BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

GREG MORRIS, Claimant, vs. LENNOX INDUSTRIES, INC., Employer, and INDEMNITY INS. CO. OF N. AMERICA, Insurance Carrier, Defendants.	File No. 1219216.01 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, Gregory Morris. Claimant appeared through his attorney, James Ballard. Defendants appeared through their attorney, Alison Stewart.

The alternate medical care claim came on for hearing on February 2, 2021. 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 record consists of Claimant's Exhibits 1 through 7, which include a total of 7 pages and two video recordings. Defendants offered Exhibits A through E, which include a total of 9 pages. All exhibits were received without objection. Claimant testified on his own behalf and called Michael Brown as an additional witness. No other witnesses were called to testify. The evidentiary record closed at the conclusion of the alternate medical care hearing.

ISSUE

The issue presented for resolution is whether claimant is entitled to a pattern recognizing myoelectric prosthetic arm.

FINDINGS OF FACT

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

Claimant, Gregory Morris, sustained a work-related injury on July 2, 1998, resulting in the amputation of his left arm. At some point in time thereafter, Mr. Morris was fitted with and provided a "farmer's hook" or body-powered prosthetic arm by Hanger Clinic in Des Moines, Iowa. (Claimant's testimony) The current, body-powered prosthetic arm is not particularly functional outside of the work environment. Claimant cannot easily grip, hold, or carry any everyday objects with his current device. He does not wear the prosthetic when he is off the clock. (Claimant's testimony)

Michael Brown is a Certified Prosthetist/Orthotist at Hanger Clinic. Mr. Brown has provided ongoing support for Mr. Morris' current prosthetic for nearly a decade. According to Mr. Brown, claimant has reported shoulder pain related to overuse from his body-powered prosthesis which requires him to utilize shoulder movement in order to function the hook terminal device. (Exhibit 2, page 3) Mr. Brown has recommended that Mr. Morris be fitted with and provided a myoelectric prosthetic left arm. (Ex. 2, p. 3; Claimant's testimony) More specifically, Mr. Brown has recommended that claimant be fitted and provided with a myoelectric prosthesis with "Taska hand and ETD hook" for use at home. (Ex. 2, p. 3) At hearing, Mr. Brown clarified that he is recommending claimant be fitted and provided with a pattern recognition myoelectric prosthesis.

Mr. Brown acknowledged that his recommendation was not requested by a physician in this case. Rather, claimant asked Mr. Brown about his options given his ongoing complaints. (Brown testimony)

At this juncture, it would be helpful to point out that there are two main types of myoelectric prosthetic devices discussed in this case: (1) Pattern Recognition prosthesis, and (2) Dual-Site/Direct Control prosthesis. (Brown testimony) Both devices are connected to the muscles in an individual's arm. When the muscles contract, a signal is sent to the artificial limb, which causes it to move. Without getting too technical, the Dual Site prosthesis has two main sensors, while the Pattern Recognition prosthesis has multiple sensors. (Brown testimony) According to Mr. Brown, Pattern Recognition prosthetics are the newer, more preferred technology. Claimant and Mr. Brown expressed a clear preference for the Pattern Recognition prosthesis.

In addition to his report, Mr. Brown produced a service estimate for a Pattern Recognition myoelectric prosthesis. (Ex. 5, pp. 6-7) At hearing, Mr. Brown provided

testimony regarding the costs associated with the Pattern Recognition prosthesis. Mr. Brown testified that the costs associated with claimant's training and follow-up appointments are included in his estimate. Mr. Brown testified that the overall cost of the device itself can vary depending on what attachments are used. While the price range is not entirely clear from the record, it is generally accepted by the parties that a Pattern Recognition prosthesis is more expensive than the other myoelectric prosthetics that will be discussed.

On July 30, 2020, claimant reached out to defendants' attorney and, citing a letter from Mr. Brown, requested a prosthetic device to accomplish everyday tasks outside of the working environment. (Ex. 1, pp. 1-2)

Lynne DeSotel, M.D., is Mr. Morris' primary care physician. (Ex. 3, p. 4) She is not an authorized treating physician for purposes of claimant's July 2, 1998, work injury. In a November 13, 2020, letter, Dr. DeSotel agreed with Mr. Brown's assessment and recommended claimant be provided with a myoelectric prosthesis for home use in addition to the body-powered prosthesis he uses at work. Id. Dr. DeSotel further opined that a myoelectric prosthesis would allow claimant to protect against further overuse of the right upper extremity while also allowing him the ability to use his left arm for routine or daily activities that are essential to his overall functioning and well-being at home. Id.

