

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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ERIC AKKERMAN,	:	
	:	
Claimant,	:	File No. 5047534.01
	:	
vs.	:	
	:	ALTERNATE MEDICAL
CITY OF DES MOINES,	:	
	:	CARE DECISION
Employer,	:	
Self-Insured,	:	HEAD NOTE NO: 2701
Defendants.	:	

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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, Eric Akkerman. Claimant appeared personally and through attorney, Christopher Spaulding. The City of Des Moines appeared through counsel, Luke DeSmet.

The alternate medical care claim came on for hearing on February 27, 2020. 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 exhibit 1 and defense exhibit A, which were received without objection. The City does not dispute liability for claimant's January 15, 2014, work injury.

ISSUE

The issue presented is whether the claimant is entitled to an order instructing the City to provide timely care.

FINDINGS OF FACT

A review of the file reflects that Mr. Akkerman filed for alternate medical care on this injury multiple times seeking medical care for his low back. The City was previously found to have abandoned medical care and was ordered to authorize care.

At hearing, claimant's counsel stated in his opening statement that the City agreed to provide treatment to the claimant, including an MRI and referral to a specialist on November 4, 2019.

Claimant testified that his low back pain is bad and he is miserable. He testified that he received his MRI sometime in December. The City contends the MRI occurred on or about December 18, 2019. (Defendant's Exhibit A) Claimant's counsel sent emails on November 4, 2019, January 4, 2020, and January 31, 2020, requesting a referral to a surgeon to review the MRI. (Claimant's Exhibit 1) Claimant testified that his pain management physician told him it was difficult to schedule with a surgeon.

Claimant filed an alternate medical care petition on February 14, 2020, asking for a consultation with a surgeon to go over the MRI results. On February 24, 2020, defense counsel indicated a referral had been scheduled with Lynn Nelson, M.D. (Def. Ex. A)

#### 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).


The care in this case was delayed, first to schedule the MRI, and then to schedule a referral to a surgeon. The MRI has now been performed and the referral is scheduled. The claimant asked for an order to timely provide medical treatment in the future. I agree with the City that a prospective order to timely provide medical treatment is not appropriate. The City is already required to provide prompt treatment by operation of law. The claimant did testify credibly he is in significant pain and needs prompt treatment.

ORDER

THEREFORE IT IS ORDERED:

The application for alternate medical care is moot. The City has authorized the requested medical care. The City is ordered to comply with the treatment it authorized prior to hearing.

Signed and filed this 28<sup>th</sup> day of February, 2020.

  
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JOSEPH L. WALSH  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Christopher Spaulding (via WCES)

Luke DeSmet (via WCES)