BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

APRIL JOHNSON, Claimant, vs. GRABER & MOTZER ENTERPRISES, INC., Employer, and EMPLOYERS COMPENSATION INSURANCE COMPANY, Insurance Carrier, Defendants.	File No. 22700491.01 ALTERNATE MEDICAL CARE DECISION Head Note No.: 2701

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, April Johnson. Claimant appeared through her attorney, Dillon Besser. Defendants did not file an appearance or answer, nor appear for the hearing.

Claimant's original notice and petition was filed on May 20, 2022. The petition includes a signed proof of service upon the employer and insurance carrier. Additionally, Claimant's Exhibit 7 contains certified mail receipts for both the employer and insurance carrier, indicating both parties were properly served. Notice of hearing was given by this agency to the employer and insurance carrier, via U.S. Mail on May 23, 2022. Nevertheless, defendants have not entered an appearance or responded in any way to the pending petition for alternate medical care.

The alternate medical care claim came on for hearing on June 3, 2022. 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 record consists of claimant's exhibits 1 through 7, and claimant's brief, filed on June 2, 2022. Claimant's counsel offered oral argument to support claimant's

position. No witnesses were called. There is no denial of liability on file with the agency. Given defendants' failure to appear for hearing or otherwise defend that alternate medical care hearing, they are found to be in default. All allegations of the claimant's petition for alternate medical care are accepted as accurate.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of authorization and scheduling of an orthopedic referral as recommended by the authorized treating physician.

FINDINGS OF FACT

Claimant sustained an injury to her right lower extremity/right hamstring on April 14, 2022. (Claimant's Exhibit 1, p. 1) Claimant notified the employer of the injury that day, and was seen in the emergency room. Claimant saw Angela Fults, D.O., at Marengo Family Medical clinic in follow-up on April 25, 2022. (Cl. Ex. 2, p. 2) Dr. Fults recommended an MRI, as she was concerned about a partial hamstring rupture. On May 4, 2022, Jared Nelson, M.D., reviewed the MRI, and noted "high-grade, essentially complete, tear of the right hamstring. . ." (Cl. Ex. 3, p. 3) He recommended claimant be referred for evaluation for possible surgical reduction.

On May 5, 2022, claimant's attorney contacted the owners of defendant employer, Marc Motzer and Nick Warson, via email, seeing information regarding the claims adjuster assigned to handle the case. (Cl. Ex. 4, p. 5) Mr. Motzer replied later that same day, indicating he had submitted the claim to the workers' compensation carrier and he had not yet been assigned an adjuster. On May 9, 2022, claimant's attorney again emailed Mr. Motzer to indicate that claimant's referral to orthopedics had been denied because no workers' compensation insurance information had been received. (Cl. Ex. 4, p. 4) Claimant's attorney asked Mr. Motzer for assistance in reaching out to the insurance carrier as claimant's benefits, including medical treatment, were being delayed.

Claimant's brief indicates that on May 12, 2022, claimant was contacted by a representative of the University of Iowa Hospitals & Clinics (UIHC) to let her know that the orthopedic referral had been received, and UIHC would reach out to the insurance carrier for approval. (Cl. Brief, p. 2) On May 16, 2022, claimant's attorney's office emailed the insurance carrier, and advised that claimant continued to await approval of the referral to UIHC, and asked when the appointment would be authorized. (Cl. Ex. 5, p. 6) On May 20, 2022, claimant's attorney wrote to Jacqueline Goad at the insurance company, outlining prior communications, noting the delay in care, and advising of claimant's dissatisfaction with care. (Cl. Ex. 6, pp. 7-8) That same date, claimant filed the application for alternate medical care at issue.

As noted above, defendants did not appear at hearing or file an answer. As of the date of hearing, the orthopedic referral has not been authorized.

I find that defendants are not currently authorizing any care for claimant's injury. As a result, I find that defendants are not offering reasonable medical care suited to treat the claimant's work injuries.

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 Iowa Supreme Court has held the employer has the right to choose the provider of care, except when the employer has denied liability for the injury, or has abandoned care. Iowa Code § 85.27(4); Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010).

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 14(f)(5); Gwinn, 779 N.W.2d at 209; 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).

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).

Reasonable care includes care necessary to diagnose the condition and defendants are not entitled to interfere with the medical judgment of its own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening June 17, 1986).

In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997), the supreme court held that "when evidence is presented to the commissioner that the employer-authorized medical care has not been effective and that such care is 'inferior or less extensive' than other available care requested by the employee, ... the commissioner is justified by section 85.27 to order the alternate care."

Defendants' failure to offer prompt medical care is unreasonable, and constitutes an abandonment of defendants' obligation to provide claimant medical care under Iowa Code section 85.27. Once an abandonment of care has occurred, the claimant is free to seek care on her own at defendant's cost. See West Side Transport v. Cordell, 601 N.W.2d 691 (Iowa 1999) (the court upheld the holding that the defendant employer had "lost the right to choose the care" and that "allow and order other care" language is

broad enough to include treatment by a doctor of the employee's choosing). Claimant is willing to allow defendants to authorize the care that has been recommended within the next ten (10) days.

Defendants shall immediately authorize and schedule claimant for an orthopedic evaluation, as recommended by Dr. Nelson. If defendants have not done so within ten (10) days of the date of this order, they will forfeit the right to direct claimant's medical care, and claimant will be permitted to reasonably select and direct her own medical care moving forward.

ORDER

THEREFORE, IT IS ORDERED:

The claimant's petition for alternate medical care is granted.

Defendants shall immediately authorize and schedule claimant for an orthopedic evaluation, as recommended by Dr. Nelson.

If defendants have not scheduled an appointment for claimant's orthopedic evaluation within ten (10) days of the date of this order, they will forfeit the right to direct claimant's medical care due to their abandonment of their responsibilities and rights to direct care. Claimant will then be permitted to reasonably select and direct her own medical care moving forward, and defendants shall be responsible for all reasonable charges.

Signed and filed this 3rd day of June, 2022.

JESSICA L. CLEEREMAN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Dillon Besser (via WCES)

Graber & Motzer Enterprises, Inc. (via certified and regular mail)
5100 Fountains Dr. NE, Ste. 110
Cedar Rapids, IA 52411

Employers Compensation Ins. Co. (via certified and regular mail)
10375 Professional Circle
Reno, NV 89521