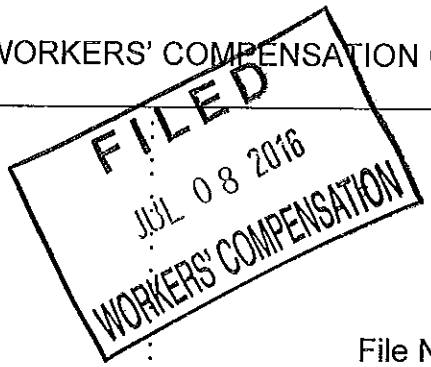
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



BARBARA FREED-CUMBO, Claimant, vs. DILLARD STORE SERVICES, INC., Employer, and DISCOVERY RE, Insurance Carrier, Defendants.	File No. 5062006 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, Barbara Freed-Cumbo.

The alternate medical care claim came on for hearing on July 8, 2016. The proceedings were digitally recorded which constitutes the official record of this proceeding. This ruling is designated final agency action and any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code 17A.

The record consists of claimant's exhibits 1 – 4 and defendants' exhibit A.

Claimant was the only witness to testify.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of a referral to a neurologist.

FINDINGS OF FACT

The undersigned having considered all of the testimony and evidence in the record finds:

Defendants admitted liability for an injury occurring on December 9, 2014. The defendants admitted responsibility for the condition which claimant is seeking treatment.

Claimant fell at work on December 9, 2014. She was taken to the emergency department at Trinity Medical Center. Claimant had two lacerations on her head and a hematoma. (Exhibit 1, page 2) Claimant testified she had nine staples in her head.

Claimant was referred to Concentra by the defendants for medical care. Naomi Chelli, M.D. provided claimant care. The unrefuted testimony of the claimant was that Dr. Chelli did not examine claimant but just prescribed medications. On February 3, 2015 Dr. Chelli found claimant at maximum medical improvement (MMI) and released claimant to regular activity. (Ex. A, p. 2)

Claimant testified that she continued to have symptoms after seeing Dr. Chelli, but delayed getting additional medical help based upon work demands and her desire to see if her symptoms might resolve.

Claimant contacted her employer, Dillard's, on June 16, 2016 and requested medical care. She was informed her file was closed. Claimant then contacted her family physician, Lynn Geick, M.D. She was complaining of headaches and pain in her head with some blurred vision. (Ex. 2, p. 5) Claimant has requested a referral to a neurologist, Irena Birski, M.D. based upon a recommendation of her primary care physician, Lynn Geick, M.D. (Ex. 2, p. 7) Dr. Geick is not a physician that has been authorized by defendants.

Claimant requested a referral to Dr. Birski or another neurologist on June 21, 2016. Claimant express dissatisfaction with the care offered by the defendants. (Ex. 3, p. 9) On June 30, 2016 defendants informed claimant that a referral to a neurologist was not authorized. (Ex. 4, p. 10)

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-reopen 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); 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.

The commissioner is justified in ordering alternate care when employer-authorized care has not been effective and evidence shows that such care is "inferior or less extensive" than other available care requested by the employee. Long; 528 N.W.2d at 124; Pirelli-Armstrong Tire Co.; 562 N.W.2d at 437.

Claimant has proven that she has requested care for a medical condition related to her work injury and was denied reasonable care. She was told by her employer her case was closed. A physician evaluated her symptoms and recommended she be examined by a neurologist. The care offered by the defendants has not been effective in alleviating claimant's symptoms.

The claimant's request for alternate care is granted. Defendants shall refer claimant to a neurologist. Defendants maintain the right to select the neurologist.

ORDER

Therefore it is ordered:

The claimant's petition for alternate medical care is granted

Signed and filed this 8th day of July, 2016.

JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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