BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BRET DUDA, Claimant, vs. POLK COUNTY IOWA, Employer, Self-Insured, Defendant.	:	File No. 22003263.01 ALTERNATE MEDICAL CARE DECISION Head Note: 2701

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, Bret Duda.

This alternate medical care claim came on for hearing on September 19, 2022. 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 by petition for judicial review under Iowa Code section 17A.19.

The record in this case consists of Claimant's Exhibit A-C, and Defendant's 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 authorization for further care of his right upper extremity condition in the Rockford, Illinois area

FINDINGS OF FACT

Defendant accepted liability for a work-related injury on January 24, 2022.

On May 31, 2022, claimant was evaluated by Devin Stane, PA-C. Claimant had undergone a left carpal tunnel and Guyon's tunnel release. Claimant still had numbness and tingling on the left. Claimant had numbness in right thumb and index finger. Claimant was prescribed physical therapy. Claimant was given a five-pound lifting restriction on the left. EMG/NCV testing was recommended for the right upper extremity. (Defendant's Exhibit A)

Claimant testified that in June of 2022, he moved to Caledonia, Illinois and lives there with his wife and in-laws. He said Caledonia is a suburb of Rockford, Illinois. Claimant moved to Illinois after his left upper extremity surgery. At the time of hearing, claimant had not yet returned to work. Claimant said he is still recovering from his surgeries. Claimant said that when he returns to work, he plans on getting an apartment in Des Moines, Iowa, and commuting to his home in Caledonia on the weekends. He said he needs to continue to work for defendant Polk County so he can qualify for IPERS.

On July 29, 2022, claimant was returned to work by Ze-Hui Han, M.D. (Def. Ex. B)

Claimant testified Dr. Han performed his surgery on his left upper extremity. Claimant testified he is currently not working at Polk County. He said he turned down a temporary work assignment with Polk County. Claimant testified he had a back surgery in April of 2022. He said he is still convalescing from that back surgery and recovering from his left carpal tunnel surgery. Claimant testified defendant did authorize physical therapy for his left upper extremity in the Rockford area. He said his wife has helped him with his recovery while living at home in Caledonia.

In a July 29, 2022, email to claimant, defendant Polk County informed claimant Dr. Han released claimant to return to work with no restrictions. Claimant was to return to work the following Monday. (Def. Ex. C)

On June 14, 2022, claimant underwent EMG/NCV testing for his right upper extremity. Testing showed claimant had a right median neuropathy localized at the level of the wrist. Testing was performed by Kurt Smith, D.O. (Claimant's Exhibit C) Claimant said Dr. Han has not indicated surgery is needed for his right upper extremity. He said Dr. Smith did tell him he needed surgery on the right.

In an August 13, 2022, email, claimant's counsel requested claimant have treatment for his hand moved to within a 50-mile radius of Rockford, Illinois so he could stay with his wife during surgery and recovery. (Cl. Ex. A)

In a later email, also dated August 13, 2022, claimant's counsel again requested defendant authorize treatment of claimant's hand within the Rockford, Illinois area. The email indicates defendant was already authorizing treatment of claimant's other injuries within the Rockford area. (Cl. Ex. B)

In an August 15, 2022, email, a claims analyst for Polk County indicated claimant was allowed to have physical therapy near his wife on a temporary basis but that defendant was not transferring care for a temporary living situation. Dr. Han was the authorized physician and would determine if claimant required further surgery.

Claimant said he wants to have treatment and care for his right upper extremity in Rockford, Illinois. He said he is aware Polk County would pay mileage for him to treat with Dr. Han.

CONCLUSION OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3)(e).

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.

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. 6.904(3)(e) ; 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 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.
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> [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.

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).

This agency has routinely held that requiring a claimant to travel excessive distances to obtain medical treatment is unduly inconvenient for claimant, and is a claim properly brought under petition for alternate medical care pursuant to rule 876 IAC 4.48. Myers v. Trace, Inc., File No. 1238262 (Alt. Care Dec. November 22, 2002); Bitner v. Cedar Falls Construction Co., File No. 5013852 (Alt. Care Dec. September 24, 2004); Solland v. Fleetguard, Inc., File No. 5006970 (Alt. Care Dec. April 19, 2004); Chamness v. Richers Trucking, File No. 5030847 (Alt. Care Dec. October 15, 2009). 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); Schrock v. Corkery Waste Disposal, Inc., File No. 1133725 (Alt. Med. Care Dec. June 26, 1996) (120-mile round trip is excessive); Schulte v. Vocational Services of Area Residential Care, File No. 1134342 (Alt. Med. Care Dec. September 6, 1996) (care more than 70 miles away is 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. Med. Care Dec. September 24, 2004).

As noted above, agency precedent indicates that requiring a claimant to travel more than 50 miles for treatment is considered unreasonable care. This case involves an unusual situation. Claimant is still employed with Polk County. Following his left upper extremity surgery, claimant moved to the Rockford, Illinois area and has received physical therapy for his left upper extremity in the Rockford area. Defendant accepts liability for the injury. Testing on the right upper extremity indicates claimant has a neuropathy in his right upper extremity. Dr. Han has not given an opinion regarding care and treatment for the right upper extremity. Claimant's credible testimony is that Dr. Smith, who was authorized to test claimant, indicates claimant requires surgery. Claimant's residence in the Rockford area is not temporary, although claimant intends to return to work at Polk County.

I appreciate defendant's position in this case given the unique circumstances. However, in considering all the facts, it is found it is unreasonable for defendant to require claimant to travel 250 miles one way for treatment with Dr. Han for the right upper extremity. Claimant has carried his burden of proof he is entitled to alternate medical care consisting of treatment and care for the right upper extremity injury in the Rockford, Illinois area.

ORDER

Claimant's petition for alternate medical is granted. Defendant shall authorize and pay for care and treatment for claimant's right upper extremity injury in the Rockford, Illinois area.

Signed and filed this __19th___ day of September, 2022.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Steven Durick (via WCES)

Meghan Gavin (via WCES)

Julie Bussanmas