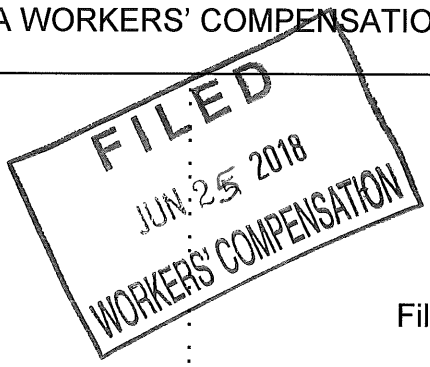
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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| BRYAN OLSON-EVERETT,<br><br>Claimant,<br><br>vs.<br><br>OWNER REVOLUTION,<br><br>Employer,<br><br>and<br><br>UNITED HEARTLAND,<br><br>Insurance Carrier,<br>Defendants. | File No. 5064226<br><br>ALTERNATE MEDICAL<br><br>CARE DECISION<br><br>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, Bryan Olson-Everett.

The alternate medical care claim came on for hearing on June 25, 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 June 21, 2016. During the course of hearing, defendants admitted the occurrence of a work injury on June 21, 2016, 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, Bryan Olson-Everett, sustained an injury to his left hip arising out of and in the course of his employment with Owner Revolution on June 21, 2016.

Following the admitted injury to his left hip the claimant received authorized treatment. On March 30, 2017, Kimberly Turman, M.D. performed authorized surgery on his left hip. Since surgery Mr. Olson-Everett has undergone physical therapy, but the pain and symptoms in his left hip have persisted. Dr. Turman recommended that Mr. Olson-Everett see a failed hip specialist such as Charles F. Burt, M.D., at OrthoNebraska Clinics. Dr. Burt examined Mr. Olson-Everett on April 2, 2018. Dr. Burt stated that he obtained and reviewed the MRI from Iowa Ortho dated March 23, 2018. He noted that the MRI revealed a degenerative labral tear without significant osteoarthritis. His assessment was work-related exacerbation of pre-existing left hip impingement and labral tearing. Dr. Burt felt that the ongoing issues were related to the work injury. Dr. Burt was confident that additional surgery would improve his pain and allow him to return to the work force. The doctor recommended left hip arthroscopy with revision rim trimming, revision femoroplasty, and labral reconstruction. (Ex. 1, pp. 7-8) Mr. Olson-Everett would like to undergo this surgery.

Defendants have not authorized the surgery and are relying on the opinions of Craig R. Mahoney, M.D. At the request of the defendants, Dr. Mahoney performed an independent medical examination (IME) on March 23, 2018. In the notes, Dr. Mahoney stated that he felt that the patient was not a candidate for hip replacement surgery. He felt the patient was not a candidate for hip replacement because the findings were not radiographically severe at that point. He also had his partner, Dr. Aviles perform a records review. Dr. Aviles stated that he had nothing further to offer arthroscopically. Dr. Mahoney did not recommend any further treatment. (Exs. A & B)

Mr. Olson-Everett was surprised to see that Dr. Mahoney's report stated that no further treatment was recommended. At the time of the appointment, Dr. Mahoney ordered the MRI with contrast. Dr. Mahoney told Mr. Olson-Everett that there was a re-tear in his labrum and that surgery could possibly correct it. (Testimony)

Mr. Olson-Everett testified that he continues to have constant pain in this left hip. He rates his pain as 8 out of 10. His hip pops. He cannot stand for more than 20 minutes. Sitting for more than 30 minutes is extremely painful. He is wearing the outsides of his shoes out. He walks with a limp on his left side. He is not able to work. He cannot climb into a truck, climb stairs, or climb a ladder. He would like to have the procedure recommended by Dr. Burt because he believes that he will then be able to return to work. He wants to be able to return to work.

There is no evidence in the record to indicate that defendants are currently providing or offering the claimant any treatment. I find that the care and treatment received by Mr. Olson-Everett has not been effective. I further find that defendants are currently not offering the claimant any care. I find that no care is inferior or less extensive care than the surgery requested by the employee.

## 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).

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 are not offering any care to the claimant. I further conclude that no care is "inferior or less extensive" care than the surgery requested by the employee. I conclude that it is not reasonable for the defendants to refuse to authorize the surgery that has been recommended by Dr. Burt and Dr. Turman. Further, Dr. Turman is the authorized provider who performed the first surgery. Claimant was referred to Dr. Burt by Dr. Turman. It is not reasonable for the defendants to deny the surgery and to offer no other care. Therefore, I conclude that claimant's petition for medical care is granted.

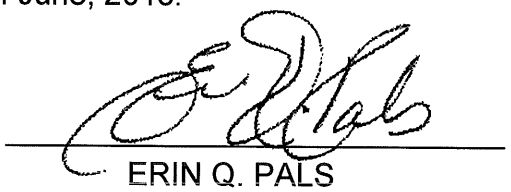
ORDER

THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care is granted.

Defendants shall authorize the requested surgery.

Signed and filed this 25th day of June, 2018.



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