BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ROGER HACKMAN, Claimant, vs. UNITED PARCEL SERVICE, Employer, and LIBERTY MUTUAL INSURANCE COMPANY, Insurance Carrier, Defendants.	File Nos. 1632263.01, 19002901.01 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, Roger Hackman. Claimant appeared personally and through his attorney and defendants appeared through their attorney.

The alternate medical care claim came on for hearing on January 17, 2019. The proceedings were digitally recorded. Said 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. As such, 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, defendants exhibits A-G, and claimant's testimony. Defendants called no witnesses. The evidentiary record closed at the conclusion of the alternate medical care hearing.

Claimant sustained an injury to his shoulder on March 2017 and again on June 2019. For the purposes of the alternate medical care proceeding, defendants have accepted liability for both injury dates. Claimant argues that the injuries may encompass

the whole body. The extent of the injuries have yet to be determined and the defendants reserve their right to deny liability in the future.

However, the admittance of liability allowed the alternate care hearing to proceed.

ISSUE

Whether claimant is entitled to a referral to another medical provider.

FINDINGS OF FACT

The parties agree that claimant was treated by Steven Aviles, M.D., for the March 2017 shoulder injury. On March 5, 2019, Dr. Aviles released claimant to work with no restrictions. (Ex. A) Claimant continued to have pain and returned to Dr. Aviles on July 2, 2019. (Ex. B:2) He had good range of motion and good strength but complained of "a sudden onset of severe pain" three weeks prior while lifting boxes weighing between 40-70 pounds. (Ex. B:2) Dr. Aviles ordered a CT arthrogram and released claimant to modified work duty with a lifting restriction of no more than ten pounds and no work above the shoulder. (Ex. C:3)

He continued to be kept off of work by Dr. Aviles. Unfortunately, claimant did not want to return to Dr. Aviles and requested a new physician. Defendants accommodated this request and claimant was sent to Christopher Vincent, M.D. (Ex. F:6) During the December 2, 2019, visit, Dr. Vincent recorded that claimant's pain was 1/10 on a 10 scale, that he was improving but had constant aching pain that was aggravated by home exercises and alleviated by rest. (Ex. F:6) Dr. Vincent concluded that claimant had reached maximum medical improvement (MMI) for the right shoulder issues and that there was "minimal to no anticipated change in function, pain level, or need for future treatments." (Ex. F: 8) Dr. Vincent went on to write that "At this time, I have no recommendations for formal continued treatment, and I do not feel that routine followup is necessary." (Ex F:8) Claimant was returned to work without restrictions. He testified that two weeks after the December 2, 2019, visit he asked his center manager to call and make an appointment for him to see Dr. Vincent. No appointment was made.

On December 20, 2019, Dr. Vincent penned a letter stating that due to the repeat MRI scan, claimant was not a candidate for repeat surgery. (Ex. G:9) Dr. Vincent believed that claimant's condition had plateaued and that he needed no further medical treatment. (Ex G:9)

REASONING AND CONCLUSIONS OF LAW

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).

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 and Air Conditioning 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."

It is undisputed claimant continues to report right upper extremity symptoms and desires a third opinion evaluation. While claimant continues to complain of pain, there is no medical evidence that suggests the current care (of no care) is unreasonable. Dr. Vincent believes that claimant is at MMI and that there is minimal to no anticipated change in function, pain level, or need for further treatments. Claimant requested another visit after only two weeks.

Claimant's care was moved from Dr. Aviles to Dr. Vincent after a complaint of claimant. There is a lack of evidence supporting a third consultation at this time. There is no medical evidence to support a finding that more care is appropriate and beneficial. Without such evidence, claimant wishes to impose a default standard in which no care proffered is always unreasonable. The case law does not suggest that is the case.

Two qualified surgeons evaluated claimant and neither recommended further surgery. If a third opinion is obtained and no other treatment recommendations are forthcoming, claimant's standard would impose a requirement on the defendant to obtain a fourth and then a fifth recommendation and so on until some medical provider recommended care.

The defendants' refusal to provide care based on two surgeon's recommendations does not shift the burden to prove their conduct is reasonable. The standard remains that the claimant must prove that the defendants' position is not reasonable.

There is no limit to the alternative medical care petitions filed. Should the evidence change at a later date, the outcome may be different. However, at this time, the evidence in the record does not support a finding that the defendants' position is unreasonable and the alternate medical care petition is denied.

THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care is DENIED.

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

JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Thomas Currie (via WCES)

Patrick McNulty (via WCES)