BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOSEPH BREITSPRECKER,	FILED	
Claimant,	MAR 28 2017	
vs.	WORKERS COMPENSATION	File No. 5062946
EAST SIDE JERSEY DAIRY, INC.,	:	ALTERNATE MEDICAL
Employer,	:	CARE DECISION
and	:	
STANDARD FIRE INSURANCE CO.,	:	
Insurance Carrier, Defendants.	:	HEAD NOTE NO: 2701

STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapters 85 and 17A. Claimant sustained a stipulated work injury in the employ of defendant employer on August 23, 2013. He now seeks an award of alternate medical care under Iowa Code section 85.27 and 876 Iowa Administrative Code 4.48.

The case was heard by telephone conference call on March 28, 2017. The entire hearing was recorded via digital tape, which constitutes the official record of proceedings. By standing order of the workers' compensation commissioner the undersigned was delegated authority to issue final agency action in the matter.

ISSUE

Liability is admitted on these claims. The sole issue presented for resolution is whether or not the claimant is entitled to an award of alternate medical care.

FINDINGS OF FACT

The claimant was employed by the East Side Jersey Dairy, Inc., on August 23, 2013 when he suffered an injury to the right ankle and foot. The defendants provided care including care by orthopedic surgeon Dr. Phistikul. Claimant now desires surgery as recommended by Dr. Keppler, a DPM.

CONCLUSIONS OF LAW

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.

The medical treatment provided by the defendants was not shown to be ineffective. The claimant has the burden of proving that the care authorized by the

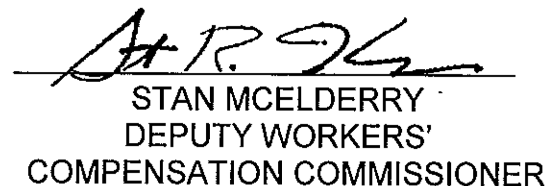
defendants has not been effective in treating his injury. The employer is permitted to choose the care provided. Defendants' conservative position does not establish unreasonableness in itself. The defendants are providing care. Nor has the care provided been shown (at this time) to be ineffective or inferior to the alternative care claimant desires.

ORDER

THEREFORE, IT IS ORDERED:

The application for alternate medical care is denied at this time.

Signed and filed this 28th day of March, 2017.



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DEPUTY WORKERS'
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