

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KEITH STEEN,
Claimant,

vs.

NORFOLK IRON & METAL CO.,

Employer,

and

ZURICH AMERICAN INS. CO.,

Insurance Carrier,
Defendants.

File No. 19002613.02

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, Keith Steen. Claimant appeared personally and through attorney, Connor Mulholland. Defendants appeared through their attorney, Paul Powers.

The alternate medical care claim came on for hearing on May 26, 2020. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's 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 claimant's exhibits 1 and 2, as well as the credible, sworn testimony of the claimant. The defendants do not dispute liability for claimant's work injury.

ISSUE

The issue presented for resolution is whether the defendant's failure to authorize surgery recommended by the authorized treating physician is reasonable.

FINDINGS OF FACT

The claimant sustained an injury on or about August 23, 2019. The employer has accepted liability and directed medical treatment related for right shoulder impingement. Claimant testified that he has had physical therapy, injections and diagnostic tests related to this condition. Genesis Occupational Health is one of claimant's authorized treatment providers. On January 7, 2020, the following is documented in the Genesis records:

Patient has followed up with ORA and will undergo right shoulder arthroscopy with labral debridement subacromial decompression biceps tenodesis acromioclavicular joint resection. Surgery is pending authorization.

(Claimant's Exhibit 2, page 4)

This surgery has not been authorized as of today. Defendants requested some leniency in the event that alternate medical care is ordered given the pandemic, suggesting the surgery may be difficult to schedule.

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. Iowa Code section 85.27 (2013).

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See 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).

An employer's statutory right is to select the providers of care and the employer may consider cost and other pertinent factors when exercising its choice. Long, at 124. An employer (typically) is not a licensed health care provider and does not possess

medical expertise. Accordingly, an employer does not have the right to control the methods the providers choose to evaluate, diagnose and treat the injured employee. An employer is not entitled to control a licensed health care provider's exercise of professional judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988). An employer's failure to follow recommendations of an authorized physician in matters of treatment is commonly a failure to provide reasonable treatment. Boggs v. Cargill, Inc., File No. 1050396 (Alt. Care January 31, 1994).

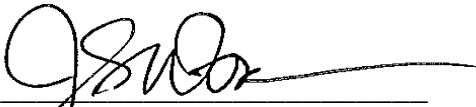
Based upon the record before me, I find the defendants' failure to authorize the medical treatment from their own authorized treatment provider is unreasonable.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is GRANTED. Defendants shall take immediate steps to authorize the surgery recommended by the authorized physicians.

Signed and filed this 27th day of May, 2020.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Connor Mulholland (via WCES)

Richard Schmidt (via WCES)

Mark Woollums (via WCES)

Paul Powers (via WCES)