BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TROY TEPPERT, Claimant, vs. IMT TRANSPORT/NID, INC., Employer, and NORTH AMERICAN RISK SERVICES, Insurance Carrier, Defendants.	File No. 20001581.01 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, Troy Teppert. Claimant appeared through his attorney, Mindi Vervaecke. Defendants appeared through their attorney, Jeff Margolin.

The alternate medical care claim came on for hearing on February 18, 2021. 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.

The evidentiary record consists of Claimant's exhibit 1-2 and Defendants' Exhibits A. There were no live witnesses. Each attorney presented arguments. During the course of the hearing, defendants accepted liability for the January 2, 2020, work injury and for the left knee and back conditions for which claimant is seeking treatment.

ISSUE

The issue for resolution is whether the claimant is entitled to alternate medical care.

FINDINGS OF FACT

Claimant, Troy Teppert, sustained a work-related injury to his left knee and back on January 2, 2020. Through his petition for alternate medical care, claimant is seeking weight loss surgery, as recommended by two authorized treating physicians, before he can be treated for his work injury.

Jeffrey Neilson, M.D., has provided treatment for Mr. Teppert's left knee and has recommended weight loss before he may receive primary treatment. (Claimant's exhibit 1) Dr. Neilson "had an in-depth discussion with the patient concerning his weight and the concerns of him as a high surgical risk candidate due to his weight. Patient may need referral for weight reduction surgery." (Cl. Ex. 1, p. 8)

Mr. Teppert has also seen L. Todd Olsen, D.O. of Olsen Orthopedics. Due to Mr. Teppert's increased risk due to his body mass index, Dr. Olsen does not believe that surgical intervention is indicated. (Defendants exhibit A)

Torrence Stepteau, M.D. has provided treatment for Mr. Teppert's back. Dr. Stepteau informed Mr. Teppert his best option would be bariatric surgery to lose enough weight so at that time Dr. Stepteau would have epidural needles that could reach his epidural space. (Claimant's exhibit 2)

Defendants are in the process of locating a bariatric specialist to see Mr. Teppert. I find that the medical treatment offered by the defendants is reasonable. Dr. Neilson and Dr. Stepteau have both indicated that weight loss surgery may be an option for Mr. Teppert. Defendants are in the process of locating a bariatric specialist to see Mr. Teppert to determine if he is an appropriate candidate for bariatric surgery.

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).

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. (Emphasis in original)

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.
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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.

The commissioner is justified in ordering alternate care when employer-authorized care has not been effective and evidence shows that such care is "inferior or less extensive" care than other available care requested by the employee. Long; 528 N.W.2d at 124; Pirelli-Armstrong Tire Co.; 562 N.W.2d at 437.

Based on the above findings of fact, I conclude that the medical treatment offered by the defendants is reasonable. Dr. Neilson and Dr. Stepteau have both indicated that weight loss surgery may be an option for Mr. Teppert. Defendants are in the process of locating a bariatric specialist to see Mr. Teppert and determine if he is an appropriate candidate for bariatric surgery. Thus, as this juncture, claimant's petition for alternate medical care is denied.

ORDER

THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care is denied.

Signed and filed this ___22nd_____ day of February, 2021.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Mindi Vervaecke (via WCES)

Jeff Margolin (via WCES)