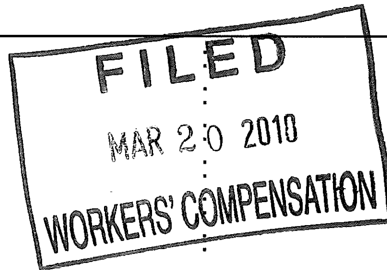
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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| JEFFREY SARCHETT, Claimant, | : | |
| vs. | : | File No. 5061435 |
| S. MOYLE MASONRY INC., Employer, | : | ALTERNATE MEDICAL CARE DECISION |
| and | : | |
| DEPOSITORS INSURANCE COMPANY, Insurance Carrier, Defendants. | : | HEAD NOTE NO: 2701 |

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, Jeffrey Sarchett.

This alternate medical care claim came on for hearing on March 20, 2018. 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 a petition for judicial review under Iowa Code section 17A.19.

The record in this case consists of Claimant's Exhibits 1 through 5; Defendants' Exhibits A and B, and the testimony of claimant.

## ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care. Claimant seeks an order requiring defendants to schedule an orthopedic evaluation within two weeks. If defendants are unable to schedule an exam by that time, claimant requests he be allowed to control care.

## FINDINGS OF FACT

Defendants accept liability for a work-related injury occurring on July 5, 2017.

On December 12, 2017 claimant underwent surgery with Peter Pardubsky, M.D. Surgery consisted of a right ulnar neurolysis with subcutaneous ulnar nerve transposition. (Exhibit 1)

On December 22, 2017, claimant returned to Dr. Pardubsky in follow-up. Claimant was prescribed medication. Claimant was given limitations to lifting up to three pounds and told to continue with gentle use of the arm. (Ex. 3)

On January 22, 2018 claimant saw Dr. Pardubsky in follow-up. Claimant had elbow discomfort. Claimant indicated relocation to North Carolina.

On January 23, 2018 a referral for scar management was sent by fax by Dr. Pardubsky. (Ex. 5)

In an affidavit, Jamilee Noble, RN indicated she is the nurse case manager for defendant insurer for claimant. She indicated she had been coordinating claimant's care since July 17, 2017. Nurse Noble indicated that when claimant notified her of his move to North Carolina, she began efforts on February 5, 2018 to locate care for claimant. (Ex. A)

Exhibit A indicates Nurse Noble contacted four different potential providers on numerous occasions, between February 6, 2018 and March 19, 2018, to establish care for claimant in North Carolina. Nurse Noble also kept in continual contact with claimant's counsel regarding efforts to secure care. Communications were exchanged by Nurse Noble with OrthoCarolina on numerous occasions to get care for claimant. As of March 19, Nurse Noble was continuing to contact OrthoCarolina to secure a specialist to evaluate claimant. On March 7, 2018, claimant was told he was authorized to treat at Concentra Charlotte as a walk-n patient at any time. (Ex. A)

Claimant testified he informed defendant employer and insurer during approximately the first week of January he was moving to North Carolina. Claimant testified he moved to North Carolina on February 8, 2018. Claimant said he moved to North Carolina to be with family.

Claimant said he was aware he could go to Concentra in North Carolina for care, but has not, as this care is a walk-in clinic and claimant believes he needs to be seen by a specialist.

Claimant testified he has not picked up anything heavier than a pen with his right arm since his surgery. He said he drives with this left hand.

## CONCLUSION OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

Iowa Code section 85.27(4) provides, in relevant part:

> For purposes of this section, the 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.

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).

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).

Claimant contends that since moving to North Carolina, defendants have not provided prompt care reasonably suited to treat his injury.

The record indicates claimant's care was relatively satisfactory until he left Iowa and moved to North Carolina. The disruption in claimant's care is due to his move out of state.

The record indicates that since February 5, 2018, defendant insurer has made numerous attempts to secure treatment for claimant. Claimant has been authorized to treat at Concentra Charlotte, but has not taken that opportunity, as this is for a walk-in clinic and not a specialist. The record indicates Dr. Pardubsky recommended that within 6-8 weeks claimant should see a specialist and should begin occupational or physical therapy. The record suggests that while defendant insurer has not been able to locate a specialist to treat claimant, claimant can get a prescription for physical or occupational therapy through Concentra Charlotte.

The difficulty with getting claimant to a specialist is due to claimant's voluntary move to North Carolina. Claimant can get a prescription for physical therapy from

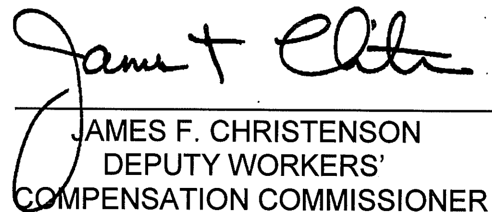
Concentra Charlotte. The record indicates defendants have been making a good faith effort to secure a specialist for claimant. Given this record, claimant has failed to carry his burden of proof the care is unreasonable.

I empathize with claimant's situation. He has not had treatment since late January of 2018. However, for the reasons detailed above, I cannot find in his favor.

ORDER

Claimant's petition is denied at this time. Claimant may re-file a petition for alternate medical care if defendants are unable to get him to a specialist within 30 days from the date of this decision. Defendants are respectfully requested to find a specialist to treat claimant by that time.

Signed and filed this 20th day of March, 2018.



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