BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RICK WESTFALL, Claimant, vs. THE CHANTLAND PVS COMPANY, Employer, and ACCIDENT FUND NATIONAL INSURANCE COMPANY, Insurance Carrier, Defendants.	:	File No. 20003789.01 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, Rick Westfall. Claimant appeared personally and through his attorney, Janece Valentine. Defendants appeared through their attorney, Laura Ostrander.

The alternate medical care claim came on for hearing on July 6, 2020. 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.

The evidentiary record consists of Claimant's exhibits 1, pp. 1-3 and 2, pp., 4-5 and Defendants' Exhibit A. The were no live witnesses at the time of hearing. Each counsel presented oral arguments. During the course of the hearing defendants accepted liability for the February 28, 2019 work injury and for the back condition for which claimant is seeking treatment.

ISSUE

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

FINDINGS OF FACT

Claimant, Rick Westfall, sustained an injury on February 28, 2019 to his low back which arose out of and in the course of his employment with The Chantland PVS Company. Mr. Westfall lives in Laurens, Iowa. Claimant is dissatisfied with the orthopaedic care offered by defendants due to the distance between his home and the treatment. Defendants have authorized Mr. Westfall to receive treatment Des Moines, Iowa. The distance from Mr. Westfall's home to Des Moines is 155 miles one way, this is an approximate two and one half hours drive. Claimant is seeking orthopaedic treatment in Spencer, Iowa because that would require less travel. The distance between Laurens, Iowa and Spencer, Iowa is 37 miles, this is an approximate 45-minute drive. (Alt. Care Pet., p. 2)

On June 9, 2020, Mr. Westfall saw Kurt A. Smith, D.O., at Iowa Ortho for follow-up on lower back pain with radiation into the left lower extremity. Dr. Smith recommended a surgical re-evaluation and noted that Mr. Westfall requested someone in the Spencer area secondary to transportation. (Cl. Ex. 1, pp. 1-3)

On June 24, 2020, defendants emailed Dr. Smith regarding Mr. Westfall. Unfortunately, the contents of the June 24, 2020 email are unknown to the undersigned because the email is not in evidence. On June 25, 2020, Dr. Smith authored a missive to defendants. Dr. Smith recommended re-evaluation by Dr. Boarini who was the surgeon who saw him initially. Dr. Smith further stated that he would recommend further evaluation with Dr. Boarini for continuity of care. (Def. Ex. A) Defendants have authorized claimant to see Dr. Boarini in Des Moines, Iowa. Additionally, defendants have agreed to either issue pre-payment for mileage or to pay for transportation to appointments with Dr. Boarini. (Defendants' Answer)

Claimant seeks treatment at a location that does not require him to travel 155 miles, which is approximately two and a half hours each way. Claimant requests treatment be authorized in Spencer, Iowa which is less than 40 miles from home, takes approximately 45 minutes to drive one way, and offers orthopaedic surgical care. (Alt. Care Pet., p. 2)

I find that requiring claimant to travel five hours or 310 miles round-trip for treatment is unduly inconvenient for the claimant. I further find that claimant can receive similar care and treatment in Spencer, Iowa which is less than 40 miles from his home. For these reasons, I find the treatment defendants are offering to the claimant is not reasonable.

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.
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> [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).

In the present case, I found that it is unduly inconvenient for the defendants to require claimant to travel five hours round-trip for treatment. Iowa law does not mention continuity of care, but Iowa law does require defendants to provide care that is not

unduly inconvenient for the claimant. Because the care that defendants are offering to the claimant is unduly inconvenient, I find that the treatment being offered is not reasonable.

ORDER

THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care is granted.

Defendants shall authorize treatment for Mr. Westfall in the Spencer area.

Signed and filed this __7TH__ day of July, 2020.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Janece Valentine (via WCES)

Laura Ostrander (via WCES)