BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOSIAH EDWARDS, Claimant, vs. IMT TRANSPORTATION, Employer, and PRAETORIAN INSURANCE COMPANY, Insurance Carrier, Defendants.	File No. 19700176.02 ALTERNATE MEDICAL CARE DECISION HEAD NOTE NO: 2701

STATEMENT OF THE CASE

On August 16, 2019, Josiah Edwards filed an application for alternate care under Iowa Code section 85.27(4) and Rule 876 IAC 4.48. The defendants, employer IMT Transportation and insurer Praetorian Insurance Company, filed their answer on August 27, 2019.

The undersigned presided over a hearing held by telephone and recorded on August 29, 2019. The audio recording constitutes the official record of the proceeding under Rule 876 IAC 4.48(12). Edwards participated through attorney John Lawyer. The defendants participated through attorney Jeff Margolin. The record consists of Claimant's Exhibits 1 and 2.

ISSUE

The issue under consideration is whether Edwards is entitled to alternate care in the form of an orthopedic consultation as recommended by the defendants' authorized care provider on July 25, 2019.

FINDINGS OF FACT

Edwards lives in Tampa, Florida. IMT is a company based out of Iowa. Edwards sustained work-related injuries on July 25, 2019, while working for IMT in Kentucky. The

defendants have accepted liability and provided care through the Hancock County Health System in Iowa. (Exhibit 2)

The defendants' authorized provider opined that Edwards is unable to work until he receives an evaluation by an orthopedic specialist. (Ex. 2) At hearing, defense counsel stated that the nurse case manager (NCM) and Praetorian's claims adjuster have worked diligently to find an orthopedic specialist who will evaluate Edwards in Tampa, his city of residence. In a letter through counsel dated August 8, 2019, Edwards expressed his dissatisfaction with the failure to arrange care with an orthopedic specialist. (Ex. 1) Defense counsel explained that despite the defendants' efforts, they had been unable to arrange care with an orthopedic specialist in the Tampa area as of the date of hearing.

CONCLUSIONS OF LAW

"Iowa Code section 85.27(4) affords an employer who does not contest the compensability of a workplace injury a qualified statutory right to control the medical care provided to an injured employee." *Ramirez-Trujillo v. Quality Egg, L.L.C.*, 878 N.W.2d 759, 769 (Iowa 2016) (citing *R.R. Donnelly & Sons v. Barnett,* 670 N.W.2d 190, 195, 197 (Iowa 2003)). "In enacting the right-to-choose provision in section 85.27(4), our legislature sought to balance the interests of injured employees against the competing interests of their employers." *Ramirez-Trujillo,* 878 N.W.2d at 770–71 (citing *Bell Bros. v. Gwinn,* 779 N.W.2d 193, 202, 207; *IBP, Inc. v. Harker,* 633 N.W.2d 322, 326–27 (Iowa 2001)).

Under the law, the employer must "furnish reasonable medical services and supplies *and* reasonable and necessary appliances to treat an injured employee." *Stone Container Corp. v. Castle*, 657 N.W.2d 485, 490 (Iowa 2003) (emphasis in original). Such employer-provided care "must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." Iowa Code § 85.27(4).

An injured employee dissatisfied with the employer-furnished care (or lack thereof) may share the employee's discontent with the employer and if the parties cannot reach an agreement on alternate care, "the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care." *Id.* "Determining what care is reasonable under the statute is a question of fact." *Long v. Roberts Dairy Co.*, 528 N.W.2d 122, 123 (Iowa 1995); *Pirelli-Armstrong Tire Co. v. Reynolds*, 562 N.W.2d 433, 436 (Iowa 1997). As the party seeking relief in the form of alternate care, the employee bears the burden of proving that the authorized care is unreasonable. *Id.* at 124; *Gwinn*, 779 N.W.2d at 209; *Reynolds*, 562 N.W.2d at 436. Because "the employer's obligation under the statute turns on the question of reasonable necessity, not desirability," an injured employee's dissatisfaction with employer-provided care, standing alone, is not enough to find such care unreasonable. *Id.*

The defendants chose the Hancock County Health System to provide care to Edwards. On July 25, 2019, the defendants' authorized provider opined that Edwards needed an evaluation by an orthopedic specialist before he could return to work. The defendants have worked diligently to arrange the recommended care close to Edwards's home in Tampa. As of the hearing on August 29, 2019, the defendants' efforts had been fruitless.

An evaluation by an orthopedic specialist is reasonable and necessary to treat Edwards's work-related injuries. Over a month has passed since the defendants' authorized care provider recommended the evaluation. The provision of this reasonable and necessary care has not been "offered promptly," as required under Iowa Code section 85.27(4). Consequently, the defendants' failure to provide the care recommended by their authorized provider is unreasonable under Iowa workers' compensation law.

ORDER

It is therefore ordered:

1) Edwards's request for alternate care in the form of an orthopedic consultation as recommended by the defendants' authorized care provider is GRANTED.

2) The defendants shall take necessary action to promptly obtain an orthopedic consultation for Edwards.

On February 16, 2015, the Iowa workers' compensation commissioner issued an order delegating authority to deputy workers' compensation commissioners, such as the undersigned, to issue final agency decisions on applications for alternate care. Consequently, there is no appeal of this decision to the commissioner, only judicial review in an appropriate Iowa district court under the Iowa Administrative Procedure Act, Iowa Code chapter 17A.

So Ordered.

BENJAMIN G. HUMPHREY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Delivered by WCES to all parties of record.