on February 16, 2015. These facts are sufficient to show defendants have, for the purpose of this alternate care, admitted liability for an injury occurring on August 28, 2014.

On March 10, 2015 Dr. Mysnyk sent a report to the employer after examining claimant. He concluded that a repeat arthroscopy would not provide significant relief and recommended a total knee replacement or very significant restrictions. (Exhibit 1, page 1)

On May 15, 2015 Dr. Mysnyk recommended a right knee total replacement. He acknowledged that the claimant's hip pain should be worked up, but felt that the right knee replacement surgery should proceed.

Claimant requested the defendants provide this surgery on April 20, 2015 and May 7, 2015. The defendants have not authorized this surgery. There is no evidence in the record as to why the defendants are not providing medical care that the authorized medical provider has recommended. The failure to provide such care is not reasonable. There is no medical evidence in the record to show why the surgery should not proceed. The claimant has significant knee pain, and according to the authorized physician, Dr. Mysnyk, the surgery is the appropriate option.

I find that the failure to authorize the right total knee replacement is a failure by the defendants to provide reasonable care.

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 defendants are not offering reasonable care to the claimant. The evidence shows he has significant pain and restrictions and that the knee replacement surgery is the only reasonable option.

Defendants shall authorize Dr. Mysnyk within 7 days of the decision to proceed with right total knee replacement surgery.

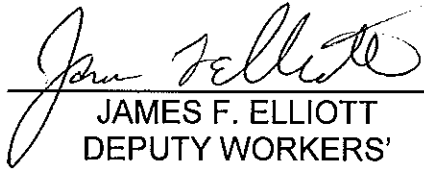
ORDER

Therefore it is ordered:

The claimant's petition for alternate medical care is granted.

Defendants shall authorize Dr. Mysnyk within seven (7) days of the decision to proceed with right total knee replacement surgery.

Signed and filed this 26th day of May, 2015.


JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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