BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LAURA THOMPSON, Claimant, vs. CARE INITIATIVES, INC. d/b/a ODEBOLT SPECIALTY CARE, Employer, Self-Insured, Defendant.	:	File No. 22010255.01 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, Laura Thompson.

The alternate medical care claim came on for hearing October 24, 2022. 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-D, and the testimony of the claimant.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of care closer to her residence in Vail, Iowa.

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 August 7, 2022 to claimant's low back. On or about August 7, 2022, claimant was working as a CNA for defendant employer. While claimant was working, a patient weighing approximately 500 pounds slipped out of a Hoyer lift. (Testimony; CE 1:1) Claimant prevented the patient from falling to the floor and lifted the patient onto the bed. In the process of this, claimant suffered an injury to her back.

She began treatment the following day with Dr. Vande Vegte, a family medicine doctor located in Ida Grove, Iowa. Dr. Vande Vegte is located about ten minutes from Vail. Under Dr. Vande Vegte's care, claimant was prescribed physical therapy and medications, however claimant continued to have ongoing symptomatology. (See CE 1:2-4) During the October 5, 2022, visit, Dr. Vande Vegte documented that claimant had been working 6 hours a day with a 20-pound weight lifting restriction. (DE B:6) Per the doctor's notes, claimant was doing much better than three weeks prior. She was taking hydroxyzine as needed and had been discharged from physical therapy. Id. At the claimant's request, claimant's restrictions were revised for her to work 8 hours a day and lift up to 30 pounds. Id. She was to push, pull and bend as tolerated. Id. The hope was that she would be back to regular duty and weaned off the nighttime Tylenol with codeine after the next visit. Id.

She underwent an MRI which showed degenerative spine changes along with right paracentral disc herniation at L5-S1 with extruded disc material obliterating the right lateral recess, prominent posterior displacement right L5 nerve root and appearance of impingement right S1 nerve root still within the thecal sac. (DE C:8) Claimant was scheduled to have the MRI results interpreted by Dr. Vande Vegte when the defendants cancelled the appointment and instructed claimant to attend a medical visit with Dr. Martin, an occupational medicine doctor. (DE A:5)

Claimant refused as she did not want to transfer care to Sioux City where Dr. Martin was located. (D A:5) Defendants offered to send claimant to an orthopedic surgeon instead of Dr. Martin in either Ames or Carroll, Iowa. (DE A:4) Claimant preferred that any referrals for future care came from Dr. Vander Vegte. During testimony, claimant admitted that she was afraid of surgery and had relayed this to Dr. Vander Vegte who was observing claimant's preference for conservative care.

Upon obtaining the MRI results, defendants wanted claimant to be seen by a neurosurgeon. (DE A:4) In further correspondence, defendants informed claimant that Dr. Greenwald, the orthopedist located in Carroll, was refusing to see claimant. (DE A:3) Instead, claimant could be seen by Dr. Espiritu in Sioux City. (DE A:3)

She did return to Dr. Vander Vegte on October 19, 2022, who refilled claimant's Tylenol with codeine, added Tramadol, imposed new work restrictions of no lifting greater than 10 pounds, no pulling and no pushing. (DE C:9) She was also not to work more than 2 days in a row with at least 1 day off. (DE D:9). Dr. Vander Vegte prescribed an epidural flood for "some relief." Id. Initially, this appeared to not be approved but at the hearing, defendants stated that the injection would be authorized.

Claimant's condition at the most recent medical visit was worse than the October 5, 2022, visit. Dr. Vander Vegte did not provide a referral and claimant did not wish to travel to a specialist, arguing that to remain with her family practice doctor, was reasonable.

At hearing and in the email exchange, claimant also maintained that Dr. Greenwald's refusal was due to a lack of a referral. Claimant also mentioned that there are closer neurosurgeons in Ames, an hour away, or Council Bluffs or Omaha. Council Bluffs and Omaha, however, are approximately the same distance—an hour and a half—than Sioux City.

Claimant testified that driving or riding in a car longer than thirty minutes aggravated her back condition. Claimant is also concerned that her car may break down during the longer drive to Sioux City.

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).

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.

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, June 17, 1986).

Appeal of this decision, if any, would be by judicial review pursuant to Iowa Code section 17A.19.

Claimant requests four things. First, that Dr . Vande Vegte be continued as the authorized treating physicians. Second, that the epidural flood injection treatment be authorized, and third that the scheduled follow-up appointments with Dr. Vande Vegte be permitted for November 2, 2022, and fourth, that defendants must find an orthopedic or neurosurgical treater within 50 miles of claimant's residence.

