BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CHAD HELMERS, Claimant, vs. WORTH COUNTY, Employer, and IMWCA, Insurance Carrier, Defendants.	File No. 20001743.02 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, Chad Helmers. Claimant appeared personally and through his attorney, Mindi Vervaecke. Defendants appeared through their attorney, Jane Lorentzen.

The alternate medical care claim came on for hearing on December 22, 2021. 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 Exhibits 1-3 and Defendants' Exhibits A-E. There was no testimony during the telephonic hearing. During the course of the hearing defendants accepted liability for the February 3, 2020 work injury and for the condition that for which claimant is seeking treatment.

ISSUE

The issue for resolution is whether the claimant is entitled to alternate medical care with the Twin Cities Spine Center.

FINDINGS OF FACT

Claimant, Chad Helmers, sustained a work-related injury to his back on February 3, 2020. Defendants have authorized and provided treatment for Mr. Helmers' back. Through his petition for alternate medical care, Mr. Helmers seeks treatment with Twin Cities Spine Center.

This is the second petition for alternate medical care Mr. Helmers has filed seeking treatment with Twin Cities Spine Center. The first petition for alternate medical care was filed on July 21, 2021. The alternate care issue proceeded to hearing on August 2, 2021. The undersigned issued a decision on August 3, 2021, which denied claimant's petition for alternate medical care. See Helmers v. Worth County, File No. 20001743.01 (alt. care dec., August 3, 2021).

Since the prior alternate care decision, Mr. Helmers attended the September 29, 2021, appointment scheduled by defendants with Trevor Schmitz, M.D. at Iowa Ortho. Dr. Schmitz referred Mr. Helmers to pain management for further injection options. (Def. Ex. C)

Mr. Helmers was evaluated by Arnold Parenteau, M.D. for pain management. Dr. Parenteau administered a trial SI joint injection on the right side. Unfortunately, Mr. Helmers did not experience significant benefit. Dr. Parenteau noted he discussed treatment options with Mr. Helmers. He stated:

> I also discussed with him potential evaluation from a neurosurgical standpoint. He has had 2 orthopedic evaluations, but has not seen a neurosurgeon regarding his right leg complaints and I believe it may be reasonable before looking at any further issues above the other medications to have a neurosurgical evaluation to see if there to be same or different recommendations. If certainly they recommended against surgical issues, I believe the spinal cord stimulator if the medications do not help, would be the next step. He is amenable to above-mentioned plan and we will forward this to his workmen's compensation carrier.

(Def. Ex. D)

On December 16, 2021, defendants advised claimant that they had scheduled a medical appointment for him with Royce Woodroffe, M.D., a neurosurgeon at the University of Iowa Hospitals and Clinics (UIHC). The appointment is scheduled for Thursday, January 6, 2022 at 1:00 p.m. (Def. Ex. E)

Claimant's petition for alternate medical care seeks treatment with Eiman Shafa, M.D. at the Twin Cities Spine Center. (Petition; Claimant's Exhibit 1)

In the case at bar, defendants have and continue to authorize treatment for Mr. Helmers' back. Since the prior alternate care decision, defendants have authorized claimant to see Dr. Schmitz and Dr. Parenteau. On December 1, 2021, Dr. Parenteau made recommendations which included an evaluation from a neurosurgical standpoint.

Defendants have an appointment scheduled for Mr. Helmers to see Dr. Woodroffe, a neurosurgeon at the UIHC, on Thursday, January 6, 2022 at 1:00 p.m. (Def. Ex. E) I find that the treatment offered by the defendants is consistent with the treatment recommendations of Dr. Parenteau. There is no evidence in the record about the qualifications of Dr. Shafa, the doctor claimant desires to see at the Twin Cities Spine Center. There is also no evidence in the record regarding the distance claimant would have to travel to either the Twin Cities Spine Center or the UIHC. I find that the treatment offered by defendants is reasonable.

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. 6.904(3)(e); 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).

In the case at bar, defendants have and continue to authorize treatment for Mr. Helmers' back. Since the prior alternate care decision, defendants have authorized claimant to see Dr. Schmitz and Dr. Parenteau. On December 1, 2021, Dr. Parenteau made recommendations which included an evaluation from a neurosurgical standpoint. Defendants have an appointment scheduled for Mr. Helmers to see Dr. Woodroffe, a neurosurgeon at the UIHC, on Thursday, January 6, 2022 at 1:00 p.m. (Def. Ex. E) I conclude that the treatment offered by defendants is reasonable.

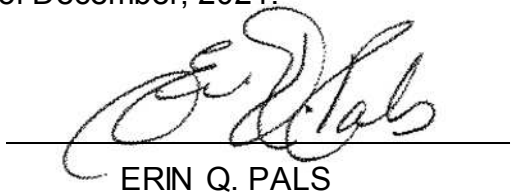
It remains clear that Mr. Helmers would prefer to treat with the Twin Cities Spine Center; however, preference is not the test in an alternate care proceeding. Under Iowa law, the employer has the right to select the care. If claimant is dissatisfied with that care, he has the burden of proving that the authorized care is unreasonable. Based on the above findings of fact, I conclude that the claimant has failed to carry his burden of proof to demonstrate by a preponderance of the evidence that the care offered by defendants is unreasonable.

ORDER

THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care is denied.

Signed and filed this _____22nd____ day of December, 2021.



ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Mindi Vervaecke (via WCES)

Jane Lorentzen (via WCES)