

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

NARDA MCKEITHAN,

Claimant,

vs.

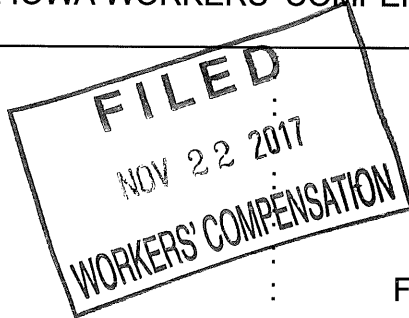
LUTHER MANOR,

Employer,

and

UNITED HEARTLAND,

Insurance Carrier,
Defendants.



File Nos. 5060142, 5060191

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, Narda McKeithan.

The alternate medical care claim came on for hearing on November 21, 2017. The proceedings were digitally recorded which constitutes the official record of this proceeding. This ruling is designated final agency action and any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code 17A.

The record consists of the testimony of claimant and Claimant's Exhibits 1 and 2 and Defendants' Exhibits A –C. Defendants submitted a brief.

The claimant moved to amend the alternate care petition in File No. 5060142 to reflect the correct date of injury of November 22, 2014. Defendants had no objection and admitted liability for an injury on that date.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of shoulder surgery in Dubuque, Iowa rather than Iowa City, Iowa.

FINDINGS OF FACT

The undersigned having considered all of the testimony and evidence in the record finds:

Defendants admitted liability for an injury occurring on November 22, 2014, File No. 5060142 and February 5, 2017, File No. 5060191.

Claimant lives in Dubuque, Iowa. Claimant has worked for Luther Manor for about five years as a CNA/CMA. On November 22, 2014 she tore her right rotator cuff; she had surgery on April 3, 2015 on her right shoulder. Claimant had surgery by David Field, M.D. in Dubuque, Iowa. Claimant testified she had to have follow-up appointments about every three weeks. Claimant said that when she returned to work her employer was not good at honoring her restrictions. Claimant was returned to work full duty in December 2014.

On February 5, 2017 claimant injured her left shoulder at work. Dr. Field performed surgery on August 16, 2017 for this injury.

Claimant was referred to Matthew Bollier, M.D. by the case manager of the defendants for evaluation of bilateral shoulder pain. Dr. Bollier examined claimant on October 23, 2017. (Exhibit A, pages 1 – 5)

Claimant testified that she did not believe that visit with Dr. Bollier went well. She described his manner with her as abrupt, that he would not let her explain her concerns, especially about the difficulty she had with her employer following restriction. Claimant said that Dr. Bollier told her he would release her to return to work two weeks after surgery. Claimant also said that Dr. Bollier told her to perform three hours of a home exercise program each night until she was would cry. Claimant said Dr. Bollier did not explain to her that this was recommended as a means to avoid some additional surgery. Claimant acknowledged that Dr. Bollier indicated the reason for this intensive home exercise program in his medical notes.

Claimant testified that she did not think she could work well with Dr. Bollier. She said that she did not believe he would listen to her concerns. An email from Mary Millang to defendants' counsel stated that the defendants could arrange transportation for the claimant to Iowa City. It also noted that Ms. Millang had never heard a patient complain about treatment or manor that claimant said she experienced with Dr. Bollier. (Ex. B, p. 1)

Claimant testified that she acknowledged that Dr. Bollier's medical qualifications are good— similar to the physicians she identified in Dubuque, whom she would like to perform surgery.

The distance between Dubuque and the University of Iowa Hospital, according to Google Maps, is about 87 miles.¹

Claimant's un rebutted testimony is that she has anxiety when traveling in the winter and has that anxiety whether she is a driver or passenger. Claimant takes anxiety medication. Claimant testified she does not travel out of Dubuque in the winter. Claimant acknowledged that she has not specifically been diagnosed with a traveling anxiety disorder.

Claimant testified she has identified two physicians in Dubuque that could perform her shoulder surgery, Stephen Pierotti, M.D. and Ryan Cloos, D.O. (Ex. 1, 2) Claimant spoke to the physicians' office and was told that both do revision surgery, both take insurance from United Heartland and both will accept patients with workers' compensation claims. Neither Dr. Pierotti nor Dr. Cloos has reviewed the claimant's medical records or examined claimant or have definitely stated they will perform an operation.

On November 23, 2017 Dr. Bollier evaluated claimant for bilateral shoulder pain. Dr. Bollier's assessment was,

Narda McKeithan is a 49 y.o. female with bilateral shoulder pain after a work-related injury on 2/05/17. She is 9 weeks s/p left arthroscopic RC repair and SAD on 8/16/17 with Dr. Field. She remains quite stiff with left shoulder ROM. We discussed the importance of discontinuing the sling and need for aggressive stretching and ROM exercises. If she does not stretch the shoulder out she may require a manipulation. Advised that she complete daily stretching exercises in addition to therapy to reach and maintain full shoulder ROM. Will continue therapy and re-evaluate in 6 weeks. If she remains stiff, consider MUA.

