

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CHAD HELMERS,

Claimant,

VS.

WORTH COUNTY,

Employer,

and

IMWCA,

Insurance Carrier,
Defendants.

File No. 20001743.01

ALTERNATE MEDICAL

CARE DECISION

Head Note: 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, Chad Helmers. Claimant appeared personally and through his attorney, Mindi Vervaecke. Defendants appeared through their attorney, Jane Lorentzen.

The alternate medical care claim came on for hearing on August 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 evidentiary record consists of Claimant's exhibits 1-3, Defendants' Exhibits A-C, and claimant's testimony during the telephonic hearing. During the course of the hearing defendants accepted liability for the February 3, 2020 work injury and for the back condition that for which claimant is seeking treatment.

ISSUE

The issue for resolution is whether the claimant is entitled to alternate medical care with the Twin Cities Spine Center.

FINDINGS OF FACT

Claimant, Chad Helmers, sustained a work-related injury to his back on February 3, 2020. Defendants have authorized and provided treatment for Mr. Helmers' back. Through his petition for alternate medical care, Mr. Helmers seeks treatment with Twin Cities Spine Center.

Mr. Helmers has received authorized treatment with Lynn M. Nelson, M.D., of Des Moines Orthopaedic Surgeons, P.C. in Des Moines. Dr. Nelson has reviewed or ordered several MRIs and x-rays of Mr. Helmers' back. Dr. Nelson has prescribed physical therapy, a variety of medications, and work restrictions. He also performed two operations on Mr. Helmers' back. Mr. Helmers testified that he only received temporary relief from the treatment. Since the February 3, 2020 work injury, his symptoms have increased. (Testimony)

Dr. Nelson saw Mr. Helmers on June 17, 2021. Mr. Helmers reported continued right buttock and posterior thigh and leg pain which was gradually worsening. Dr. Nelson's impression was right buttock and lower extremity pain with severe complaints. Dr. Nelson noted that the most recent scan did not demonstrate a large HNP. The scan did show some degree of right sided L5 foraminal stenosis. Dr. Nelson noted that Mr. Helmers' pain complaints and functional limitations are considerably greater than one would anticipate given his scan findings. Dr. Nelson recommended a right L5 nerve root injection for diagnostic and therapeutic purposes. If the injection did not provide at least temporary relief, then Dr. Nelson would be skeptical that the L5 foraminal stenosis is clinically significant. Mr. Helmers testified that he is not happy with Dr. Nelson's treatment and Dr. Nelson did not answer his questions during his last appointment. (Def. Ex. C)

On June 24, 2021, Mr. Helmers advised the defendants that he would not be attending the appointment for the authorized injection or the follow-up with Dr. Nelson. Mr. Helmers felt Dr. Nelson had done nothing to alleviate his pain. He felt Dr. Nelson's treatment plan was not reasonable and he advised defendants he was going to seek a second opinion on his own. (Cl. Ex. 1, p. 1)

Because Mr. Helmers was not happy with the treatment he received from Dr. Nelson, he conducted his own research for other treatment options. On his own, Mr. Helmers went to the Twin Cities Spine Center for a second opinion. (Testimony; Alternate Medical Care Petition)

On July 16, 2021, claimant advised defendants that he had been to the Twin Cities Spine Center. Two doctors at the Center reviewed his MRIs and spent two hours talking to him. According to an email from claimant's counsel to defense counsel, Dr. Shafa advised Mr. Helmers that the injection recommended by Dr. Nelson will lessen his pain for a short period of time, but he needs a fusion for his pain. The surgery is scheduled with the Twin Cities Spine Center on September 13, 2021. Evidently, this is the same surgery Dr. Nelson originally recommended, but then at the last appointment

Dr. Nelson decided to recommend injections instead. (Cl. Ex. 2, p. 1; Cl. Ex. 3, p. 1; Testimony)

At the alternate care hearing, Mr. Helmers testified that he does not want to attend a second opinion appointment that defendants recently scheduled for him with Dr. Schmitz at Iowa Ortho on September 1, 2021. Although he does not want to attend, Mr. Helmers will attend if he is required. He does not want to attend the second opinion appointment because he is really confident in the Twin Cities Spine Center. (Testimony)

Unfortunately, there are not any records in evidence from the Twin Cities Spine Center. The evidentiary record does not contain any first-hand information regarding the specific surgery that has been recommended or the information that the surgical recommendation was based on. The Twin Cities Spine Center is located in Minnesota. Mr. Helmers testified that Des Moines is closer to him geographically than the Twin Cities Spine Center. Mr. Helmers does not know if any of these doctors are licensed to practice in Iowa. Mr. Helmers does not know if it is anticipated that he will be physically capable of returning to his prior job with the defendants after he has recovered from the recommended surgery.

Mr. Helmers has not received any long-term relief from the treatment he has received thus far from Dr. Nelson. Mr. Helmers would prefer to treat with Twin Cities Spine Center. Defendants have and continue to authorize treatment with Dr. Nelson for Mr. Helmers back. Most recently, Dr. Nelson recommended a right L5 nerve root injection for both diagnostic and therapeutic purposes. (Def. Ex. C) In addition to authorizing continued treatment with Dr. Nelson, defendants have also scheduled an appointment for a second opinion with Dr. Schmitz at Iowa Ortho. While I recognize that Mr. Helmers would prefer to treat with the Twin Cities Spine Center, I find that the treatment currently offered by the defendants is reasonable.

REASONING AND CONCLUSIONS OF LAW

Under Iowa law, the employer is required to provide care to an injured employee and is permitted to choose the care. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

[T]he employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. . . . The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

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.

[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.

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).

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 Decision June 17, 1986).

In the present case, defendants have and continue to authorize treatment with Dr. Nelson for Mr. Helmers back including the recommended right L5 nerve root injection for both diagnostic and therapeutic purposes. (Def. Ex. C) In addition to authorizing continued treatment with Dr. Nelson, defendants have also scheduled an appointment for a second opinion with Dr. Schmitz at Iowa Ortho. Clearly, Mr. Helmers would prefer to treat with Twin Cities Spine Center; however, preference is not the test in an alternate care proceeding. Under Iowa law, the employer has the right to select the care. If claimant is dissatisfied with that care, he has the burden of proving the authorized care is unreasonable. Based on the above findings of fact, I conclude

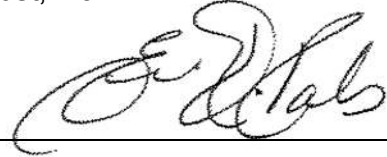
claimant has failed to carry his burden of proof to demonstrate by a preponderance of the evidence that the care offered by defendants is unreasonable.

ORDER

THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care is denied.

Signed and filed this 3rd day of August, 2021.

A handwritten signature in black ink, appearing to read 'Erin Q. Pals', is written over a horizontal line.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Mindi Vervaecke (via WCES)

Jane Lorentzen (via WCES)