BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MARCIAL CABRERA BRUNET, Claimant, vs. REMBRANDT FOODS, Employer, and NATIONWIDE INSURANCE, Insurance Carrier, Defendants.	FILED JUL 10 2019 WORKERS COMPENSATION File No. 5068851 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, Marcial Cabrera Brunet. Claimant appeared personally and through attorney, Steve Hamilton. Defendants appeared through their attorney, Deb Stein.

The alternate medical care claim came on for hearing on July 10, 2019. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's 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 record consists claimant's exhibits 1 through 3 and defense exhibits A through F, which were received without objection. The defendants do not dispute liability for claimant's February 2, 2019, work injury.

Sarah Huddleston, of the Hamilton Law Firm, served as interpreter for the proceedings. She was deemed to be qualified by the undersigned and neither party objected.

ISSUE

The issue presented for resolution is whether the claimant is entitled to a second opinion at Bascom Eye Institute in Miami, Florida.

FINDINGS OF FACT

The claimant sustained an injury to his right eye on or about February 2, 2019. The injury was quite serious and has already resulted in two surgeries in February and March 2019. Care was eventually established with the University of Iowa Hospitals and Clinics (UIHC) through Mark Greiner, M.D., and Ian Han, M.D. (Defendants' Exhibits E, F) According to U.S. News and World Report the UIHC is rated number 7 in the country for Ophthalmology.

Claimant testified credibly that he has a total loss of vision in his right eye. On April 12, 2019, claimant was seen at UIHC for an acute onset of pain in his right eye. He was seen by Elaine Binkley, M.D., on that date. (Cl. Ex. 3, p. 3) This was not a regular visit. It was an urgent visit necessitated by the sudden onset of pain. At that visit, Dr. Binkley discussed various options with the claimant. Claimant expressed a strong preference for obtaining a second opinion for treatment purposes with the Bascom Palmer Eye Institute. Dr. Binkley documented the following with regard to this conversation. "I said that we would be happy to facilitate a second opinion and I will call his case manager for his workers compensation claim to discuss." (Cl. Ex. 3, p. 6)

Claimant immigrated from Cuba in 2015. He first located in Miami, Florida. He heard about Bascom Palmer Eye Institute from a friend. Claimant performed internet research which led him to believe Bascom Palmer Eye Institute is rated number 1 for ophthalmology in the country. (Cl. Ex. 2, p. 2) Since then, claimant has been highly focused on getting an evaluation with this clinic.

On April 18, 2019, claimant followed up with Dr. Han. Dr. Han documented that claimant "discussed his condition with his social worker for possible evaluation at the Bascom Palmer Eye Institute for a second opinion and is in the process of coordinating this with his social worker." (Def. Ex. A, p. 2) He was again evaluated by Dr. Han on May 30, 2019, where the following was documented.

> We had a lengthy discussion with the patient and his wife with the aid of a professional Spanish interpreter. The goal of the initial repair was exploration of the extent of injury, attempt to stabilize the eye, and visual rehabilitation as above, with poor visual prognosis. We are encouraged that the eye seems to be stabilized and he is noticing improved vision. However, we reviewed that the prognosis remains poor given the expected proliferative vitreoretinopathy. We reviewed that further surgery could be considered but would not be advised in our opinion due to the severity of the injury, chronic retinal detachment, and likelihood of recurrent proliferative vitreoretinopathy or precipitating phthisis.

(Def. Ex. C, p. 2) Claimant testified that his authorized physicians agreed that a second opinion with Bascom Palmer Eye Institute is a good idea. Based upon the medical documentation presented, none of the physicians at UIHC have actually recommended that he have a second opinion as medically necessary for treatment purposes. It is

apparent that the physicians at UIHC agree that a second opinion with Bascom Palmer Eye Institute is a reasonable option for the claimant.

At hearing, claimant admitted that his care with UIHC has been good. He has no complaints about Dr. Han or Dr. Greiner. I find that the claimant, who is only 35 years old, is highly motivated to keep his eye and restore vision. One of the options presented by UIHC is to remove his eye. I find all of claimant's testimony to be highly credible and I find his desire to be seen at one of the best clinics in the country to be eminently reasonable.

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. Iowa Code section 85.27 (2013).

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See 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).

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

An employer's statutory right is to select the providers of care and the employer may consider cost and other pertinent factors when exercising its choice. Long, at 124. An employer (typically) is not a licensed health care provider and does not possess medical expertise. Accordingly, an employer does not have the right to control the methods the providers choose to evaluate, diagnose and treat the injured employee. An employer is not entitled to control a licensed health care provider's exercise of professional judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988). An employer's failure to follow recommendations of an authorized physician in matters of treatment is commonly a failure to provide reasonable treatment. Boggs v. Cargill, Inc., File No. 1050396 (Alt. Care January 31, 1994).

In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997), the supreme court held that "when evidence is presented to the commissioner that the

employer-authorized medical care has not been effective and that such care is 'inferior or less extensive' than other available care requested by the employee, . . . the commissioner is justified by section 85.27 to order the alternate care."

Claimant concedes that the care provided has been good. He relies on the holding in Reynolds to argue that the care offered by the employer is inferior or less extensive than the care he is seeking.

Based upon the record before me, I cannot find that the claimant has met his burden of proof. I do find that what the claimant is requesting is completely reasonable. It is the type of care any reasonable person would want in this unfortunate circumstance. It is certainly what I would want, if I were in his shoes.

The record before me, however, demonstrates that the claimant has received excellent medical care. In spite of this, the care provider, UIHC, has not provided a good prognosis for the claimant. The UIHC, while indicating that a second opinion is a reasonable option, has not specifically recommended a second opinion for treatment purposes. If they had, the outcome would be different. A specific referral for treatment purposes, even for a second opinion, is generally considered a treatment recommendation and can be ordered through alternate care. To date, the UIHC treatment providers, however, have simply agreed with the claimant that it is a reasonable option at his suggestion.

Furthermore, at this time, since the claimant has not been seen at the Bascom Palmer Eye Institute, there is no specific treatment recommendation to compare against the UIHC treatment plan. As such, I have no basis to make an award of alternate care. This certainly presents a dilemma for the claimant in that his only option is to pay for an initial evaluation himself or to use his independent medical evaluation under section 85.39 to cover the costs of the evaluation (assuming all other conditions are met for such an evaluation). In order to require alternate care, however, this agency must find something inadequate or unreasonable about the care which has been offered. Based upon the record before me, I cannot make such a finding.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is DENIED.

Signed and filed this 10th day of July, 2019.

JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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