BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

STEVEN COLE, Claimant, vs. JMF COMPANY, Employer, and ACCIDENT FUND INSURANCE COMPANY OF AMERICA, Insurance Carrier, Defendants.	File No. 22700567.01 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, Steven Cole who filed an application for alternate medical care on June 9, 2022. Claimant appeared through attorney, MaKayla Augustine. Through counsel, defendants filed an appearance prior to hearing.

The alternate medical care claim came on for hearing on June 21, 2022. 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 of claimant's exhibits 1 through 5, described as follows:

Cl. Ex. 1	Letter from counsel to defendants	June 1, 2022
Cl. Ex. 2	Restrictions Form, Dr. Hussain	May 27, 2022
Cl. Ex. 3	Email Exchange, Claimant/Defendants	May 2022

Cl. Ex. 4	Occupational Medicine Note	September 3, 2021
Cl. Ex. 5	Proof of Service	June 2022

In addition, the administrative file was reviewed without objection by any party. There is no indication in this record that defendants have ever formally denied this claim or any portion of the claim. In fact, there is actually no first report of injury on file for this claim. A denial of liability is a required filing under 876 Iowa Administrative Code Section 3.1(2)

ISSUE

The issue presented for resolution is whether the claimant is entitled to return to the authorized treating physician.

FINDINGS OF FACT

The claimant sustained an injury which arose out of and in the course of his employment on November 17, 2020. The defendants had been directing medical treatment for this injury, at least for his right shoulder. In May 2020, Waqas Hussain, M.D., provided medical restrictions of no lifting more than 10 pounds and no overhead lifting "until next appointment." (Cl. Ex. 2) Claimant had attempted to have his left shoulder evaluated earlier in May 2022. (Cl. Ex. 3) On June 1, 2022, claimant's counsel wrote a detailed letter to defendants requesting further treatment for the left shoulder. There is no indication that defendants ever responded to this letter. On June 9, 2022, claimant filed this application for alternate medical care, properly serving defendants. The agency record reflects that defendants have not contested claimant's application.

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).

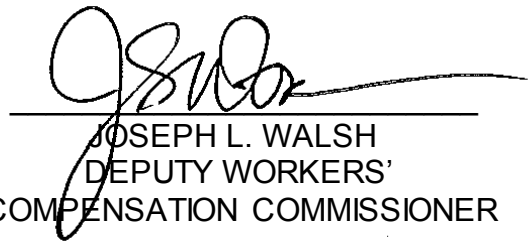
Based upon the record before me, I find that the defendants have failed to provide reasonable treatment and the claimant is entitled to return to the authorized treating physician for evaluation and treatment of his left shoulder condition.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is GRANTED. Defendants shall immediately authorize a follow-up appointment with Dr. Hussain.

Signed and filed this 21st day of June, 2022.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

MaKayla Augustine (via WCES)

Laura Ostrander (via WCES)