BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TODD STROMLEY, Claimant, vs. MANPOWER INTERNATIONAL, INC. d/b/a MANPOWERGROUP INC., Employer, and NEW HAMPSHIRE INSURANCE CO., Insurance Carrier, Defendants.	File No. 5058933 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, Todd Stromley against Manpower International Inc. d/b/a ManpowerGroup (hereinafter "Manpower").

The alternate medical care claim came on for hearing on October 5, 2017. 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 exhibits 1-5; defendants' exhibits A-E. Claimant alleges a date of injury of May 29, 2015. During the course of hearing, defendants admitted the occurrence of a work injury on May 29, 2015, and liability for the conditions sought to be treated by this proceeding. Counsel offered oral arguments to support their positions; claimant was the only witness to testify.

ISSUE

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

FINDINGS OF FACT

Claimant, Todd Stromley, sustained an injury arising out of and in the course of his employment with Manpower on May 29, 2015. The relief claimant is seeking through this alternate medical care petition is, additional treatment for his neck injury as recommended by Sarah Mechem, M.D. (Alt. Care Pet.)

As a result of that work injury claimant has underwent a surgical procedure on his neck performed by Dr. Beck. Subsequently, Dr. Beck released Todd from his care and advised that he had no further treatment to offer him. Todd also received treatment from Chad D. Abernathey, M.D. In April of this year Dr. Abernathey noted that Todd had developed a right upper extremity resting tremor and the doctor was suspicious for Parkinson's disease. Dr. Abernathey did not have any additional treatment to offer to Todd. Since that time, Todd underwent testing for Parkinson's; the testing came back negative. Todd also received treatment from Dr. Naylor for his shoulder injury. (Exhibit E; testimony)

Todd testified that he continues to experience neck symptoms and symptoms of numbness and shakiness in his right upper extremity. Dr. Mechem is claimant's personal care physician. On September 5, 2017, she stated that her diagnosis of Todd is neck pain and upper back/neck muscle spasms. She believes that those conditions were caused and/or materially and substantially aggravated by the May 29, 2015 work injury. Dr. Mechem recommends that Todd be referred to Dr. Kloc for pain management treatment and also undergo diagnostic EMG testing. Todd testified that he would like to pursue Dr. Mechem's recommendations. (Ex. 1) Prior to the alternate care proceeding claimant did express his dissatisfaction with the care in writing to the defendants.

Defendants argue that Dr. Mechem is not an authorized treating physician. They have sent his report, along with Dr. Mechem's treatment records to Dr. Naylor for his review and comment on future care. (Ex. A & B) It is also noted that Dr. Naylor, who treated claimant's shoulder, released Todd from his care on September 18, 2017. He has offered Todd no treatment since that time. (Testimony)

Defendants have scheduled an appointment for Todd to return to see Dr. Beck on October 11, 2017. Defendants have also sent updated medical information to Dr. Naylor and requested his comments with regard to future treatment. (Ex. A)

Claimant has requested additional care for his ongoing symptoms. This care has been recommended by his personal care physician, not an authorized treating physician. Defendants have authorized a return visit to Dr. Beck, who previously treated Todd. Additionally, they have provided updated medical information to Dr. Naylor, who previously treated claimant, to obtain his opinion with regard to additional treatment. At this time, I find that the defendants' offered treatment plan is reasonable. I further find the appointment for Todd to see Dr. Beck, who previously treated him, is providing reasonable care.

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).

Based on the above findings of fact, I conclude claimant has failed to carry his burden to prove that the authorized care is unreasonable. While claimant may desire to undergo the treatment as recommended by his primary care physician the test is not one of desirability. At this juncture, claimant has failed to show that the defendants' authorized care is unreasonable.

ORDER

THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care is denied.

Signed and filed this 6th day of October, 2017.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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