BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CONNIE CORDERO, Claimant, vs. JBERMAL, INC. d/b/a SUBWAY, Employer, and ATLANTIC STATES INSURANCE CO., Insurance Carrier, Defendants.	File Nos. 21012912.01 22700359.02 ALTERNATE MEDICAL CARE DECISION Head Note: 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, Connie Cordero. Claimant appeared personally and through her attorney, Joseph Powell. Defendants appeared through their attorney, Caitlin Kilburg.

The alternate medical care claim came on for hearing on April 21, 2022. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's February 16, 2015 Order, 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 evidentiary record consists of Claimant's Exhibits 1-3 and claimant's testimony during the telephonic hearing. Defendants did not offer any additional exhibits or witnesses. During the course of the hearing defendants accepted liability for the June 25, 2020 (right arm/hand) and May 4, 2021 (left arm/hand) work injuries for which claimant is seeking treatment.

ISSUE

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

FINDINGS OF FACT

Claimant, Connie Cordero, sustained an injury to her right arm/hand on June 25, 2020. She also sustained an injury to her left arm/hand on May 4, 2021. The parties agree that these injuries arose out of and in the course of her employment. Ms. Cordero has received treatment for her injuries.

On June 3, 2021, Ms. Cordero saw Michael A. Gainer, M.D. at Iowa Ortho for follow-up of her left wrist and right thumb. Dr. Gainer's assessment of Ms. Cordero's left wrist was tendinitis. With regard to her left wrist, he instructed Ms. Cordero to follow up with her occupational medicine physician because he had nothing surgical to offer her. Dr. Gainer also saw Ms. Cordero for symptoms in her right thumb, hand, and forearm. Dr. Gainer's assessment included flexor carpi radialis tenosynovitis and right flexor carpi radialis tenosynovitis. He recommended occupational therapy and weaning from her wrist brace. Dr. Gainer stated that Ms. Cordero would follow up with her occupational medicine physician because he had nothing surgical to offer her. (Cl. Ex. 1, pp. 1-6)

Ms. Cordero saw occupational medicine physician, Matthew Doty, M.D., on September 9, 2021. Dr. Doty saw her for her bilateral wrists and forearms. He felt a reevaluation with a hand specialist was indicated. (Cl. Ex. 2, p. 7; testimony)

On September 21, 2021, claimant requested a second opinion for her work injuries. Because defendants did not respond to the initial request, claimant sent a second request on December 9, 2021. (Cl. Ex. 3, pp. 8-9)

On December 9, 2021, the claim representative for the workers' compensation carrier, Kimberley Lawler, responded to claimant's counsel about the requests for a second opinion. Ms. Lawler explained that she had attempted to obtain an appointment for Ms. Cordero with seven different specialists, but they all declined the referral. Additionally she stated:

> In addition, your client has already had a second opinion when she requested transfer of care/SOP from Dr. Han with Iowa Ortho to Dr. Gainer. This was approved on my end and I had to pay a fee for the transfer of care. At this time, your client can obtain her own SOP and you can provide me the results of such appointment and I can determine what further action is needed on my end.

(Cl. Ex. 3, p. 10)

Because the defendants had not obtained an appointment with a specialist for Ms. Cordero, she obtained a referral from her family physician to the Hand and Wrist Clinic at the University of Iowa Hospitals and Clinics (UIHC). Ms. Cordero contacted the Hand and Wrist Clinic at the UIHC and scheduled an appointment. During her appointment she spoke with Katharine M. Staniforth, ARNP. Once ARNP Staniforth learned that Ms. Cordero was seeking treatment

for a work injury she stepped out of the examination room to speak to the specialist. ARNP Staniforth returned to the examination room and advised Ms. Cordero that the hand specialist is willing to see her, but they needed to get approval from workers' compensation first. (Testimony) Ms. Cordero's testimony is unrefuted.

Since Dr. Doty recommended Ms. Cordero see a hand specialist, she has not heard of the defendants scheduling any appointments for her to receive any further treatment. (Testimony)

Ms. Cordero would like to be seen at the UIHC Hand and Wrist Clinic. The UIHC Hand and Wrist Clinic is willing to see Ms. Cordero. The record is void of any evidence that the defendants are currently offering any treatment to Ms. Cordero. I find there is no evidence in the record that the defendants have found any medical provider that will see Ms. Cordero. I find that the defendants are currently not offering any treatment to Ms. Cordero. I find that defendants' offer of no treatment is unreasonable.

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 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).

Reasonable care includes care necessary to diagnose the condition and defendants are not entitled to interfere with the medical judgment of its own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening Decision June 17, 1986).

Based on the above findings of fact, I conclude that defendants have not offered any evidence in this case to demonstrate that they are offering any care to the claimant. While defendants made arguments that could imply they would be willing to authorize a return visit to Dr. Gainer, there is no evidence in the record to support that argument. I conclude that defendants' offer of no treatment is unreasonable. Thus, I conclude that claimant's petitions for medical care are granted.

ORDER

THEREFORE IT IS ORDERED:

Claimant's petitions for alternate medical care are granted.

Defendants shall authorize the treatment claimant is seeking at the Hand and Wrist Clinic at the University of Iowa Hospitals and Clinics.

Signed and filed this 22nd day of April, 2022.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Joseph Powell (via WCES)

Caitlin Kilburg (via WCES)