BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MATTHEW ALEXANDER,

Claimant,

vs.

IOWA MOLD AND TOOLING CO., INC.,

Employer,

and

TRAVELERS INDEMNITY CO. OF CT,

Insurance Carrier,
Defendants.

File No. 5055952

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. The undersigned has been delegated final agency action in this decision. Iowa Code section 17A.15(1); Order of Delegation, February 15, 2015. Any appeal of the decision will be to the Iowa District Court.

Claimant appeared through his attorney, James T. Fitzsimmons. Defendants appeared through their attorney, James M. Ballard.

The alternate medical care claim came on for hearing on September 11, 2018 at 8:30 a.m. The proceedings were digitally recorded. The recording constitutes the official record of this proceeding.

The record consists of Claimant's Exhibits 1 through 4, and Defendants' Exhibits A and B. Claimant testified on his own behalf.

Both attorneys were given the opportunity to make opening remarks. Then claimant testified.

Claimant sustained a work-related injury on January 4, 2016. He sustained a crush injury to the right wrist and a crush injury to the left small finger.

Defendants have approved treatment with Markus Bendel, M.D. at the Mayo Clinic for a spinal cord stimulator trial. The approval was given on August 28, 2018.

(Exhibit A-1) The spinal cord stimulator trial is now scheduled for October 3-10, 2018 in Rochester, Minnesota.

Previous to September 7, 2018, there were no restrictions on claimant's ability to drive. As a consequence, defendants would not reimburse claimant's spouse for transportation and meals. However, effective September 7, 2018, Dr. Bengsten restricted claimant from driving more than ten (10) miles.

Mr. Ballard admitted on the record; given claimant's inability to drive to and from Mayo Clinic, Travelers Insurance Company would reimburse claimant's spouse for "reasonably necessary transportation expenses incurred for such services," as provided by Iowa Code section 85.27(1).

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 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.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's petition for alternate care is granted.

Defendants shall allow claimant's spouse "reasonably necessary transportation expenses incurred for such services" as travel and meals when she must drive claimant to and from his appointments to medical providers.

Signed and filed this 11th day of September, 2018.

Michelle A. McGovern

MICHELLE A. MCGOVERN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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