BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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| LAURENCE MORRISON,<br><br>Claimant,<br><br>vs.<br><br>EPM IOWA, LLC,<br><br>Employer,<br><br>and<br><br>AUTO-OWNERS INSURANCE CO.,<br><br>Insurance Carrier,<br>Defendants. | File No. 22005847.02<br><br>ALTERNATE MEDICAL CARE DECISION<br><br>Headnote: 2701 |

This is a contested case proceeding under Iowa Code chapters 85 and 17A. The expedited procedures of rule 876 IAC 4.48, the "alternate medical care" rule, are invoked by claimant, Laurence Morrison.

This alternate medical care claim came on for hearing on January 23, 2023. 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 by petition for judicial review under Iowa Code section 17A.19.

The record in this case consists of Claimant's Exhibit 1-2, Defendants' Exhibits A-B, and the testimony of claimant.

## ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of authorization for a referral to an orthopedic specialist.

## FINDINGS OF FACT

Defendants accept liability for a work-related accident of April 27, 2022. Claimant testified he injured his left wrist after falling off a ladder at work.

Claimant testified he was originally sent to an orthopedic specialist in Cedar Falls, Iowa. He said diagnostic testing indicated a cyst in his left wrist. Because of the situation with the cyst, claimant was referred to ZeHui Han, M.D. for care

On October 10, 2022, claimant was evaluated by Devin Stane, PA-C and Dr. Han for a follow-up for left wrist pain. Claimant had improvement in his left wrist but still had pain. Claimant was found to be at maximum medical improvement (MMI). (Exhibit A)

Claimant testified he saw Dr. Han approximately four to five times. He said Dr. Han told him surgery was the only remaining treatment option for his pain. He said Dr. Han recommended against surgery because of claimant's age. Claimant testified he was unsure if Dr. Han told him that further surgery would be due to a pre-existing condition of the cyst in his wrist.

In an October 25, 2022, response to a letter from the defendant insurer, Dr. Han found claimant had a two percent permanent impairment to the left upper extremity for his left wrist injury. Dr. Han opined claimant did not require further medical care. (Ex. B)

In a December 2, 2022, letter, claimant's counsel requested further care for claimant. (Ex. 1)

On December 28, 2022, claimant was evaluated by Emily Grarup, ARNP. Claimant was assessed as having left wrist pain. Claimant was referred to an orthopedic surgeon. (Ex. 2)

Claimant said he has continued wrist pain. He said he did not have wrist pain prior to his fall from the ladder. Claimant said he wants to be evaluated by another orthopedic specialist as recommended by nurse practitioner Grarup.

## 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 R. App. P. 6.904(3).

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 Rule of Appellate Procedure 6.904(3)l; 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. v. Reynolds, 562 N.W.2d 433 (Iowa 1997), 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).

I appreciate claimant's situation. He continues to have left wrist pain that causes him difficulty at work. Claimant wants to see another orthopedic specialist for treatment options. Claimant wants to continue to work at his job with EPM.

However, defendants have already authorized two orthopedic specialists to treat claimant. Claimant saw Dr. Han, an orthopedic specialist who specializes in hand and upper extremity surgery, four to five times. Dr. Han recommended against surgery due to claimant's age. Precedent indicates that alternate medical care is a remedy if a claimant carries the burden of proof the care offered by a defendant is unreasonable. Given the record as detailed above, I cannot find the care given by defendants, in this case, is unreasonable. Claimant has failed to carry his burden of proof the care offered by defendants is unreasonable.

## ORDER

Therefore, it is ordered that claimant's petition for alternate medical is denied.

Signed and filed this ____23rd____ day of January, 2023.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Bryant Engbers (via WCES)

Christine Westberg Dorn (via WCES)