

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BRYAN TRIPP,

Claimant,

vs.

HORMEL FOODS,

Employer,  
Self-Insured,  
Defendants.

File No. 22700113.03

ALTERNATE MEDICAL

CARE DECISION

Head Note No.: 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, Bryan Tripp.

This alternate medical care claim came on for hearing on August 5, 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 Exhibits 1-4, and Defendants' Exhibit 1.

## ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of cervical surgery with Chad Abernathey, M.D.

## FINDINGS OF FACT

Defendants accept liability for a work-related accident on December 7, 2021.

On July 29, 2019, claimant was evaluated by Kyle Tevebaugh, PA-C with Grand River Medical Group. Claimant had pain radiating down the right upper extremity. Claimant said he had five bulging discs in his neck and requested to be sent to an orthopedic specialist. Claimant indicated he was scheduled for shoulder surgery and surgery was not completed as claimant moved to Iowa. (Defendant's Exhibit 1, pages 3-4)

On March 14, 2022, claimant was evaluated by Chad Abernathey, M.D. Claimant had a three-month history of neck, left arm and shoulder pain. An MRI showed significant degenerative changes with disc protrusions and stenosis at C5

through C7. Cervical surgery was recommended and chosen as a treatment option. (Ex. 1)

In a May 9, 2022, letter, written by claimant's counsel, Dr. Abernathey assessed claimant as having a left C6-7 radiculopathy secondary to C5-C7 disc protrusions with osteophyte formations and stenosis at C5-C-7. Dr. Abernathey was aware claimant had a 2010 dirt bike accident but opined the December 7, 2021 work injury materially and substantially aggravated his condition resulting in a need for surgery. Dr. Abernathey recommended a two-level fusion at C5-C7. (Ex. 2)

In a July 13, 2022, letter, written by claimant's attorney, Dr. Abernathey indicated he compared the cervical MRI for 2010 to the cervical MRI from 2022. Based on that comparison he opined the 2022 MRI showed an injury specific to a C6-7 injury. (Ex. 3)

In a July 13, 2022, letter, claimant's counsel requested defendant authorize surgery recommended by Dr. Abernathey.

In a July 28, 2022, letter, written by defendant's counsel, Dr. Abernathey indicated that given surgery was recommended in 2018 for claimant, it would be safe to assume there was an MRI performed in 2018. Dr. Abernathey opined a 2018 MRI would be relevant to opine regarding causation. Dr. Abernathey recommended claimant proceed with shoulder surgery until he had the 2018-2019 medical information on claimant's cervical spine. (Defendant's Exhibit 1, pp 1-2)

## CONCLUSION OF LAW

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 Rule of Appellate Procedure 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 433 (Iowa 1997), 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.

Dr. Abernathey is an authorized provider. In March of 2022, Dr. Abernathey recommended cervical surgery for claimant. Dr. Abernathey also initially opined claimant’s need for surgery was causally connected to his work injury. Most recently Dr. Abernathey opined cervical surgery should be delayed until he has medical information from 2018-2019 regarding claimant’s cervical condition, if it exists.

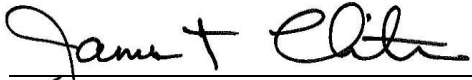
Defendant has authorized Dr. Abernathey to treat claimant. Most recently Dr. Abernathey opined he would like to review records from 2018-2019 before proceeding with claimant’s cervical surgery. Given this record, claimant has failed, at this time, to carry his burden of proof the care provided by defendant is unreasonable.

Claimant’s petition for alternate medical care is denied, at this time. Because Dr. Abernathey initially recommended a cervical procedure for claimant in March of 2022, defendant shall have 30 days from the date of this decision, to get the records at issue to Dr. Abernathey for review.

#### ORDER

Claimant’s petition for alternate medical care is denied at this time. Defendants shall have thirty (30) days from the date of this decision to get the records at issue to Dr. Abernathey for review.

Signed and filed this 5<sup>th</sup> day of August, 2022.

  
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JAMES F. CHRISTENSON  
DEPUTY WORKERS’  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Eric Loney (via WCES)

Abigail Wenninghoff (via WCES)