

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MICHAEL DESOTEL,

Claimant,

vs.

SPEE-DEE DELIVERY SERVICE, INC.,

Employer,

and

AMERICAN CASUALTY CO. OF
READING PA,Insurance Carrier,
Defendants.

File No. 20003115.04

ALTERNATE MEDICAL CARE

DECISION

Head Note: 2701

STATEMENT OF THE CASE

On November 10, 2021, the claimant filed a petition for alternate medical care pursuant to Iowa Code 85.27(4) and 876 Iowa Administrative Code 4.48. The defendants filed an answer accepting liability for injuries relating to the body as a whole.

The undersigned presided over the hearing held via telephone and recorded digitally on November 22, 2021. That recording constitutes the official record of the proceeding pursuant to 876 Iowa Administrative Code 4.48(12). Claimant participated through his attorney, Casey Steadman. The defendants participated through their attorney, L. Tyler Laflin. The evidentiary record consists of Claimant's Exhibits 1-3. The defendants were offered the opportunity to present exhibits but declined. All of the exhibits were admitted and received into evidence.

On February 16, 2015, the Iowa Workers' Compensation Commissioner issued an order delegating authority to deputy workers' compensation commissioners, such as the undersigned, to issue final agency decisions on applications for alternate care. Consequently, this decision constitutes final agency action, and there is no appeal to the commissioner. Judicial review in a district court pursuant to Iowa Code Chapter 17A is the avenue for an appeal.

ISSUE

The issue under consideration is whether claimant is entitled to alternate medical care in the form of a repeat neuropsychological evaluation.

FINDINGS OF FACT

Claimant, Michael DeSotel, alleges that he sustained an injury to his whole body on February 18, 2020, while working for defendant Spee-Dee Delivery Service, Inc. The defendants accepted liability for the whole body injury in their answer, and again verbally at the hearing.

The claimant received a neuropsychological evaluation one year ago with Dr. Tranel at the University of Iowa. Dr. Tranel recommended that Mr. DeSotel return in one year. The defendants represented that they have attempted to return the claimant to care with Dr. Tranel, but that Dr. Tranel's office required certain referral forms. (Claimant's Exhibit 1:2). The defendants indicated that they continue to attempt to arrange care. The claimant argued that if Dr. Tranel will not see the claimant, the defendants should be forced to provide care with another provider. (CE 1:4). The claimant also argued that the defendants abandoned care.

Mr. DeSotel's therapist Dawn Hupfeld, M.S., L.M.H.C.T., recommended, in a check box letter to claimant's counsel, that Mr. DeSotel receive a repeat neuropsychological evaluation with Dr. Tranel. (CE 3:9). Should Dr. Tranel be unable to provide Mr. DeSotel with care, Ms. Hupfeld recommended that Mr. DeSotel be provided an alternative provider. (CE 3:9). The defendants have been attempting to arrange a neuropsychological evaluation with Dr. Tranel since at least September. (CE 1:3).

CONCLUSIONS OF LAW

Iowa Code 85.27(4) provides, in relevant part:

For purposes of this section, the employer is obligated 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.

Iowa Code 85.27(4). See Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

"Iowa Code section 85.27(4) affords an employer who does not contest the compensability of a workplace injury a qualified statutory right to control the medical care provided to an injured employee." Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 769 (Iowa 2016) (citing R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 195, 197 (Iowa 2003)). "In enacting the right-to-choose provision in section 85.27(4), our legislature sought to balance the interests of injured employees against the

competing interests of their employers.” Ramirez, 878 N.W.2d at 770-71 (citing Bell Bros., 779 N.W.2d at 202, 207; IBP, Inc. v. Harker, 633 N.W.2d 322, 326-27 (Iowa 2001)).

The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Iowa Code 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening, October 16, 1975). An employer’s right to select the provider of medical treatment to an injured worker does not include the right to determine how an injured worker should be diagnosed, evaluated, treated, or other matters of professional medical judgment. Assmann v. Blue Star Foods, Inc., File No. 866389 (Declaratory Ruling, May 19, 1988). 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 employer must furnish “reasonable medical services and supplies *and* reasonable and necessary appliances to treat an injured employee.” Stone Container Corp. v. Castle, 657 N.W.2d 485, 490 (Iowa 2003)(emphasis in original)). Such employer-provided care “must be offered promptly and be reasonable suited to treat the injury without undue inconvenience to the employee.” Iowa Code section 85.27(4).

By challenging the employer’s choice of treatment - and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See e.g. Iowa R. App. P. 14(f)(5); Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). An injured employee dissatisfied with the employer-furnished care (or lack thereof) may share the employee’s discontent with the employer and if the parties cannot reach an agreement on alternate care, “the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order the care.” Id. “Determining what care is reasonable under the statute is a question of fact.” Long, 528 N.W.2d at 123; Pirelli-Armstrong Tire Co., 562 N.W.2d at 436. As the party seeking relief in the form of alternate care, the employee bears the burden of proving that the authorized care is unreasonable. Id. at 124; Gwinn, 779 N.W.2d at 209; Pirelli-Armstrong Tire Co., 562 N.W.2d at 436. Because “the employer’s obligation under the statute turns on the question of reasonable necessity, not desirability,” an injured employee’s dissatisfaction with employer-provided care, standing alone, is not enough to find such care unreasonable. Id.

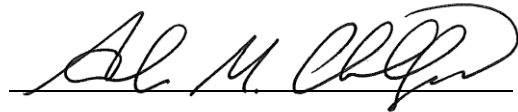
The claimant merely desires another neuropsychological evaluation by an alternate provider. At this time, the defendants continue to attempt to arrange for repeat care with Dr. Tranel. This care was previously recommended by Dr. Tranel. There appear to be some logistical issues with arranging the care, but the defendants represented that they are working through these issues. At this time, it seems as though alternate care is not a ripe issue as it relates to the neuropsychological evaluation, as the defendants have not denied care. The defendants have also not abandoned care, as they indicated they continue to attempt to arrange the appointment

with Dr. Tranel. The claimant failed to meet their burden that the authorized care is unreasonable.

IT IS THEREFORE ORDERED:

1. The claimant's petition for alternate care is denied.

Signed and filed this 22nd day of November, 2021.

A handwritten signature in black ink, appearing to read "Al M. Phillips", is written over a horizontal line.

ANDREW M. PHILLIPS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Casey Steadman (via WCES)

L. Tyler Laflin (via WCES)