On November 16, 2020, claimant followed up with defendants' attorney and, citing Dr. DeSotel's report, requested the procurement of a myoelectric prosthetic device. (Ex. 4, p. 5)

Defendants have accepted claimant's request for a myoelectric prosthetic arm; however, they are currently denying claimant's request for a Pattern Recognition myoelectric prosthesis. Defendants argument is twofold. On one hand, defendants assert less expensive myoelectric prostheses exist and such devices will meet claimant's needs.

Defendants obtained a service estimate from Clark & Associates for a myoelectric transradial prosthesis on November 24, 2020. (Ex. B, p. 3) The Clarke & Associates estimate is approximately half the cost of Mr. Brown's estimate. Neither estimate adequately explains what is included with the costs.

Charles Mooney, M.D., is an occupational physician with Iowa Occupational Medicine Consulting Services, P.L.C. (Ex. A, p. 1) His experience with prosthetics is limited. (Ex. A, p. 2) In a November 30, 2020, report, Dr. Mooney agreed with Dr. DeSotel that claimant would benefit from the use of a myoelectric device. (Id.) Dr. Mooney opined that the device provided in the Clark & Associates estimate appears to meet the majority of claimant's expectations. Id. He further opined that myoelectric devices can be quite complex, with multiple sensors and functions that can be difficult to learn. Id. According to a November 16, 2020, correspondence between the parties, Dr.

Mooney felt as though the device suggested by Dr. DeSotel could require years to learn. (See Ex. D, p. 6) Such an opinion is not supported by the evidentiary record.

Mr. Brown testified the Pattern Recognition device would require less training as it is more intuitive. He further explained it was not a guarantee that claimant would take to the dual-site prosthesis given that the dual-site prosthesis relies on muscles that claimant has not consistently utilized in over 20 years. These opinions are supported by the video recordings in evidence.

Claimant submitted two videos into evidence. According to Mr. Morris and Mr. Brown, the videos are recordings of claimant testing both a Dual Site prosthesis and a Pattern Recognition prosthesis. In the recordings, claimant clearly struggles to open and close the prosthetic hand using the dual-site prosthesis. The motion is slow and choppy. In contrast, claimant is able to open and close the hooks of the Pattern Recognition prosthesis with relative ease. (See Exs. 6, 7)

On the other hand, defendants do not currently believe that the specific myoelectric prosthesis sought by claimant is reasonable or necessary. This is not to say defendants are against providing claimant a pattern recognition prosthesis if the same is recommended by a physical medicine and rehabilitation physician in the future. Rather, given the high cost of myoelectric devices, defendants would like to obtain additional opinions as to what prosthetic device is most appropriate for claimant.

To this end, defendants are attempting to refer Mr. Morris to a physical medicine and rehabilitation physician for treatment and a recommendation as to an appropriate prosthesis. Defendants produced a referral request and claimant's medical records to the University of Iowa Hospitals and Clinics (UIHC) for consideration on January 25, 2021. (Ex. C, p. 4) It does not appear as though an appointment had been scheduled as of the date of hearing.

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.14(6).

Iowa Code section 85.27(4) provides, in relevant part:

> For purposes of this section, the 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); 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).

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 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."

The record indicates Mr. Brown recommended a myoelectric prosthetic device for claimant on or about July 30, 2020. (Ex. 2, p. 3) Defendants did not authorize the requested device. In a November 13, 2020, letter, Dr. DeSotel agreed with Mr. Brown's assessment and recommended claimant be fitted for a myoelectric prosthesis. (Ex. 3, p. 4) In a November 5, 2020, correspondence, defendants acknowledged claimant's entitlement to a second prosthetic, but requested an additional 30 days to gather information on what options were available and appropriate. (Ex. D, p. 5) Between November 5, 2020, and November 30, 2020, defendants obtained an estimate for a dual-site prosthesis and an opinion from Dr. Mooney, who openly admits his knowledge and/or experience with prosthetic devices is limited. The Clark & Associates estimate is not accompanied by an opinion or recommendation from Clark & Associates. The estimate does not describe or otherwise provide information about the prosthesis listed. Defendants did not submit an opinion recommending the dual-site prosthesis detailed in the Clark & Associates estimate. Dr. Mooney's letter is fairly broad and does not provide a discussion of the prosthesis detailed in the Clark & Associates estimate.

