BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JORGE ALVAREZ a/k/a EDGAR ALVAREZ,

Claimant,

vs.

IOWA BRIDGE AND CULVERT,

Employer,

and

BITUMINOUS INSURANCE COMPANIES,

Insurance Carrier,
Defendants.

File No. 5044156

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, Jorge Alvarez.

The alternate medical care claim came on for hearing on March 30, 2017. The proceedings were digitally recorded, which constitutes the official record of this proceeding. By order filed February 16, 2015, this ruling is designated final agency action.

No witnesses testified at the telephonic hearing. Counsel for each side did present oral arguments. The record consists of claimant's exhibits 1-3; defendants' exhibits B and C. Exhibit A was a copy of the review-reopening decision issued by this agency. Administrative notice was taken of the decision and therefore, it was not necessary to mark the decision as an exhibit. Claimant alleges an injury of March 16, 2012. During the course of hearing, defendants admitted the occurrence of a work injury on March 16, 2012, and liability for the conditions sought to be treated by this proceeding.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care.

FINDINGS OF FACT

Claimant, Jorge Alvarez, sustained an injury arising out of and in the course of his employment with Iowa Bridge and Culvert on March 16, 2012. The relief claimant is seeking through his alternate medical care petition is, "Defendants are attempting to reassign care from one authorized treating physician to another, when Claimant is not dissatisfied with the current authorized treating physician." (Alternate Care Petition, page 1)

This agency issued a review-reopening decision in this underlying case on February 22, 2017. The decision notes that Dr. Galles, the authorized treating orthopedic doctor, referred the claimant to Dr. Rayburn for pain management treatment. The decision also noted that in July of 2016 Dr. Rayburn provided claimant with an injection. Dr. Rayburn had also recommended physical therapy in addition to possible other treatment such as more injections; however, this was not authorized or followed through on. (Review-Reopening Decision, pp. 4, 7) In the "Order" portion of that decision, the deputy stated the "Defendants shall provide the medical care recommended by Dr. Rayburn and Dr. Manshadi." (Review Reopening Dec. p. 11)

On March 15, 2017, claimant's counsel sent a letter to defense counsel which stated in part,

> [W]e have received the notification for Jorge to attend an appointment with Dr. Timothy Miller on March 24, 2017. Please provide the basis for why medical care is being shifted away from Dr. Rayburn. Since we were not dissatisfied with Dr. Rayburn's medical treatment, we are not in agreement that medical care should be removed from him.

(Ex. 1)

On March 16, 2017, defense counsel responded by stating, "Regarding treatment by Dr. Miller. He is a pain specialist just as Dr. Rayburn. He also practices his specialty in Ottumwa so it requires much less travel for Mr. Alvarez than going to Des Moines. In short, the decision was made for Mr. Alvarez' convenience." (Ex. 2)

Claimant acknowledges that defendants have the right to select the care, but argues that said right is not unfettered. Defendants' stated reason for transferring care if for Mr. Alvarez's convenience. Claimant states that this reason is irrelevant because claimant does not believe treatment with Dr. Rayburn is inconvenient. Rather, claimant prefers to continue treating with Dr. Rayburn; claimant is familiar with and has already treated with Dr. Rayburn. Furthermore, claimant was referred to Dr. Rayburn by the authorized treating orthopedic doctor, Dr. Galles.

Defendants argue that the review-reopening decision ordered defendants to provide treatment as recommended by Dr. Rayburn and that the offered treatment with Dr. Miller complies with that order. I find that the curricula vitae of Dr. Rayburn and Dr. Miller demonstrate that they are both qualified pain management specialists.

