BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TESSA MURPHY, Claimant, vs. GREAT RIVER MEDICAL CENTER, Employer, and ARGENT/WEST BEND INS CO., Insurance Carrier, Defendants.	File No. 5039042.01 ALTERNATE MEDICAL CARE DECISION HEAD NOTE NO: 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, Tessa Murphy.

This alternate medical care claim came on for hearing on May 26, 2020. 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.19.

The record in this case consists of Claimant's Exhibits 1-3, Defendants' Exhibit A, and the testimony of claimant.

ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of authorization of care of a pain management specialist in Lakeland, Florida.

FINDINGS OF FACT

Defendants accept liability for a work-related injury to claimant occurring on September 10, 2011.

Claimant was living in Burlington, Iowa. Claimant was receiving pain management with John Dooley, M.D. who practiced in Burlington, Iowa.

In November of 2019 claimant moved to Lakeland, Florida.

In April of 2020, Dr. Dooley informed claimant he would no longer provide medications to her at a distance. Claimant would require a pain management specialist in her geographic area in Florida. (Exhibit 1, page 1)

In an April 9, 2020 email, claimant's counsel asked defendants' counsel for a pain management specialist in Lakeland, Florida. In a response, dated April 21, 2020, defendants' counsel indicated an insurance adjuster was looking for a provider for claimant. (Ex. 1, p. 1)

In an April 21, 2020 email, claimant's counsel again asked if defendants would authorize a pain management specialist for claimant in Florida. Defendants' counsel indicated, in an April 29, 2020 email, the insurer had not yet responded to his request for a treating physician for claimant. (Ex. 1, p. 2)

In an April 29, 2020 email, defendants' counsel indicated claimant was authorized to treat with Geoffrey Cronen, M.D. in Tampa, Florida. Dr. Cronen is an orthopedic surgeon specializing in the spine. (Ex. 1, p. 3; Ex. 2)

In an April 29, 2020 email, claimant's counsel requested claimant be seen by a provider in Lakeland, Florida, as Tampa was an hour drive in "good traffic." (Ex. 1, p.3)

In a May 1, 2020 email, defendants indicated they wanted claimant to treat with Dr. Cronen. In a May 4, 2020 response, claimant's counsel indicated claimant was dissatisfied with her care and that making the client travel to Tampa was unreasonable. (Ex. 1, pp. 4-5)

According to Google Maps, it is approximately 36 to 37 miles from claimant's residence in Lakeland, Florida to Dr. Cronen's office in Tampa, and the trip can take between one hour and ten minutes to 45 minutes, depending on the time of day.

Claimant testified it takes approximately one hour to drive from her residence in Lakeland to Tampa, Florida. She said she takes Interstate 4 to get to Tampa. Claimant said she avoids driving to Tampa, as the interstate is dangerous and traffic is usually congested.

Claimant has a lower back injury. Claimant had surgery to implant a spinal cord stimulator in her back in the fall of 2019. Claimant takes three prescription medications for pain. Claimant said she has difficulty driving more than a half hour due to back pain. Claimant testified she is not currently working.

Claimant testified she previously worked as a nurse care practitioner in a pain management clinic. She said she had her lower back surgery in Burlington with Robert

Foster, M.D. She said Dr. Foster referred her to Dr. Dooley for pain management. Claimant said it has been her experience orthopedic doctors do not want to do long-term pain management, which is why she believes Dr. Foster referred her to Dr. Dooley.

Claimant said she has not seen Dr. Cronen. She said she did not know if Dr. Cronen would treat her, long-term, for pain management.

CONCLUSION OF LAW

The party who would suffer loss if an issue were not established ordinarily has the burden of proving that issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.14(6) (e).

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

> For purposes of this section, the 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. v. Reynolds, 562 N.W.2d at 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.

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). Determining what care is reasonable under the statute is a question of fact. Id.

This agency has routinely held that requiring a claimant to travel excessive distances to obtain medical treatment is unduly inconvenient for claimant, and is a claim properly brought under petition for alternate medical care pursuant to rule 876 IAC 4.48. Myers v. Trace, Inc., File No. 1238262 (Alt. Care Dec. November 22, 2002); Bitner v. Cedar Falls Construction Co., File No. 5013852 (Alt. Care Dec. September 24, 2004); Solland v. Fleetguard, Inc., File No. 5006970 (Alt. Care Dec. April 19, 2004); Chamness v. Richers Trucking, File No. 5030847 (Alt. Care Dec. October 15, 2009). Generally, care should be provided within a reasonable distance from claimant's residence. Trade Professionals, Inc. v. Shriver, 661 N.W.2d 119, 124 (Iowa 2003); Schrock v. Corkery Waste Disposal, Inc., File No. 1133725 (Alt. Care Dec. June 26, 1996) (120 mile round trip excessive); Schulte v. Vocational Services of Area Residential Care, File No. 1134342 (Alt. Care Dec. September 6, 1996) (care more than 70 miles away unreasonable). A 50-mile radius is generally considered a reasonable distance to travel for treatment in workers' compensation cases. Bitner v. Cedar Falls Construction Co., File No. 5013852 (Alt. Care Dec. September 24, 2004).

However, it depends on what is reasonable under the circumstances in a particular case. See Warner v. City of Hawarden, File No. 5039478 (Arb. June 27, 2013).

It is approximately 36 to 37 miles from claimant's residence to Dr. Cronen's office. Defendants are correct that generally a 50-mile radius is considered a reasonable distance to travel for treatment for workers' compensation cases. However, this is not a hard and fast rule. The reasonableness of treatment is a question of fact.

Claimant recently had a spinal cord stimulator implanted in her. She takes three prescription medications for pain. These facts are indicative of the level of claimant's low back pain. Claimant's unrebutted testimony is she has difficulty driving more than 30 minutes. The trip from claimant's residence to Dr. Cronen's office is between 45 minutes to over an hour. A lot of the travel is on a congested interstate. Dr. Cronen is an orthopedic specialist and not a pain management specialist.

This is a difficult case. It would be easy to find the 50-mile rule applies in this situation. However, given the facts as described in the above paragraph, it is found the care offered with Dr. Cronen is not reasonable, given the circumstances in this case, and this case only. Given these facts, claimant has carried her burden of proof that the offered care is not reasonable.

ORDER

THEREFORE, it is ordered, that claimant's petition for alternate medical care is granted.

Defendants shall authorize claimant care with a pain specialist within a 30-minute drive of claimant's residence.

Signed and filed this 26th day of May, 2020.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Emily Anderson (via WCES)
Nathan McConkey (via WCES)