Right shoulder MRI from 6/12/17 was not available for review today however per radiology report she has a near full-thickness RC tear. Will request these images for our records. We discussed treatment options for the right shoulder including non-surgical versus surgical intervention. Given persistent pain and weakness it is reasonable to pursue surgery to repair the rotator cuff tear and address additional pain generators noted on physical exam, including the biceps tendon and AC joint. Recommend RIGHT shoulder arthroscopy, rotator cuff repair, distal clavicle excision, biceps tenotomy, decompression and debridement; possible LEFT

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shoulder manipulation under anesthesia. The procedure and expected post-op course were discussed at length. Following surgery she will remain in a sling for 6 weeks. She is advised not to drive while in the immobilizer to reduce risk for damaging any repairs made during surgery. Compliance with the brace improves post-operative course, reducing risk for re-injury or post-surgical complications. After Dr. Bollier visualizes the shoulder joint, a plan of care regarding physical therapy will be developed. Pain medication will be provided after surgery, which we expect to last until the first post-op appointment 10-14 days after surgery. Pain medication needs will be re-addressed at that time and we will transition to non-narcotic pain management strategies. Advised that she wean and discontinue tramadol as regular use of pain medication prior to her surgery will make post-op pain more difficult to manage.

(Ex. A, p. 4)

Dr. Bollier recommended right shoulder surgery, aggressive physical therapy and home physical therapy. He noted that claimant would be off work for approximately 14 days after surgery and would be assigned restrictions after the first post-op visit. (Ex. A, p. 5) Dr. Bollier is willing to perform surgery on December 15, 2017.

REASONING AND CONCLUSIONS OF LAW

The sole issue for determination is whether claimant is entitled to alternate medical care in the form of having her shoulder surgery performed in Dubuque, Iowa where she resides or in Iowa City, Iowa. While claimant has been evaluated by Dr. Bollier and he is willing to perform surgery, claimant asserts that there is a breakdown in the doctor/patient relationship and that care in Iowa City, with the necessary follow-up appointments and travel is unreasonable.

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).

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.

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).

“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).

Generally, care should be provided within a reasonable distance from claimant’s residence. Trade Professionals, Inc. v. Shriver, 661 N.W.2d 119, 124 (Iowa 2003) (more than 100 miles is an undue inconvenience); Schrock v. Corkery Waste Disposal, Inc., File No. 1133725, (Alt. Care Dec. June 26, 1996) (120 mile round trip excessive); Schulte v. Vocational Services of Area Residential Care, File No. 1134342, (Alt. Care Dec. September 6, 1996) (care more than 70 miles away unreasonable). A 50-mile radius is generally considered a reasonable distance to travel for treatment in workers’ compensation cases. Bitner v. Cedar Falls Construction Co., File No. 5013852 (Alt. Care Dec. September 24, 2004). However, it depends on what is reasonable under the circumstances in a particular case. See Warner v. City of Hawarden, File No. 5039478 (Arb. Dec. June 27, 2013).

Under the facts of the instant matter, defendants have designated a surgeon located at a distance of approximately 87 miles one-way from claimant’s residence. Accordingly, each trip for follow-up to Dr. Bollier will total 174 miles round-trip. There are instances where travelling to such a distance would be reasonable, i.e. evaluation by a specific specialist, care for complex or uncommon injuries, or availability of specialized equipment. None of those scenarios is at play with respect to claimant’s current need for care. While Dr. Bollier is undoubtedly qualified to treat claimant, there is no evidence he is uniquely qualified to offer treatment, nor was there evidence that there are not qualified physicians in the Dubuque area.

Offering a physician located at a distance of over 174 miles round-trip is unreasonable given there are appropriately qualified physicians located at minimal distance from claimant’s domicile in Dubuque. Claimant has anxiety that is heightened when traveling in the winter.

Finally, claimant does not have confidence that she can have an appropriate doctor/patient relationship. This was based upon her interaction with Dr. Bollier, not some generalized fear or mistrust of a physician chosen by the defendants.

I therefore find defendants have failed to provide reasonable and necessary medical treatment, and an award of alternate medical care is appropriate.

Defendants still maintain the right to choose the physician to provide care for the claimant. I am not specifically ordering defendants to utilize Dr. Pierotti or Dr. Cloos. Defendants shall provide care to the claimant in the Dubuque area.

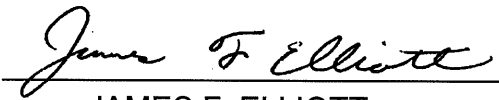
ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is granted in part.

Defendants shall promptly arrange for claimant to be seen by a qualified shoulder surgeon in the Dubuque area.

Signed and filed this 22nd day of November, 2017.


JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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