

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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MANUEL CISNEROS,

Claimant,

vs.

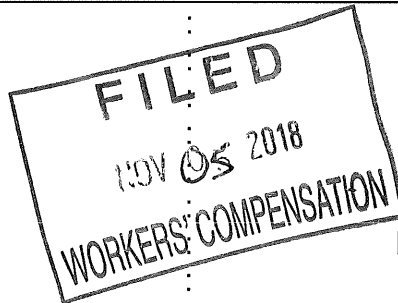
DPWN HOLDINGS, INC.,

Employer,

and

NEW HAMPSHIRE INSURANCE CO.,

Insurance Carrier,  
Defendants.



File No. 5066385

ALTERNATE MEDICAL  
CARE DECISION

HEAD NOTE NO: 2701

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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, Manuel Cisneros. Claimant appeared personally and through his attorney, Greg Egbers. Defendants appeared through their attorney, Eric Lanham.

The alternate medical care claim came on for hearing on November 5, 2018. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's February 16, 2015 Order, the undersigned has been delegated authority to issue a final agency decision in this alternate medical care proceeding. Therefore, this ruling is designated final agency action and any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code section 17A.

The evidentiary record consists of claimant's exhibit 1, defendants' exhibits A-D, and claimant's testimony during the telephonic hearing. During the course of the hearing defendants admitted liability for the December 16, 2017 work injury and for the condition for which treatment is being sought.

ISSUE

The issue for resolution is whether the claimant is entitled to alternate medical care.

## FINDINGS OF FACT

Claimant, Manuel Cisneros, sustained an injury to his right elbow. Shortly after the injury defendants authorized treatment with Shane Cook, M.D. Dr. Cook has diagnosed Mr. Cisneros with right elbow lateral epicondylitis. Dr. Cook's October 9, 2018 clinical note states:

Plan: I again had a long discussion with patient regarding treatment options. We again discussed nonsurgical and surgical options. I did state that this is usually a self-limiting disease with [sic] the patient has had long term symptoms. With that being said I did offer multiple values of treatment including PRP Injection, Tenex procedure performed by Iowa Radiology and open debridement. After long discussion with the patient regarding risk, benefits and alternatives patient would like to move forward with Tenex procured by Iowa radiology [sic].

(Cl. Ex.1, p. 1)

Mr. Cisneros testified that during his discussion with Dr. Cook, the doctor told him that due to the length of time that Mr. Cisneros has had this pain, he felt the best treatment option for him was the Tenex procedure. Dr. Cook also told Mr. Cisneros that if he did not receive treatment then he could have chronic pain for the rest of his life. Dr. Cook did not discuss how long any potential relief from the Tenex procedure would last. (Testimony)

Defendants sent Mr. Cisneros to see Ze-Hui Han, M.D. at Iowa Ortho for an independent medication examination (IME) on September 18, 2018. With regard to treatment, Dr. Han stated the "only viable approach for this patient, is observation and/or limited work activity at this point." (Ex. D, p. 3)

On November 1, 2018, Dr. Han issued a letter to defendants with his opinions about the Tenex procedure proposed by Dr. Cook. Dr. Cook stated:

I personally do not perform this procedure, but from the most recent hand surgery and also from the Orthopedic Sports Medicine literature this is not a common procedure performed, and there is recent paper, which was published in April 2018 from Journal of Hand, which was authored by Niedermeier SR and N. Crouser from the Ohio State University Wexner Medical Center, Columbus USA [sic] stated that they surveyed about 3,354 surgeons and eventually got a reply from the 612 upper extremity surgeons. The Tenex procedure is among the very least commonly performed nonoperative treatment and is only used in 6% of the patient population, and also from my understanding of the most recent knowledge about the conservative treatment from the lateral epicondylitis that there is no definitive scientifically reputable publication to state that the Tenex

procedure has a long-term benefit for this patient. The most benefit for patients with lateral epicondylitis is about 6-12 weeks of the pain relief, which is no better than the traditional medical open procedure.

(Ex. A, p. 1)

Claimant has filed a petition seeking the Tenex procedure recommended by the authorized treating physician, Dr. Cook. The record is void of any evidence to show that defendants are offering claimant any treatment. I find that the treatment sought by the claimant, the Tenex procedure, is superior than no treatment being offered by the defendants.

### REASONING AND CONCLUSIONS OF LAW

Under Iowa law, the employer is required to provide care to an injured employee and is permitted to choose the care. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

[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., 562 N.W.2d at 433, 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 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).

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).

Based on the above findings, I conclude defendants' denial of the requested treatment is not reasonable. Claimant's petition for alternate medical care is granted.

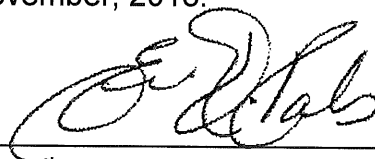
ORDER

THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care is granted.

Defendants shall authorize the Tenex procedure as recommended by the authorized treating physician, Dr. Cook.

Signed and filed this 5<sup>th</sup> day of November, 2018.

  
ERIN Q. PALS  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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