BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

GARY NEWCOMER, Claimant, vs. AIR METHODS CORPORATION, Employer, and STARR INDEMNITY & LIABILITY CO., Insurance Carrier, Defendants.	File No. 22014130.01 ALTERNATE MEDICAL CARE DECISION Headnote: 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 Gary Newcomer.

This alternate medical care claim came on for hearing on August 2, 2023. 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.15(1).

The record in this case consists of claimant's exhibit 1-3.

The agency file demonstrates that claimant served a copy of the original notice and petition for alternate medical care upon the employer on July 21, 2023, via certified mail, return receipt. Claimant's counsel represented he had made numerous efforts to contact the employer and their TPA and received no responsive communications. Defendants have failed to file an appearance, an answer, or any other responsive pleadings in this case. Defendants have not contacted the undersigned or this agency in an effort to defend this matter.

ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of authorization and payment for an exam and treatment with a neurosurgeon.

FINDINGS OF FACTS

On April 21, 2023, claimant was evaluated by Nicholas Bingham, M.D. Claimant was assessed as having lumbar radiculopathy. Dr. Bingham recommend claimant be sent to a neurosurgeon. (Exhibit 1)

In a June 2, 2023, email, defendants' third-party administrator (TPA) indicated Dr. Bingham referred claimant to Cassim Igram, M.D. with the University of Iowa Hospitals and Clinics (UIHC). Dr. Igram refused to see claimant as a patient but would see claimant to perform an independent medical evaluation (IME). (Ex. 3, p. 7)

On June 14, 2023, claimant was evaluated by Dr. Igram for ongoing low back pain. Dr. Igram did not have the MRI scans to review and would not speculate about the need for surgery without viewing the MRI. He opined claimant was not at maximum medical improvement (MMI). (Ex. 2)

In a July 19, 2023, email, claimant's counsel requested that defendants' TPA authorize claimant to see a spine surgeon for consultation. In response, defendants' TPA indicated they would make a follow-up appointment for claimant to see Kyle Morrissey, D.O. Dr. Morrissey is a pain management specialist. (Ex. 3, pp. 7-8)

CONCLUSIONS 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. 6.904(3).

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-Reopening 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).

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).

Claimant was authorized to treat with Dr. Bingham. Dr. Bingham recommended claimant be evaluated by a neurosurgeon. Instead of following Dr. Bingham's recommendation, defendants sent claimant to Dr. Igram for an IME. Dr. Igram was unable to give an opinion regarding surgery as he lacked records of diagnostic testing. Defendants now want to send claimant to a pain specialist.

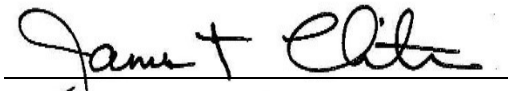
Given the record as detailed above, it is found the care provided by defendants is unreasonable. Because an authorized provider recommends claimant be evaluated by a neurosurgeon, and defendants have failed to follow that recommendation, claimant has carried his burden of proof he is entitled to the requested alternate medical care.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is granted and defendants are ordered to authorize and pay for an exam with a neurosurgeon for claimant.

Signed and filed this 3RD day of August, 2023.



JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Andrew Giller (via WCES)

Air Methods Corporation (via regular and certified mail)
385 Ruppert Rd
Iowa City, IA 52246-4547

Starr Indemnity & Liability Co. (via regular and certified mail)
399 Park Ave, Fl. 3
New York, NY 10022-4686