BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

AMY BAST f/k/a AMY MARTINSON, Claimant, vs. DEB EL FOOD PRODUCTS, LLC, Employer, and EVEREST NATIONAL INS. CO., Insurance Carrier, Defendants.	File No. 22003587.02 ALTERNATE MEDICAL CARE DECISION Headnote: 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, Amy Bast. Claimant appeared through her attorney, Eric Loney. Defendants appeared through their attorney, Bryan Brooks.

The alternate medical care claim came on for hearing on July 25, 2022. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's order dated February 16, 2015, the undersigned has been delegated authority to issue a final agency decision in this alternate medical care proceeding. Therefore, 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 and 2. No witnessed were called. Counsel offered oral arguments to support their positions.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of authorization to return to Robert Bartelt, M.D.

FINDINGS OF FACT

Claimant alleged injuries to her right arm, right shoulder, and neck occurred while working on April 7, 2021. Defendants admitted liability for the shoulder injury and continue investigating the remaining claims. Claimant was authorized to treat with Dr. Bartelt, and did receive treatment. (Claimant's Exhibit 1, pp. 1-3) At some point in October 2021, claimant was in physical therapy, and was considered a "no show" to one or more appointments. (Cl. Ex. 2, p. 6) In November 2021, claimant's attorney asked for physical therapy to be re-started. Since that time, claimant has continued to request treatment. Defendants have not authorized care, but are working to schedule an independent medical evaluation (IME). (Cl. Ex, 2, pp. 2-3)

I find that defendants are not currently providing reasonable care.

REASONING AND CONCLUSIONS OF LAW

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.

Iowa Code § 85.27(4).

Defendants' "obligation under the statute is confined to *reasonable* care for the diagnosis and treatment of work-related injuries." Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995) (emphasis in original). In other words, the "obligation under the statute turns on the question of reasonable necessity, not desirability." Id.

Similarly, 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. See Iowa Code § 85.27(4). Thus, 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 6.904(3)(e) ; Long, 528 N.W.2d at 124.

Additionally, 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. v. Reynolds; 562 N.W.2d 433, 437 (Iowa 1997).

Ultimately, determining whether care is reasonable under the statute is a question of fact. Long, 528 N.W.2d at 123. In this case, I found that defendants are not currently authorizing any care for the accepted injury. As such, they are not offering medical treatment reasonable suited to treat the work injury. Therefore, I conclude that claimant has proven her claim for alternate medical care. Defendants are ordered to authorize and pay for claimant to return to Dr. Bartelt for ongoing treatment.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is granted.

Defendants shall immediately authorize and timely pay for claimant to return to Robert Bartelt, M.D., for ongoing treatment.

Signed and filed this 25th day of July, 2022.

JESSICA L. CLEEREMAN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Eric Loney (via WCES)

Bryan Brooks (via WCES)