

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JIM GESUALDO,

Claimant,

vs.

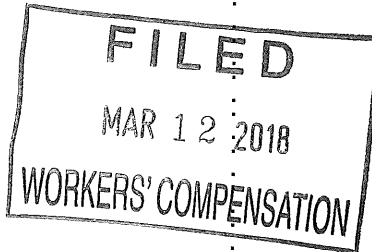
FARNER BOCKEN CO.,

Employer,

and

ZURICH NORTH AMERICA,

Insurance Carrier,
Defendants.



File No. 5045254

ALTERNATE MEDICAL

CARE DECISION

Head Note No.: 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, Jim Gesualdo. Claimant appeared through his attorney, Eric Loney. Defendants failed to answer claimant's original notice and petition. Defendants submitted no exhibits in advance of hearing and did not appear for the alternate medical care hearing. The agency file demonstrates that claimant served a copy of the original notice and petition for alternate medical care upon the employer on February 23, 2018 via certified mail, return receipt.

The alternate medical care claim came on for telephonic hearing on March 12, 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.

Claimant offered 1 page of exhibits, marked as exhibit 1. No other evidence was received into the evidentiary record and the evidentiary record closed at the conclusion of the hearing on March 12, 2018.

Given defendants' failure to appear for hearing or otherwise defend the alternate medical care hearing, they are found to be in default. All allegations of the claimant's petition for alternate medical care are accepted as accurate.

ISSUE

The issue presented for resolution is whether the claimant is entitled to follow up treatment with authorized treating physician at Iowa Ortho.

FINDINGS OF FACT

The undersigned having considered all the evidence in the record finds:

Claimant sustained injury to his right lower extremity and back as a result of a work injury sustained on September 14, 2012. The work injury occurred in Carroll, Iowa and has caused the need for medical treatment. (Original Notice and Petition for Alternate Medical Care)

Claimant expressed his dissatisfaction with the defendants' failure to authorize care and gave notice of his intention to file a petition for alternate medical care with this agency on February 9, 2018. (Ex. 1) Defendants did not authorize the requested care. (Original Notice and Petition for Alternate Medical Care) On February 23, 2018, claimant's counsel sent defendants copies of the petition for alternate medical care. (Original Notice and Petition for Alternate Medical Care)

The requested follow up treatment with the authorized provider Iowa Ortho is considered to be reasonable and medically necessary care. No contrary evidence exists in this record upon which defendants could reasonably dispute that the requested treatment is anything but reasonable and necessary. Defendants are not offering any treatment.

Defendants have delayed in authorizing treatment recommended by the authorized medical provider. Defendants are not offering reasonable medical care suited to treat claimant's work injuries. Claimant needs the requested follow up treatment.

REASONING AND CONCLUSIONS OF LAW

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); Bell Bros. Heating v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); 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. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). 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).

“Determining what care is reasonable under the statute is a question of fact.” Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995).

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 June 17, 1986).

I found that Iowa Ortho is an authorized medical provider. Claimant's request for follow up treatment is reasonable and necessary. Similarly, I found that defendants are not offering any medical care at the current time. I conclude that claimant has clearly established that the treatment he requests is reasonable. Having found that defendants offered no treatment, I conclude that claimant has established entitlement to an order directing defendants to authorize the requested follow up treatment related to the work injury.


ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is granted.

Defendants shall immediately authorize and pay for follow up treatment at Iowa Ortho related to the work injury.

Signed and filed this 12th day of March, 2018.


ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies To:

Eric J. Loney
Attorney at Law
1311 – 50th St.
West Des Moines, IA 50266
eric@loneylaw.com

Farner Bocken Co.
1751 US Hwy 30 East
PO Box 368
Carroll, IA 51401
CERTIFIED AND REGULAR MAIL

Zurich Insurance Company
Attn: Laura Orozco
PO Box 968023
Schaumburg, IL 60196
VIA FAX: 214-866-1676

EQP/kjw