It was not until claimant filed an alternate medical care petition in January 2021 that defendants made the offer to have claimant evaluated by a physical medicine and

rehabilitation physician. There is no reason claimant's care should have been delayed for this long. It cannot be said that the care offered by defendants was prompt. I find that defendants failed to offer claimant prompt medical care in response to his July 30, 2020, request.

This case is distinguishable from Schehl v. Iowa Cage Free, File No. 1659721.01 (Alt. Care Dec. April 8, 2020), where a similar fact pattern yielded different results. In Schehl, defendants entered into evidence an opinion from claimant's authorized treating physician which provided the prosthesis desired by claimant was not medically reasonable or necessary. The physician further opined it was reasonable and appropriate to consider a different prosthetic device and recommended claimant be evaluated by another prosthetist for this purpose. Moreover, the defendants in Schehl introduced the opinions of a licensed prosthetist/orthoptist – who actually reviewed the proposed prosthesis – to accompany their quote for a more cost effective prosthetic device. No such opinions exist in the matter at hand.

One factor that has figured "prominently" in determining whether employer-authorized medical care is reasonable is the effectiveness of the care. Pirelli–Armstrong Tire Co., 562 N.W.2d at 437.

In this case, defendants are offering medical care that is less extensive and inferior to the care requested by Mr. Morris. Arguably, defendants are not offering any specific medical care at this point in time. Defendants have entered evidence to show less expensive alternatives to the pattern recognition prosthesis exist, but have not definitively offered the same to claimant. Defendants have entered evidence suggesting claimant's medical care has been referred to UIHC; however, there is no indication that claimant has been scheduled for an appointment or that UIHC has even accepted claimant as a patient. While a referral to a physical medicine and rehabilitation physician would be reasonable, the referral was not initiated until nearly six months after claimant's request, and it is unclear from the record whether UIHC will accept defendants' referral. In their current state, I cannot conclude that defendants' offers are reasonable.

Drs. DeSotel and Mooney, as well as Mr. Brown, all agree that claimant should be fitted for and provided a myoelectric prosthesis. Defendants have agreed to provide claimant with a myoelectric prosthesis; however, they dispute whether the Pattern Recognition prosthesis is medically reasonable and necessary. Defendants assert there are less expensive alternatives that will meet the majority of claimant's expectations. However, defendants have not offered an opinion as to how the less expensive alternatives would meet claimant's expectations. Moreover, no physician has expressly recommended a less expensive alternative. Rather, Clark & Associates drafted an estimate of a less expensive alternative and Dr. Mooney, without discussing the specific prosthesis, opined the prosthesis was a reasonable approach to improve claimant's overall functionality. This, after stressing his experience with prosthetics is limited. I do not find Dr. Mooney's opinion to be persuasive in this instance.

Defendants' issue with the Pattern Recognition prosthesis, as highlighted in the attorney correspondences and in argument at hearing, is motivated by economic considerations. Cost is not, and should not, be a criterion in providing claimant with a replacement for his amputated left arm. Defendants have demonstrated that less expensive myoelectric prosthetic arms exist; they have not demonstrated that an alternative prosthesis would meet claimant's needs. But for the testimony of Mr. Brown, the undersigned would have no information or understanding of the prosthesis listed in the Clark & Associates estimate.

The pattern recognition myoelectric prosthetic arm will provide Mr. Morris greater function and is superior to the dual-site direct control prosthetic arm the defendants suggest. Mr. Brown provided convincing testimony in this regard. Mr. Brown has provided ongoing support for claimant's prosthetic device for nearly a decade. While he is not a physician, as a Certified Prosthetist/Orthotist, he is in the best position to make a determination as to the most appropriate and reasonable myoelectric prosthesis for claimant. His recommendation is supported by claimant's primary care physician who is also familiar with claimant's condition. I find their opinions persuasive.

For these reasons, I conclude Mr. Morris is entitled to the Pattern Recognition myoelectric prosthesis he requests.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's petition for alternate medical care is granted.

Defendants shall immediately authorize, purchase, and pay for all related parts and services necessary to provide claimant the myoelectric prosthesis as recommended by Mr. Brown.

Signed and filed this 5th day of February, 2021.

MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

James M. Ballard (via WCES)

Alison Stewart (via WCES)