BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ANGELES AGUILAR-MONTIEL, Claimant, vs. SMITHFIELD FOODS, INC., Employer, and SAFETY NATIONAL CASUALTY CORP., Insurance Carrier, Defendants.	File No. 1654969.02 ALTERNATE MEDICAL CARE DECISION HEAD NOTE NO: 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, Angeles Aguilar-Montiel.

This alternate medical care claim came on for hearing on August 21, 2020. 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 Exhibits 1-3 and Defendants' Exhibits A-D.

ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of authorization of an MRI for claimant's left shoulder.

FINDINGS OF FACT

Defendants accept liability for a work-related injury to claimant occurring on July 25, 2018.

Claimant worked a production line for defendant Smithfield Foods (Smithfield). Claimant used a knife in the right hand and used a hook with the left. (Exhibit 2, page 3)

Claimant underwent right arm and shoulder surgery on November 28, 2018. (Ex. B, p. 3)

On June 25, 2019, claimant was in a car accident and had right shoulder pain. (Ex. 2, p. 3)

On December 12, 2019, claimant was evaluated by Timothy Vinyard, M.D. with Iowa Ortho for evaluation of left shoulder pain. Dr. Vinyard is an orthopedic surgeon. Claimant had a car accident but was having left shoulder symptoms prior to the car accident. An MRI of the left shoulder was discussed. Dr. Vinyard did not believe an MRI was recommended. A cortisone shot was given. Dr. Vinyard opined future care of the left shoulder was not related to the work injury (Ex. B, p. 5)

On June 4, 2020, claimant was evaluated by Dr. Vinyard for follow-up of bilateral shoulder pain. Claimant indicated a poor result with the right shoulder after surgery. Based on the poor outcome of the right shoulder surgery, further surgery was not recommended. Dr. Vinyard recommended a second opinion. (Ex. 1)

On or about June 9, 2020, claimant was evaluated by Sunil Bansal, M.D for an independent medical evaluation (IME). Claimant was assessed as having a left shoulder strain consistent with a rotator cuff pathology. Dr. Bansal opined claimant's bilateral shoulder problems were work-related. He opined claimant was not at maximum medical improvement (MMI) for the left shoulder. He recommended an MRI for the left shoulder. (Ex. 2)

On July 21, 2020 claimant underwent another IME with Ian Crabb, M.D., an orthopedic surgeon. Claimant had bilateral shoulder problems. Claimant had a lot of pain in the left shoulder. Dr. Crabb did not recommend an MRI for the left shoulder. (Ex. 3, p. 10)

In an August 18, 2020 letter, Dr. Vinyard indicated he had treated and performed shoulder surgery on claimant. He opined an MRI of the left shoulder was not recommended. (Ex. D)

Dr. Vinyard noted claimant was evaluated by Dr. Crabb, who also opined an MRI was likely not helpful in determining care for claimant. Dr. Vinyard again opined claimant would not benefit from surgery to the left shoulder. As claimant was not recommended to have left shoulder surgery, an MRI of the left shoulder was likely not helpful. Dr. Vinyard also opined most reasonable orthopedic surgeons would not recommend an MRI given claimant's circumstances. (Ex. D)

CONCLUSION 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.

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).

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 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. 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.
>
> [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.

Claimant treated with Dr. Vinyard for an extended period of time. Dr. Vinyard performed claimant's right shoulder surgery. Dr. Vinyard recommends against an MRI to the left shoulder. He also opines he believes most reasonable orthopedic surgeons would not recommend an MRI given the facts of this case.

Claimant saw Dr. Crabb for a second opinion. Dr. Crabb agreed with Dr. Vinyard that an MRI of the left shoulder was not warranted.

Only Dr. Bansal, claimant's expert, recommends an MRI to the left shoulder.

Two orthopedic surgeons have opined an MRI of the left shoulder is not recommended given claimant's circumstances. Given this record, it is found defendants' denial of authorization of the MRI to the left shoulder is not unreasonable.

I understand claimant's position in this case. I am empathetic to claimant's contention that claimant "…should be afforded the dignity of a diagnostic examination…" to further determine the pathology of claimant's left shoulder. (Claimant's Brief, page 3)

However, as noted above, two orthopedic surgeons opined an MRI of the left shoulder is not warranted in this situation. Given this record, I am unable to find in claimant's favor regarding ordering defendants to authorize the MRI for the left shoulder

ORDER

Therefore, it is ordered that claimant's petition is denied for the reasons detailed above.

Signed and filed this 21st day of August, 2020.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Jennifer M. Zupp (via WCES)

Michael J. Miller (via WCES)