BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TIMOTHY UERLING, Claimant, vs. EXPRESS SERVICES, INC., Employer, and AIU INSURANCE COMPANY, Insurance Carrier, Defendants.	File No. 23003025.03 ALTERNATE MEDICAL CARE DECISION Headnote: 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, Timothy Uerling.

The alternate medical care claim came on for hearing on April 12, 2023. The proceedings were digitally recorded which constitutes the official record of this proceeding. By order filed by the Commissioner, this ruling is designated final agency action.

The record consists of Claimant's Exhibits 1-2, Defendants' Exhibits A-H, and the testimony of the claimant.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of an appointment with a pulmonary specialist and/or whether there has been a breakdown in a physician/patient relationship between claimant and McFarland Clinic.

FINDINGS OF FACT

The undersigned having considered all of the testimony and evidence in the record finds:

Defendants admitted liability for an injury occurring on February 3, 2023, when claimant was exposed to hexavalent chromium in the course and scope of his employment. As a result of this, claimant alleges he has sustained injuries including, but not limited to, his pulmonary function. His symptoms include nausea, vomiting and the sensation of feeling physically ill.

He requested a pulmonary appointment previously as can be seen in File No. 23003025.02 wherein claimant requested care and filed an alternate care petition to obtain said care. The parties came to an agreement that defendants would make every practicable effort to place claimant on the schedule of a pulmonary specialist within two weeks of the order of March 16, 2023.

This was not done. Instead, claimant was scheduled for blood to be drawn on or about March 1, 2023. It was the implication during the alternate care hearing that test results on claimant's blood were a prerequisite for a pulmonary specialist consult, however, that appears to be incorrect as claimant ultimately has not had his blood drawn but has had a pulmonary function test.

On March 1, 2023, claimant presented to the McFarland Clinic lab for his blood to be drawn. He testified that the staff was not able to draw blood for at least 18 minutes and that they inserted a needle in at least three different places. The test was suspended due to claimant feeling ill. The timeline signed off on by Dr. Lacreasia Wheat-Hitchings, claimant's authorized treating physician, says that claimant did not comply with the arrangements to have his blood drawn on March 1, 2023. (See Defendants' Exhibit H) The evidence supports a finding that claimant did attend the appointment to have his blood work drawn but that the appointment could not be completed due to the inability of the staff to draw blood. Therefore, claimant did comply with the arrangements to have his blood drawn on March 1, 2023.

Claimant was contacted the following day by McFarland Clinic to reschedule the blood work appointment. Claimant indicated he would return to complete the testing but has not done so.

Claimant had an appointment on March 7, 2023, but was not able to make the appointment due to feeling ill. He called the day prior, on March 6, 2023, to reschedule. This appears to be corroborated by Exhibit 2 which shows a charge note on March 6, 2023. (Claimant's Exhibit 2) He recalls rescheduling this appointment for March 9, 2023.

There was an appointment for a pulmonary function test on March 9, 2023, but claimant did not appear for the test due to illness again.

He then received a text message that he had an appointment on March 16, 2023. He attempted to call many times to change this as he was out of town and could not attend the visit. He informed them that the next appointment was set for March 23, 2023.

Exhibit B sets out an appointment for a pulmonary function test on March 16, 2023, at 1:15 p.m. (Ex B) Sedgwick, the third-party administrator, authorized a CT scan on March 9, 2023, and the authorization was sent to a third party to schedule. (Ex C) A work status form dated March 1, 2023, sets claimant's next appointment for March 7, 2023. (Ex 1) A work status form dated March 9, 2023, referred claimant for a CT scan and set the next appointment date in a week. (Ex 3)

Claimant's next appointment was then scheduled for March 21, 2023. That day there were two appointments; one to complete his pulmonary testing, the other to see Dr. Wheat-Hitchings.

On March 21, 2023, claimant completed the pulmonary function testing. He felt ill and went home. He did not meet with Dr. Wheat-Hitchings, but did call into Dr. Wheat-Hitchings' office to reschedule. At that time he was told that Dr. Wheat-Hitchings would no longer see him and he would need to make alternative arrangements for medical care.

On March 21, 2023, Dr. Wheat-Hitchings discharged claimant for failure to participate in the recommended medical management including blood work and failure to appear for scheduled appointments and testing. Despite this, claimant did appear for the March 23, 2023, appointment and a CT was conducted.

Based on the foregoing, it is found that claimant had medical appointments scheduled for March 7, March 9, March 16, and March 21. He was only able to complete the pulmonary function test on March 21, and thus Dr. Wheat-Hitchings discharged claimant from her care due to missed appointments and noncompliance. Claimant asserts that he was unaware of the March 16 appointment but would not have attended because he was out of town. For the other dates, claimant maintains he was ill. To date, claimant has not completed his blood work.

At the hearing, defendants' counsel averred McFarland Clinic would continue to treat claimant and claimant testified that the care received from McFarland Clinic was satisfactory.

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-reopen October 16, 1975).

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. 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 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" 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.

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 Number 694639 (Review-Reopening Decision June 17, 1986).

When defendants accept responsibility for a workplace injury, the law allows them to direct care. Alternate care is only appropriate if the available care is inferior or less extensive than that proffered by the employer. In this case, defendants are offering claimant care from the McFarland Clinic and Dr. Wheat-Hitchings. Claimant testified that he was satisfied with that care. The care preferred by defendants is appropriate and reasonable. There appears to be no dispute. Claimant is entitled to ongoing medical care for his accepted work-related condition including but not limited to a consultation with a pulmonary specialist.

While it is concerning that claimant's condition is such that medical appointments are difficult for him to meet, if he does not attend the medical appointments and he does not complete the required testing, it is not likely claimant will be able to obtain the medical care needed.

ORDER

Therefore it is ordered:

The claimant's petition for alternate medical care is granted in part and denied in part. Claimant shall be seen by a pulmonary specialist, but defendants remain entitled to direct care.

Signed and filed this __14th___ day of April, 2023.

JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

MaKayla Augustine (via WCES)

Caroline Westerhold (via WCES)