(Exs. B and C) Defendants had scheduled an appointment for claimant to see Dr. Rayburn on March 24, 2017, in Ottumwa but defendants cancelled that appointment at the claimant's request. (Ex. 3)

In Iowa, the responsibility of paying for the medical care comes along with the defendants' right to select the care. The statute provides that defendants do have the right to choose the claimant's medical care. If a claimant is dissatisfied with the care that is offered then the claimant must demonstrate that the authorized care is unreasonable. In the present case, I find that claimant has not demonstrated that defendants' authorization of Dr. Miller is not reasonable. Dr. Miller is located closer to the claimant and he is qualified to provide the treatment as recommended by Dr. Rayburn. At this time, there has been no showing that any treatment from Dr. Miller would be inferior to the treatment of Dr. Rayburn. However, if, after seeing the claimant, Dr. Miller has no treatment to offer to Mr. Alvarez then the claimant may have a legitimate claim for alternate medical care with Dr. Rayburn. At this time I find that the treatment with Dr. Miller in Ottumwa which is being offered by the defendants is reasonable. I find that the treatment offered by defendants is closer to claimant's home with a qualified pain management expert. I find that claimant has failed to carry his burden of proof to show that the treatment offered by defendants is unreasonable.

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. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 16, 1975).

Under Iowa law, the employer is required to provide care to an injured employee and is permitted to choose the care. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

> [T]he 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.

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 R. App. P. 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). In Pirelli-Armstrong Tire Co., 562 N.W.2d at 433, the court approvingly quoted Bowles v. Los Lunas Schools, 109 N.M. 100, 781 P.2d 1178 (App. 1989):

> [T]he words "reasonable" and "adequate" appear to describe the same standard.
>
> [The New Mexico rule] requires the employer to provide a certain standard of care and excuses the employer from any obligation to provide other services only if that standard is met. We construe the terms "reasonable" and "adequate" as describing care that is both appropriate to the injury and sufficient to bring the worker to maximum recovery.

The commissioner is justified in ordering alternate care when employer-authorized care has not been effective and evidence shows that such care is "inferior or less extensive" care than other available care requested by the employee. Long; 528 N.W.2d at 124; Pirelli-Armstrong Tire Co.; 562 N.W.2d at 437.

Reasonable care includes care necessary to diagnose the condition and defendants are not entitled to interfere with the medical judgment of its own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening Decision June 17, 1986). When a designated physician refers a patient to another physician, that physician acts as the defendant employer's agent. Permission for the referral from defendant is not necessary. Kittrell v. Allen Memorial Hospital, Thirty-fourth Biennial Report of the Industrial Commissioner, 164 (Arb. November 1, 1979) (aff'd by industrial commissioner). See also Limoges v. Meier Auto Salvage, I Iowa Industrial Commissioner Reports 207 (1981). "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).

However, defendants point out that the statue contemplates that an employer may change the authorized care so long as the employer promptly notifies the claimant. The statute states, "If the employer chooses the care, the employer shall hold the employee harmless for the cost of care until the employer notifies the employee that the employer is no longer authorizing all or any part of the care and the reason for the change in authorization." Iowa Code section 85.27(4). In the present case, the defendants have provided notice to the claimant that the authorized treating physician will be Dr. Miller. They have also notified claimant that the reason for the change is for Mr. Alvarez's convenience so he does not have to travel as far for treatment. The care offered by defendants complies with the order of the review-reopening decision.

I conclude that claimant failed to carry his burden of proof that the authorized care with Dr. Miller is unreasonable. I further conclude that there has been no showing that treatment with Dr. Miller is inferior to treatment with Dr. Rayburn. In the present case, the employer's choice of care located closer to the claimant is reasonable and at this time there is no proof that the care from Dr. Miller would be inferior to that of Dr. Rayburn. Therefore, claimant's application for alternate medical care is denied at this time.

ORDER

THEREFORE IT IS ORDERED:

Claimant's application for alternate medical care is denied.

Signed and filed this 31st day of March, 2017.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies To:

Gary B. Nelson
Attorney at Law
PO Box 637
Cedar Rapids, IA 52406-0637
gary@rushnicholson.com

Bruce L. Gettman, Jr.
Attorney at Law
PO Box 627
Cedar Falls, IA 50613
bgettman@cflaw.com

EQP/srs