BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SADIJA RAKANOVIC, Claimant, vs. TYSON FRESH MEATS, INC., Employer, Self-Insured, Defendant.	FILED JUN 14 2017 WORKERS COMPENSATION	File Nos. 5058856, 5058857 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, Sadija Rakanovic.

The alternate medical care claim came on for hearing on June 14, 2017. 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 and 2 and Defendant's Exhibit A.

Claimant did not testify and no witness was called.

The claimant requested that alternate care File No. 5058857 be dismissed without prejudice. The request is granted.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of authorizing Arnold Delbridge, M.D., to provide treatment for the claimant's right shoulder.

FINDINGS OF FACT

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

Defendant admitted liability for an injury occurring on October 4, 2016 as well as a right shoulder injury of February 2, 2012. .

On January 6, 2017, claimant requested a second opinion to see if additional surgery was needed. (Exhibit 2, page 1) Claimant was seen by Dr. Delbridge. On June 6, 2017, Dr. Delbridge wrote that claimant may be able to have her pain relieved considerably by appropriate fluoroscopic-guided injections. He also said that claimant may require some surgical interventions. Dr. Delbridge was willing to provide such treatments.

Defendant's attorney stated that Dr. Gordon and Dr. Gorshe are the authorized treating physicians in this case and defendant is willing to have either of those physicians evaluate claimant to determine treatment.

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); 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.

Reasonable care includes care necessary to diagnose the condition and defendants are not entitled to interfere with the medical judgment of their own treating

physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening Decision June 17, 1986).

Claimant asserts that the request filed by claimant on January 6, 2017 was sufficient to show that Tyson was not providing reasonable care.

I do not find that that form of January 6, 2017 and Dr. Delbridge's June 6, 2017 letter provide enough evidence that the defendant is not providing reasonable care. Based upon the evidence presented claimant has not shown that defendant has refused to provide reasonable care. There was no record that claimant requested the care that Dr. Delbridge recommended from the defendant. Claimant's request for alternate medical care was premature.

ORDER

THEREFORE IT IS ORDERED:

Alternate medical care, File No. 5058857 is dismissed without prejudice.

The claimant's petition for alternate medical care, File No. 5058856 is denied.

Signed and filed this 14th day of June, 2017.

JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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