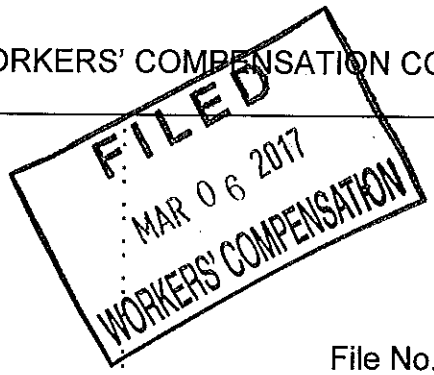
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



TRAVIS S. MANSELL, Claimant, vs. KEY CITY MOVING & STORAGE, LTD., Employer, and CONTINENTAL INDEMNITY COMPANY, Insurance Carrier, Defendants.	File No. 5058301 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, Jeremy Winters.

The alternate medical care claim came on for hearing on March 6, 2017. The proceedings were digitally recorded, which constitutes the official record of this proceeding. By order filed February 16, 2015, this ruling is designated final agency action.

The record consists of claimant's exhibits 1-3; defendants' exhibit 1. Neither party called any witnesses at the hearing. Each party offered oral arguments. Claimant alleges an injury of June 29, 2016. During the course of hearing, defendants admitted the occurrence of a work injury on June 29, 2016, and liability for the ongoing conditions related to the injury.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care.

FINDINGS OF FACT

Claimant, Travis Mansell, sustained an injury arising out of and in the course of his employment with Key City Moving and Storage, Ltd. on June 29, 2016. The relief

claimant is seeking through his alternate medical care petition is authorization of the MRI ordered by Emily Armstrong, PA-C. (Alternate Care Petition, page 1)

On October 24, 2016, Ms. Armstrong ordered an MRI of the thoracic spine. Ms. Armstrong works at Tri-State Occupational Health. (Ex. 1, pp. 1-2) There is no dispute that Ms. Armstrong was an authorized treater at the time she made this recommendation. On October 27, 2016 Applied Underwriters sent a letter to Tri-State Occupational Health advising that any appointment scheduled after October 24, 2016 pertaining to the work injury of June 29, 2016 will not be authorized. There is a hand-written note on the letter which states, "-not denied but: -Dr *[sic]* Igram will follow – defense attorney did a record review & they will notify Travis's lawyer re: 0 further at TSOH." (Ex. 2)

On January 24, 2017, claimant's counsel sent an email to defense counsel expressing their dissatisfaction with care and requesting that the MRI be authorized. Defense counsel responded via email and advised that defendants attempted to authorize the MRI but were notified that Ms. Armstrong had withdrawn the order. However, defendants do not have any documentation to show that the MRI order was actually withdrawn. Claimant's counsel emailed defense counsel and advised that there was no documentation to show that the MRI order was withdrawn, only documentation that the MRI had been denied. (Ex. 3)

Defendants filed an answer to the alternate care petition on March 6, 2017 and stated that to the extent the PA-C continues to recommend a thoracic MRI, the defendants will authorize the MRI.

Based on the record it appears there is a communication issue between counsel and the office of Ms. Sherman. To date, the defendants have failed to clarify with PA-C Sherman's office the reason the MRI has not occurred. Is the delay because the medical office believes defendants have denied the MRI or is the delay because Ms. Sherman has revoked her order for the MRI? I find that defendants' failure to reach clarity on this issue is not reasonable. However, defendants have indicated that they will promptly reach out to the PA-C's office to determine if she continues to recommend the thoracic MRI and if so, defendants will authorize the MRI. Thus, I find that defendants shall promptly reach out to the PA-C's office to determine if she continues to recommend the thoracic MRI and if so, defendants will authorize the MRI. Defendants shall comply with Ms. Sherman's recommendations.

REASONING AND CONCLUSIONS OF LAW

Under Iowa law, the employer is required to provide care to an injured employee and is permitted to choose the care. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

> [T]he 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., 562 N.W.2d at 433, 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" care 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.

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).

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 Decision June 17, 1986).

To date, defendants have not provided prompt medical treatment. I concluded that their failure to clarify the issues with Ms. Sherman's office is not reasonable. However, defendants have offered to promptly contact Ms. Sherman's office to determine if she continues to recommend the thoracic MRI and if so, defendants will authorize the MRI.

ORDER

THEREFORE IT IS ORDERED:

Defendants shall promptly contact Ms. Sherman's office to determine if she continues to recommend the thoracic MRI and if so, defendants will authorize the MRI. Defendants shall comply with Ms. Sherman's recommendations.

Signed and filed this 6th day of March, 2017.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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