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 more extensive, specialized care to the claimant whose medical condition appears to have worsened under the treatment of family physician, Dr. Vande Vegte. On October 5, 2022, claimant's condition had improved. Her work restrictions were modified to allow her to work more hours and more days a week with lower limitations on lifting. Dr. Vande Vegte had hoped to see claimant back to regular duties after the next appointment.

However, that hope was not met. Instead, claimant's medications were increased. Her work restrictions became more severe. She was limited to working only two days in a row with one full day off. Her lifting restrictions were tightened from 30 pounds to 10 pounds. Injection therapy was introduced. Her MRI showed signs of impingement.

It is not unreasonable for the defendants to direct claimant to different specialists for additional care. It is also not inferior or less extensive care than what the claimant desires. Thus, claimant's desire for her care to remain with Dr. Vande Vegte does not meet the standard to justify interfering with the defendants' right to control care.

If defendants were terminating care with Dr. Vande Vegte while not offering other care, the care proffered by defendants would be inferior or less extensive. However, that is not the case here. Claimant's friendly feelings toward Dr. Vande Vegte are not sufficient justification to remove defendants' right to control the care of an accepted work injury.

Claimant has not met her burden to justify the ordering of Dr. Vande Vegte as her main authorized treating physician. Defendants have agreed to authorize the ESI which presumably must occur during the follow-up appointments thus it is found that the claimant's requests for the ESI and appointment on November 2, 2022, are moot.

The final issue is whether the medical appointment with Dr. Espiritu in Sioux City is inferior due to the distance from claimant's home and work place. Claimant testified without rebuttal that any distance over 30 minutes in a car is uncomfortable. She also testified that Dr. Greenwald, an orthopaedic specialist who is available in Carroll, Iowa, once a month, is available to treat claimant if there was a referral. Claimant, through her counsel, appeared to agree to see physicians in either Council Bluffs and/or Omaha, Nebraska.

This agency has routinely held that requiring a claimant to travel excessive distances to obtain medical treatment is unduly inconvenient for claimant, and is a claim properly brought under petition for alternate medical care pursuant to rule 876 IAC 4.48. Myers v. Trace, Inc., File No. 1238262 (Alt. Care November 22, 2002); Bitner v. Cedar Falls Construction Co., File No. 5013852 (Alt. Care September 24, 2004); Solland v. Fleetguard, Inc., File No. 5006970 (Alt. Care April 19, 2004); Chamness v. Richers Trucking, File No. 5030847 (Alt. Care October 15, 2009). Generally, care should be provided within a reasonable distance from claimant's residence. Trade Professionals, Inc. v. Shriver, 661 N.W.2d 119, 124 (Iowa 2003); Schrock v. Corkery Waste Disposal, Inc., File No. 1133725 (Alt. Care June 26, 1996) (120 mile round trip excessive); Schulte v. Vocational Services of Area Residential Care, File No. 1134342 (Alt. Care September 6, 1996) (care more than 70 miles away unreasonable). A 50-mile radius is generally considered a reasonable distance to travel for treatment in workers' compensation cases. Bitner v. Cedar Falls Construction Co., File No. 5013852 (Alt. Care September 24, 2004).

There are instances where traveling such a distance would be reasonable, including, but not limited to an evaluation with a specific specialist, care for complex or uncommon injuries, or the availability of specialized equipment. See Dorothy Ickes v. Great River Med Center, File No. 5063028. The defendants argue that claimant should be seen by a spine specialist.

While Dr. Espiritu is qualified to treat claimant, there is no evidence he is uniquely qualified to offer treatment, nor was he specifically designated by another authorized provider. Defendants had offered care in Carroll or Ames previously.

At this time, the record supports a finding that if Dr. Greenwald would see claimant, it would be better for her medical condition which limits her to driving or riding more than 30 minutes without discomfort. If Dr. Greenwald continues to object to seeing claimant then a different medical provider in Ames would appear to be less of an undue burden on claimant. Should those circumstances change, the parties are always able to seek clarification through the alternate medical care process.

ORDER

THEREFORE IS ORDERED:

The claimant's petition for alternate medical care is granted in part and denied in part.

Per agreement of the parties, claimant shall be allowed to return to Dr. Vande Vegte for the ESI and follow up for the ESI.

Defendants shall be allowed to continue directing care for the claimant but within fifty (50) miles of Vail, Iowa, and if no specialist can be found to agree to see claimant within fifty (50) miles of Vail, Iowa, then Ames, Iowa, is a reasonable location.

Signed and filed this 26th day of October, 2022.

JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Jennifer Zuppp (via WCES)

Joni Ploeger (via WCES)