BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

HOWARD GREY, Claimant, vs. AMN HEALTHCARE, INC., Employer, and SENTINEL INS. CO., Insurance Carrier, Defendants.	File No. 5063050.02 ALTERNATE MEDICAL CARE DECISION HEAD NOTE NO: 2701

On October 9, 2019, claimant filed an original notice and petition for alternate medical care under Iowa Code section 85.27, invoking the provisions of rule 876 IAC 4.48. Defendants did not file a formal answer.

This alternate medical care claim came on for hearing on October 21, 2019, at 8:30 a.m. 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 consists of Claimant's Exhibits 1 through 2, which include a total of 3 pages. Defendants offered no exhibits. Mr. Grey was the only witness to provide testimony. Counsel for both parties provided argument.

ISSUE

The issue presented for resolution is whether claimant is entitled to alternate medical care consisting of an H-Wave Unit, as recommended by Bradley Troxler, M.D.

FINDINGS OF FACT

Having considered all evidence and testimony in the record, the undersigned finds:

Claimant sustained a work-related injury on March 30, 2016. Claimant filed a petition in arbitration and a hearing was held on February 7, 2018, in Des Moines, Iowa, before Deputy Workers' Compensation Commissioner, Michelle McGovern. The arbitration decision was issued on November 30, 2018. In the arbitration decision, among other matters, the deputy determined claimant sustained an injury to his back as a result of his work injury on March 30, 2016.

Defendants have provided medical treatment and authorized medical care for the work injury since the arbitration decision. Claimant has ongoing back pain from his work injury. Subsequent to the arbitration decision, defendants authorized medical treatment through Dr. Troxler. On September 3, 2019, Dr. Troxler recommended claimant obtain an H-Wave home unit for his ongoing low back symptoms. (Exhibit 1, pages 1-2).

Counsel for claimant sent an electronic correspondence to defendants, requesting authorization for the recommended H-Wave home unit on September 4, 2019. (Ex. 2, p. 1). To date, defendants have not authorized the H-Wave home unit. In this record, there is no explanation as to why the treatment has not been approved by the defendant insurer. In his closing statement, defense counsel represented that he has acted to obtain authorization.

Claimant desires to obtain an at-home H-Wave unit. Claimant testified the H-Wave unit helps mitigate his symptoms. (Testimony). The purpose of the treatment is to reduce and/or eliminate inflammation and accelerate healing in the low back. (Ex. 1, p. 2). Dr. Troxler has explained that the H-Wave is an effective form of pain management, and furthers the ultimate goal of restoring functional ability. (Id.). Dr. Troxler believes the H-Wave home unit is medically necessary care. (Id.). No contrary evidence exists in this record upon which defendants could reasonably dispute that the requested treatment is anything but reasonable and necessary.

I find that an authorized treating physician, Dr. Troxler, has recommended an H-Wave home unit and that there is no medical opinion in contradiction thereto. I find that the recommendation is reasonable in light of claimant's continued symptoms. I further find that the failure to authorize such recommended care is unreasonable. I find that the care offered by defendants has been unreasonably delayed without justification. Claimant is entitled to receive medical care recommended by his authorized treating physicians without delay.

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).

[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).

An employer's right to select the provider of medical treatment to an injured worker does not include the right to determine how an injured worker should be diagnosed, evaluated, treated, or other matters of professional medical judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988).

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).

I found that the lack of authorization for the recommended treatment of the defendants' authorized provider, Dr. Troxler, concerning the H-Wave home unit is unreasonable. There is no medical evidence that is contrary to the recommendation of Dr. Troxler.

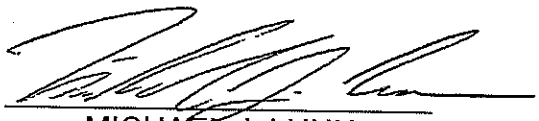
Defendants have not authorized the H-Wave home unit. Defendants have not communicated to claimant why the H-Wave home unit, recommended by his authorized

treating physician, has not been authorized. Defendants have had since September 3, 2019, to investigate the recommendation made by Dr. Troxler. There is nothing in the record suggesting any investigation was performed. Claimant has requested that the care recommended by his authorized treating physician be authorized by defendants. Given this record, claimant has carried his burden of proof; he is entitled to the H-Wave home unit as recommended by Dr. Troxler.

THEREFORE, IT IS ORDERED:

The claimant's petition for alternate medical care is granted. Defendants are ordered to provide claimant the H-Wave home unit recommended by Dr. Troxler for his work-related injury to his low back. Defendants have until the close of business on Friday, October 25, 2019, to authorize the H-Wave home unit.

Signed and filed this 22nd day of October, 2019.



MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Erik Bair (via WCES)
David Castello (via email)