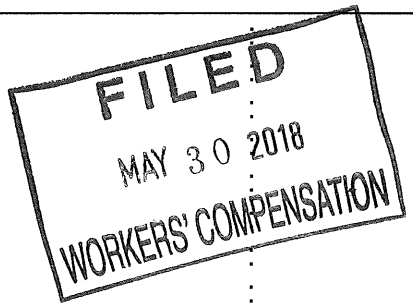
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



PAUL J. JONES, Claimant, vs. CURRIES MFG., Employer, and TRAVELERS INDEMNITY CO. OF CT., Insurance Carrier, Defendants.	File No. 5063957 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, Paul Jones.

The alternate medical care claim came on for hearing on May 30, 2018. The proceedings were digitally recorded, which constitutes the official record of this proceeding. By order filed February 16, 2015, this ruling is designated final agency action.

The record consists of claimant's exhibit 1; defendants' exhibits A & B. Claimant alleges a date of injury of December 11, 2017. During the course of hearing, defendants admitted the occurrence of a work injury on December 11, 2017, and liability for the conditions sought to be treated by this proceeding. Counsel offered oral arguments to support their positions; no witnesses testified.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care.

FINDINGS OF FACT

Claimant, Paul Jones, sustained an injury to his back arising out of and in the course of his employment with Curries Manufacturing on December 11, 2017.

On May 9, 2018, David W. Beck, M.D. of Mercy Neurosurgery in Mason City saw Mr. Jones for a chief complaint of severe right leg pain. Dr. Beck saw Mr. Jones at the request of Dr. Singh. Dr. Beck noted that Mr. Jones had been advised to have a lumbar fusion in Des Moines. Dr. Beck stated, "Clinically Paul has an L5- radiculopathy on the right. He has failed conservative therapy. My recommendation would be a foraminotomy on the right at L5-S1. I don't see any indication for a fusion." (Exhibit 1)

On May 24, 2018, Cassim M. Igram, M.D., Associate Professor Orthopedic Surgery at the University of Iowa Work injury Recovery Center issued a letter to defendants. Dr. Igram stated:

> Upon your referral of this patient, I reviewed the provided documentation regarding Mr. Jones back complaints and previous treatment. Based upon the documentation, I did not find any injury, pathology, or problem that would be reliably resolved or significantly improved by surgical or non-surgical treatment in my care. I recommended my partner Dr. Joseph Chen, who specialized in Physical Medicine and Rehabilitation, for conservative treatment.

(Ex. A-1)

Trevor R. Schmitz, M.D., is an orthopaedic surgeon at Iowa Ortho in Des Moines, Iowa. On May 25, 2018, he issued a letter to defendants. Dr. Schmitz noted that he has seen Mr. Jones on several occasions and has tried a multitude of conservative care measures. The doctor noted that the physical examination changed virtually every time he sees Mr. Jones. He feels that conservative treatment measures have been exhausted except for a referral to physiatry. Dr. Schmitz stated,

> Given these inconsistencies on his examination, as well as a lack of treatment response to virtually any treatment, I do not think that he is a surgical candidate in my hands. Our ethos in medicine is first do no harm and I do not think that Mr. Jones is likely going to get significant improvement in his symptoms, regardless of what type of surgery he has, and I think, given lack of consistent examination findings, he would be undergoing the risk of surgery without a significant likelihood of benefit.

(Ex. B-2).

Claimant's petition for alternate medical care states, "Authorized care has not provided Claimant any pain relief. Dr. Back recommending surgery (exhibit 1 attached.) Defendant's *[sic]* have not authorized surgery with Dr. Beck." (Alt. Care Pet.) Based on the written exhibits I find defendants' refusal to authorize surgery with Dr. Beck is reasonable. Dr. Igram did not find any injury, pathology, or problem that would be significantly improved by surgical or non-surgical treatment in his care. Rather, Dr. Beck opined that treatment with a physiatrist would be appropriate. Dr. Schmitz did not recommend surgical treatment. Therefore, I find that defendants' denial of surgical

treatment with Dr. Beck is reasonable at this time. With regard to claimant's request for surgery with Dr. Beck, claimant's petition for alternate medical care is denied.

However, I find that the treatment currently being provided to the claimant by the defendants is not reasonable. According to the agency file, Mr. Jones lives in Mason City and the employer is located in Mason City. Defendants are providing treatment in the Iowa City and/or Des Moines area. Driving between Mason City and Iowa City is over 2 ½ hours each way. Driving between Mason City and Des Moines is just under two hours each way. I find that requiring the claimant to travel such distance for treatment is unreasonable. Mr. Jones lives in Mason City where there are qualified medical providers. I find that claimant's petition for alternate medical care is granted and that defendants shall provide prompt and reasonably necessary treatment for the claimant closer to home.

REASONING AND CONCLUSIONS OF LAW

Under Iowa law, the employer is required to provide care to an injured employee and is permitted to choose the care. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

> [T]he 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); 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., 562 N.W.2d at 433, 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" care 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.

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).

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).

"Determining what care is reasonable under the statute is a question of fact." Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995).

Generally, care should be provided within a reasonable distance from claimant's residence. Trade Professionals, Inc. v. Shriver, 661 N.W.2d 119, 124 (Iowa 2003) (more than 100 miles is an undue inconvenience); Schrock v. Corkery Waste Disposal, Inc., File No. 1133725, (Alt. Care June 26, 1996) (120 mile round trip excessive);

Schulte v. Vocational Services of Area Residential Care, File No. 1134342, (Alt. Care September 6, 1996) (care more than 70 miles away unreasonable). A 50-mile radius is generally considered a reasonable distance to travel for treatment in workers' compensation cases. Bitner v. Cedar Falls Construction Co., File No. 5013852 (Alt. Care September 24, 2004). However, it depends on what is reasonable under the circumstances in a particular case. See Warner v. City of Hawarden, File No. 5039478 (Arb. June 27, 2013).

Under the facts of the instant matter, defendants have provided treatment at a distance of approximately 120-plus miles one-way from claimant's residence. There are instances where travelling to such a distance would be reasonable, i.e. evaluation by a specific specialist, care for complex or uncommon injuries, or availability of specialized equipment. The record is void of any evidence to demonstrate that any of those scenarios are at play with respect to claimant's current need for care.

Offering a physician located at a distance of over 240-plus miles round-trip is unreasonable given there are appropriately qualified physicians located at minimal distance from claimant's domicile in Mason City.

I therefore conclude defendants have failed to provide reasonable and necessary medical treatment, and an award of alternate medical care is appropriate.

Defendants still maintain the right to choose the physician to provide care for the claimant. I am not specifically ordering defendants to utilize Dr. Beck. Defendants shall provide appropriate care to the claimant in the Mason City area.

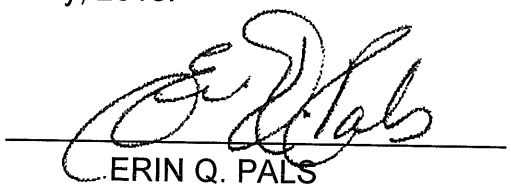
ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is DENIED in part. The petition is denied, at this time, with regard to the specific request of surgery with Dr. Beck.

The claimant's petition for alternate medical care is GRANTED in part. The defendants shall immediately arrange an appointment with an appropriate treatment provider in Mason City, if one is available.

Signed and filed this _____ day of May, 2018.



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