

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JACINDA LINEBAUGH,

Claimant,

vs.

MILLS FLEET FARM, INC.,

Employer,

and

SENTINEL INSURANCE CO.,

Insurance Carrier,  
Defendants.

**FILED**  
MAR 21 2019  
WORKERS' COMPENSATION

File No. 5067804

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, Jacinda Linebaugh.

The alternate medical care claim came on for hearing on March 21, 2019. The proceedings were digitally recorded which constitutes the official record of this proceeding. This ruling is designated final agency action and any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code 17A.

The record consists of Claimant's Exhibits 1 and 2 and Defendants' Exhibit A.

No testimony was taken. The attorneys provided legal argument.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of authorization for surgery for the claimant's left foot.

FINDINGS OF FACT

The undersigned having considered all of the testimony and evidence in the record finds:

Defendants admitted liability for an injury occurring on October 10, 2018. Claimant requested that surgery be authorized for claimant's left foot which was denied.

Claimant expressed dissatisfaction to the defendants about the lack of authorization. (Exhibit 1, page 1)

Claimant injured her right foot to which defendants have admitted arose out of and in the course of her employment with Mills Fleet Farm. Claimant was seen by Dennis Kessler, DPM on January 17, 2019 who determined claimant had a bilateral injury and that she needed surgery on her left foot. (Ex. 2, pp. 1, 3)

The defendants filed an answer on March 20, 2019 which admitted the right foot injury and treatment. The defendants continue to investigate the left foot injury. The defendants stated in their answer that they do not deny the left foot injury, although they are still investigating the injury and have scheduled an independent medical examination. (Ex. A, p. 1)

For the purposes of this alternate medical care proceeding defendants admitted the claimant had a left foot injury and an authorized treating physician has recommended surgery.

#### 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); 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 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.

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" 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.

Reasonable care includes care necessary to diagnose the condition and defendants are not entitled to interfere with the medical judgment of their own treating physician. Pote v. Mickow Corp., File No. 694639 Review-Reopening Decision June 17, 1986).

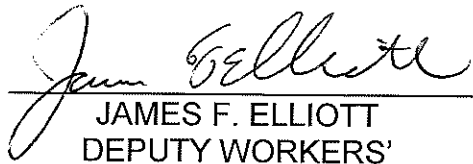
The defendants admitted liability for the condition which claimant seeks in this alternate medical care proceeding. The defendants have the right to investigate the claim further, but are bound by the admission of liability for the left foot surgery recommended by authorized physician Dr. Kessler. The defendants shall provide such surgery. The defendants are required to pay for this surgery and surgery follow-up care regardless of further investigation of the claim.

ORDER

THEREFORE, IT IS ORDERED:

The claimant's petition for alternate medical care is granted

Signed and filed this 21<sup>st</sup> day of March, 2019.

  
JAMES F. ELLIOTT  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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