BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MICHAEL CARLILE, Claimant, vs. COURTESY NISSAN, INC. Employer, and TECHNOLOGY INSURANCE COMPANY, Insurance Carrier, Defendants.	File No. 1629865.01 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, Michael Carlile.

The alternate medical care claim came on for hearing on October 21, 2019. The proceedings were digitally recorded which constitutes the official record of this proceeding. This ruling is designated final agency action and any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code 17A.

The record consists of Claimant's Exhibit 1, Defendants' Exhibits A – C and testimony of claimant.

Defendants advised the undersigned that the correct name for the employer was Courtesy Nissan, Inc. and the correct insurance carrier is Technology Insurance Company. The parties agreed the pleadings should be amended to reflect the correct name for the defendants. I granted the request to change the names of the defendants to show the real parties in interest.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of whether claimant is entitled to continued care with Ryan

Taylor, M.D. at the Genesis Pain Center and whether Dr. Taylor can perform a CESI at C 6–7 for diagnostic and therapeutic purposes.

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 January 27, 2017. Claimant was seen by occupational physician Rick Garrels, M.D. for a follow up in October 2017. (Exhibit A, page 1) Dr. Garrels noted that claimant had two injections with Dr. Meloy but they, "did not do anything." (Ex. A, p. 1) Claimant was waiting for an appointment with a spine surgeon at that time.

Claimant has had carpal tunnel surgery on August 10, 2017 and left shoulder surgery on May 16, 2018. (Ex. 1, p. 1) Tobias Mann, M.D. performed both the carpal tunnel surgery as well as the left shoulder surgery.

Dr. Mann referred claimant to Dr. Taylor for pain management. (Claimant's testimony) Claimant has seen Dr. Taylor since the fall of 2018. Claimant last saw Dr. Taylor on July 1, 2019. Dr. Taylor told claimant that he would like to provide claimant a left C6-7 CESI for both diagnostic and therapeutic purposes. (Ex. 1, p. 2)

When Dr. Taylor made this referral defendants had Dr. Garrels examine claimant. On August 6, 2019 Dr. Garrels found claimant at maximum medical improvement and had no further care to offer claimant. (Ex. A, p. 5) On August 19, 2019 Dr. Garrels emailed the defendants' claim adjuster, "Given the chronicity of the condition and the pattern of symptoms I do not feel the injection will do anything." (Ex. B, p. 7) Based upon the opinion of Dr. Garrels, defendants informed claimant they would not authorize the injections recommended by Dr. Taylor. (Ex. C, p. 8)

On September 24, 2019 Dr. Taylor responded to a letter from claimant's attorney as follows:

> 3. Are you requesting the left C6-7 CESI for both diagnostic and therapeutic purposes related to the work related injury?
>
> Yes: _x___ No: _____
>
> 4. Would you like Mr. Carlile to follow with you after the left C6-7 CESI to determine additional appropriate care related to the work related injury?
>
> Yes: __x__ No: _____

(Ex. 1, p. 2)

Claimant testified that he wants to pursue the treatment recommended by Dr. Taylor.

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. v. Reynolds, 562 N.W.2d 433 (Iowa 1997), 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" 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 their own treating physician. Pote v. Mickow Corp., File No. 694639 Review-Reopening Decision June 17, 1986).

Dr. Taylor was an authorized treating physician. He is a pain specialist. Dr. Taylor has recommended CESI for both diagnostic and treatment reasons. Dr. Garrels has nothing further to offer claimant. Dr. Taylor, a specialist in pain management, wants to do diagnostic and therapeutic injections.

The defendants are interfering with the medical judgment of their own authorized treating physician. Dr. Garrels has nothing further to offer claimant. Dr. Taylor, the specialist, wants to perform further diagnostics and treatment for the claimant. Certainly Dr. Taylor, who has been providing treatment since the fall of 2018, is aware of claimant's prior treatment.

I find that the defendants are not providing reasonable care. I also find that the defendants are interfering in the treatment of their authorized treating physician. As the defendants are not providing reasonable care, the claimant's application for alternate medical care is granted.

ORDER

THEREFORE, IT IS ORDERED:

The claimant's petition for alternate medical care is granted. Defendants shall authorize Dr. Taylor to perform the CESI injections and additional follow up care.

Signed and filed this 21st day of October, 2019.

James F. Elliott

JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Andrew Tice (via WCES)
Nicholas Pothitakis (via WCES)