BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CHERYL DeBERRY,

Claimant,

vs.

CHENHALL'S STAFFING SERVICES, INC.,

Employer,

and

ARCH INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 5063629

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, are invoked by claimant, Cheryl DeBerry.

The alternate medical care claim came on for hearing on June 14, 2017. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's February 16, 2015 Order, the undersigned has been delegated authority to issue a final agency decision in this alternate medical care proceeding. Therefore, this ruling is designated final agency action and any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code section 17A.

Claimant appeared at the hearing telephonically and through her attorney, Nicholas Shaull. Claimant properly served notice of this petition for alternate care on the defendant employer by certified mail. Claimant's attorney made a professional statement that he received a return receipt of service of the petition and original notice and submitted the same as exhibit 9.

Defendants failed to file an appearance or answer and failed to participate at the time of the hearing. There is no indication that anyone on behalf of defendants called this agency to provide a phone number to be called during the hearing. The file does not indicate that the notice of hearing, which was sent to the employer and insurance

carrier was returned as undelivered. No phone calls were received by the undersigned or this agency during the hearing by anyone purporting to be calling on behalf of the defendants.

The record consists of claimant's exhibits 1-10, which include a total of 10 pages. Claimant testified on her own behalf. Defendant's did not participate at hearing.

ISSUE

Whether claimant is entitled to alternate medical care consisting of treatment for claimant's right shoulder symptoms with Dr. Bries and the ORA Orthopedic Clinic.

FINDINGS OF FACT

The undersigned having considered all the evidence in the record finds:

I find that claimant properly served notice of the petition for alternate medical care on the defendant employer; the employer did not answer or otherwise plead or appear, nor provide this agency with a phone number or person to contact for the hearing, and the defendants are therefore found to be in default concerning this alternate medical care proceeding.

Claimant testified that on April 12, 2017, while employed by Chenhall's Staffing Services, she was engaged in her job, as instructed by her supervisor, which involved scraping and drilling plastic parts. At the conclusion of her shift, claimant had significant pain in her right shoulder. The next day, she woke up with extreme pain in her right shoulder, which was severe enough that she was unable to work. She advised her employer of the injury and sought care at the Genesis West Emergency Room who referred her for physical therapy. She later saw her family physician, who recommended an MRI of her right shoulder, which was obtained on May 23, 2017 and indicated claimant had sustained a SLAP tear. (Ex. 5) Claimant was then referred by her family physician to Dr. Bries at ORA and testified that she had an appointment with Dr. Bries on June 14, 2017 at 9:30 a.m., immediately after the hearing.

Claimant testified that both her family physician and her physical therapist advised her that her right shoulder injury was caused by her work activity.

Claimant desires to be evaluated and treated by Dr. Bries and the ORA Orthopedic Clinic.

At this time, claimant has yet to receive any authorized care.

Defendants did not participate and as a result there was no contrary evidence.

I find that defendant's abandonment of care and failure to provide medical care is unreasonable because the medical care or lack thereof, is not reasonably suited to treat claimant's work injury, nor is it offered promptly and it is unduly inconvenient for the

claimant. I further find that evaluation and treatment with Dr. Bries, an orthopedic physician, and the ORA Orthopedic Clinic, particularly based upon the results of the MRI and referral from claimant's family physician, is reasonable.

REASONING AND 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 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 R. App. P 14(f)(5); Bell Bros. Heating v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); 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 (Iowa 1995). 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).

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).

I found that the defendants have abandoned care and failed to provide medical care and that the same is unreasonable. I further conclude that the claimant's failure to provide medical care is not consistent with employers obligation to provide care under Iowa Code section 85.27.

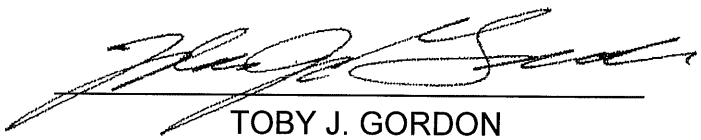
Therefore, I conclude that claimant has proven her claim for alternate medical care. I conclude that defendants should be ordered to authorize and pay for evaluation and treatment with Dr. Bries and the ORA Orthopedic Clinic.

ORDER

IT IS THEREFORE ORDERED that based upon defendant's failure to appear, answer, or otherwise plead, and defendant's failure to participate in the hearing, that defendants are in default concerning this application for alternate care.

IT IS FURTHER ORDERED that claimant's petition for alternate care is granted. Defendants shall immediately communicate with Dr. Bries and the ORA Orthopedic Clinic and provide authorization for evaluation and treatment of claimant for her right shoulder injury, and shall immediately thereafter communicate to claimant's counsel to advise that said authorization has been accomplished, such that claimant can proceed with medical treatment with Dr. Bries at his next available appointment. Given the prior delay in delivery of medical care in this matter, time is of the essence.

Signed and filed this 15th day of June, 2017.



TOBY J. GORDON
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