

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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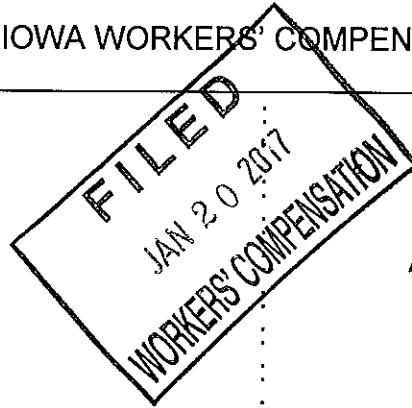
ADAM UNDERWOOD,

Claimant,

vs.

THE BROCK GROUP,

Employer,  
Defendant.



File No. 5057921

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE: 2701

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This is a contested case proceeding under Iowa Code chapters 85 and 17A. The expedited procedures of rule 876 IAC 4.48, the "alternate medical care" rule, are invoked by claimant, Adam Underwood.

This alternate medical care claim came on for hearing on January 20, 2017. The proceedings were recorded digitally and constitute the official record of the hearing. By an order filed by the workers' compensation commissioner, this decision is designated final agency action. Any appeal would be by a petition for judicial review under Iowa Code section 17A.19.

The claimant properly served notice of this petition for alternate medical care on the defendant employer by certified mail. No answer to the petition for alternate medical care was filed by the employer or any insurance carrier or attorney representing the employer. The claimant's attorney made a professional statement that he received a return receipt of service of the petition and original notice indicating defendant employer received those documents on January 9, 2017. Claimant's counsel indicated he had not been contacted by anyone on behalf of the employer or any insurance carrier in regards to this petition.

The undersigned examined the file for this petition and there is no answer from the employer or its insurance carrier on file. A check of the agency's computer system also shows no answer has been filed. There is no indication that anyone representing the employer or its insurance carrier called in to the agency to provide a phone number to be called during the hearing. The file does not show that this agency's notice of the hearing, sent to the employer and requesting a phone number to be called was returned as undelivered. No phone calls were received by the agency during the hearing inquiring why the employer was not called at the time designated for the hearing.

Thus, a finding was made that the claimant had properly served notice of the petition for alternate medical care on the defendant employer; that the employer had not filed an answer or otherwise appeared; and that the employer had not provided this

agency with a phone number or person to be contacted for its participation in the hearing. The employer was found to be in default for purposes of this alternate medical care proceeding, and the employer is found to have abandoned the care of the claimant by its refusal to respond to claimant regarding further treatment, or participate in this alternate medical care proceeding.

The record in this case consists of claimant's testimony. Defendants did not participate in the hearing.

### ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of treatment with Chad Abernathey, M.D.

### FINDINGS OF FACT

Claimant sustained a low back injury while working for the Brock Group, on or about September 3, 2016. Claimant testified his employer failed to offer or authorize any medical care for his work injury. Claimant sought the care of Robert Foster, M.D. on his own. Claimant has been told he has a herniated disc at the L4-5 level. Claimant wants to have treatment with Dr. Abernathey for continued care of his low back injury.

Defendant did not participate in this hearing and thus there is no contrary evidence.

### 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 Decision 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 Rule of Appellate Procedure 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. v. Reynolds, 562 N.W.2d 433 (Iowa 1997), 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 its own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening Decision June 17, 1986).

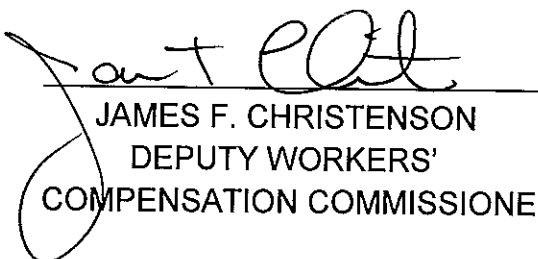
Defendant has not communicated with the claimant or his attorney regarding claimant's requests for continued care. Defendant did not participate in the hearing on this alternate medical care petition. Based on this, it is found defendant has abandoned the claimant's care. There is evidence indicating the treatment provided by defendant was not appropriate or adequate. Claimant seeks treatment that is appropriate for his injury. The petition for alternate medical care is granted.

ORDER

THEREFORE, IT IS ORDERED:

The claimant's petition for alternate medical care is granted. Treatment with Dr. Abernathey is authorized and shall be provided at defendant's expense.

Signed and filed this 20<sup>th</sup> day of January, 2017.

  
JAMES F. CHRISTENSON  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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