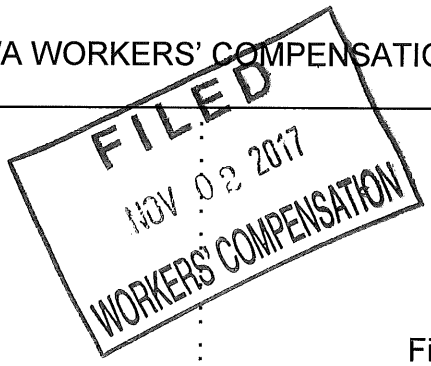
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



ALYSON L. LaMASTRES, Claimant, vs. BUNN-O-MATIC CORPORATION, Employer, and TRAVELERS INDEMNITY COMPANY OF CT., Insurance Carrier, Defendants.	File No. 5057590 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 procedures of rule 876 IAC 4.48, the "alternate medical care" rule, are invoked by claimant, Alyson LaMastres.

This alternate medical care claim came on for hearing on November 1, 2017. 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 1-6, Defendants' Exhibits A-D, and the testimony of claimant.

ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of further treatment of her shoulder condition with Jason Sullivan, M.D., Brian Crites, M.D., Jeffrey Davick, M.D., or Stephen Ash, M.D.

FINDINGS OF FACTS

Defendants admit liability for an injury occurring on July 26, 2016. Claimant testified she injured her right shoulder on July 26, 2016 while moving a box at work.

On September 15, 2016 claimant was examined by Tom Young, D.O. Claimant was assessed as having a right shoulder impingement and recommended to have physical therapy. (Exhibit 1, page 1) Claimant testified this appointment with Dr. Young was the first authorized medical care after her injury.

On July 19, 2016, claimant was in a car accident. Claimant was assessed as having left and right shoulder strains, a neck strain and abdominal contusions. (Ex. 2 and 3)

Claimant returned in follow-up with Dr. Young on October 27, 2016. Claimant indicated no improvement in her condition. Claimant was referred to William Ralston, D.O., an orthopedic specialist. (Ex. 1, p. 2)

Claimant testified she saw Dr. Ralston four times between December of 2016 and March of 2017. Claimant testified Dr. Ralston gave her a cortisone shot in her right shoulder on December 8, 2016. She said the injection did not help. Dr. Ralston referred claimant to physical therapy. Claimant said physical therapy helped, but only provided temporary relief. (Ex. 5, p. 1)

On March 20, 2017 claimant was evaluated by Dr. Ralston. Dr. Ralston noted claimant had made good progress. Dr. Ralston found claimant had reached maximum medical improvement (MMI). He released claimant to return to work with no restrictions. (Ex. 5, p. 2; Ex. A) Claimant testified she disputed she made any progress with her right shoulder while being treated by Dr. Ralston.

In an October 27, 2017 letter defendants' counsel noted claimant asked for a second opinion. Defendants had arranged for claimant to be evaluated by Kary Schulte, M.D. (Ex. B) In an October 30, 2017 letter, defendants indicated claimant had an appointment with Dr. Schulte on November 9, 2017. (E C)

Claimant testified she had loss of strength and range of motion in her right shoulder. She testified she is limited in doing housework, driving and performing her job with Wells Fargo due to her right shoulder pain.

Claimant testified she spoke with her family doctor, George Fotiadis, M.D., for recommendations for a doctor to treat her shoulder. She said Dr. Fotiadis recommended Drs. Sullivan and Davick. She said a friend recommended Dr. Crites. She said she looked on-line regarding Drs. Sullivan, Davick, Crites, and Ash and all received good ratings. She said she read some negative reviews about Dr. Schulte regarding his communication skills with patients. Claimant testified she has never treated with Dr. Schulte. She testified she has never met Dr. Schulte.

Dr. Schulte's curriculum vitae (C.V.) indicates he specializes in orthopedic surgery and sports medicine. He has authored or co-authored 14 papers regarding orthopedic surgery. His C.V indicates he has served as the sports doctor for a number of Des Moines high school and professional sports teams. (Ex. D)

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 Decision 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). In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997), 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

Claimant testified she has never met Dr. Schulte. She testified she wants to have authorized treatment with one of the four specialists named in her petition, as she has heard or read positive things about those physicians.

I appreciate claimant's concerns regarding treating with a doctor who has good communication skills. I can appreciate that she wants to treat with a physician who will treat her with respect.

However, claimant has not met Dr. Schulte. She cannot be dissatisfied with care from Dr. Schulte, as she has never received care of any kind from him. She wants to treat with the physicians named in her petition because she has read positive comments about those doctor's on-line, because she has received a few personal recommendations, and because she has read a few uncomplimentary things about Dr. Schulte on-line.

Given this record, claimant has failed to carry her burden of proof the care offered by defendants is unreasonable. Claimant's petition for alternate medical care is denied.

ORDER

THEREFORE, it is ordered that claimant's petition for alternate medical care is denied.

Signed and filed this 2nd day of November, 2017.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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