BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

PHILLIP ISBELL, Claimant, vs. DEE ZEE, INC., Employer, and WEST BEND MUTUAL INSURANCE COMPANY, Insurance Carrier, Defendants.	File No. 1619855.03 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, Phillip Isbell.

The alternate medical care claim came on for hearing on December 14, 2020. 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 – 9 and Defendants' Exhibits A – E. The only witness to testify was the claimant. Defendants submitted a brief.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of treatment for the claimant's right ankle, find that the defendants have abandoned care and transferring the authority to obtain medical care to the claimant.

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 July 19, 2016. The claimant has expressed dissatisfaction concerning the care provided from the defendants before filing the petition for alternate medical care.

Claimant had a work-related injury to his right ankle that arose out of and in the course of his employment on July 19, 2016. Claimant testified that he broke all the bones in his right ankle, as well as other injuries. Claimant stated he had hardware installed in his right ankle, including a plate, two pins and eight screws.

Claimant was deposed by the defendants on September 15, 2020. In the deposition claimant testified that at that time he did not need medical care for his right ankle.

Claimant testified that he needed and received significant medical care in 2020. Clamant was hospitalized at one point. Claimant testified that he has seen many medical providers and was not certain of everyone who treated him.

On September 28, 2020, claimant's counsel emailed defendants' counsel. (Exhibit 1, page 1; Exhibit B, page 3) The email stated that claimant was scheduled to receive an ankle brace. Claimant informed the defendants that he had canceled his appointment for the ankle brace as the claimant was not certain which doctor had ordered the ankle brace, and that he wanted to have the ankle brace properly authorized by a defendants' authorized physician. On October 5, 2020, claimant's counsel informed defendants that claimant appeared to have seen Shane Cook, M.D., at DMOS and wanted to know if Dr. Cook was an authorized doctor. (Ex. 2, p. 1)

On October 6, 2020, claimant's counsel emailed defendants, "Philip wants this ankle treatment. Please get the records before setting an appointment with Dr. Isaacson. I will check back with you in a week." (Ex. 3, p. 1; Ex. B, p. 1) Defendant's counsel responded on October 6, 2020, and stated that at all times Mark Isaacson, M.D., of DMOS was the authorized physician for claimant's ankle fracture and that the defendants were unaware what Dr. Cook was treating the claimant for. (Ex. 4, p. 1; Ex. B, p. 2)

The defendants did obtain records from Dr. Cook, who treated claimant for two finger fractures. (Ex. C, pp. 1, 2) Claimant testified that he was unclear who recommended he receive an ankle brace and was mistaken in telling his attorney that Dr. Cook recommend an ankle brace. Claimant testified that a doctor recommended he receive an ankle brace.

On October 21, 2020, claimant asked the defendants for treatment of his right ankle. (Ex. 5, p. 1)

The defendants' scheduled an appointment for the claimant on November 17, 2020 with Dr. Isaacson. Claimant was informed on November 12, 2020 that Dr. Isaacson was not willing to see claimant. (Ex. 7, p. 1) Defendants then scheduled an

appointment with Paul Butler, M.D., at DMOS for December 8, 2020. Claimant was late for this appointment and the appointment was rescheduled for December 11, 2020. The December 11, 2020 appointment was canceled due to a personal emergency of Dr. Butler. (Ex. A, p. 1) An appointment has now been scheduled with Dr. Butler for Friday December 18, 2020. Claimant testified that he intended to attend this appointment.

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).

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care she 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).

On the other hand, 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). In other words, defendants are not entitled to interfere with the medical judgment of their own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening, June 17, 1986).

In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997), the supreme court held that "when evidence is presented to the commissioner that the employer-authorized medical care has not been effective and that such care is 'inferior or less extensive' than other available care requested by the employee, . . . the commissioner is justified by section 85.27 to order the alternate care."

If an employer fails to provide prompt medical care, the commissioner has authority to order alternate medical care, including care from a doctor chosen by the claimant. West Side Transport v. Cordell, 601 N.W.2d 691, 693 (Iowa 1999).

It took from September 28, 2020 until November 17, 2020 for the defendants to arrange treatment for claimant's ankle. A portion of the delay was attributable to the claimant. Claimant provided incorrect information, albeit in good faith, concerning treatment by Dr. Cook and insisted that defendants obtain this information before making a referral to Dr. Isaacson.

Due to the refusal of Dr. Isaacson to see claimant, defendants obtained appointments with Dr. Butler on December 8 and December 11, 2020 that had to be rescheduled. Claimant is currently scheduled for appointments with Dr. Butler for December 18, 2020.

While the claimant's medical care has been delayed, I find that defendants are providing reasonable medical care at this time.

I conclude that claimant failed to prove he is entitled to an order terminating defendants' right to select the authorized medical provider pursuant to Iowa Code section 85.27. Defendants have authorized treatment for the claimant's right ankle.

ORDER

THEREFORE IT IS ORDERED:

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

Signed and filed this 15th day of December, 2020.

JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Marlon Mormann (via WCES)

Charles Blades (via WCES)