BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ADAM SWANGEL, Claimant, vs. HORMEL FOODS CORPORATION, Employer, and CBCS, Insurance Carrier, Defendants.	File No. 20015525.01 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, Adam Swangel. Claimant appeared telephonically and through his attorney, Andrew Giller. Claimant's original notice and petition contains proof of service upon the employer. Claimant's Exhibit 2 contains a signed certified mail receipt, indicating delivery was made on February 19, 2021. It is found that the petition was properly served via certified mail upon the employer. Notice of hearing was given by this agency to the employer and CBCS, which appears to be the third-party claims administrator, via U.S. Mail on February 18, 2021. Additionally, claimant's attorney emailed a copy of the petition to Stephanie Newman, Claims Representative for CBCS, on February 17, 2021. (Cl. Ex. 3) Nevertheless, the 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 March 2, 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 record consists of claimant's exhibits 1 through 3 and claimant's testimony. No other witnesses were called. Counsel offered oral argument to support claimant's position. Given defendants' failure to appear for hearing or otherwise defend the 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 due to defendants' abandonment of care.

FINDINGS OF FACT

Claimant testified that he sustained a right elbow/right upper extremity injury while working for Hormel Foods. The petition states October 12, 2019, is the date of injury. Claimant testified that he reported the injury the same day to his immediate boss, as well as the safety manager. He also completed a written incident report.

Claimant testified that he was initially provided with physical therapy. The physical therapist told him that he "messed up" the tendons in his elbow, and recommended physical therapy to take place three times per week for two months. If the symptoms persisted, the therapist told claimant he would then need to see a physician for diagnostic imaging. Claimant testified that he attended 5 physical therapy sessions, after which they were cancelled with no explanation. He testified that he asked the safety manager for more treatment, but none was provided, again with no explanation.

Claimant was terminated from employment in September of 2020. At that time, he was not provided with any information regarding the status of his workers' compensation claim nor information regarding ongoing treatment. Claimant does not know whether the employer ever reported his claim to the insurance carrier. Recently, Stephanie Newman, claims representative with CBCS, took a statement from claimant via telephone. However since that time no additional treatment has 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, and have abandoned care.

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); Bell Bros. Heating, 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 his 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).

As such, defendants have forfeited any right to direct claimant's medical care. Claimant will be permitted to reasonably select and direct his own medical care moving forward.

ORDER

THEREFORE IT IS ORDERED:

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

Claimant is permitted to reasonably direct his own medical care given defendants' abandonment of their responsibilities and right to direct care. Defendants shall be responsible for all reasonable charges.

Signed and filed this 2nd day of March, 2021.

JESSICA L. CLEEREMAN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Andrew Giller (via WCES)

Hormel Foods Corporation (via regular and certified mail)
1516 South D Ave.
Nevada, IA 50201

CBCS (via email)
Attn: Stephanie Newman
snewman@cbcsclaims.com