BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOHN CHANEY, Claimant, vs. BRIDGESTONE AMERICAS, INC., Employer, and OLD REPUBLIC INS. CO., Insurance Carrier, Defendants.	File No. 22002420.03 22701098.03 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, John Chaney. Claimant appeared only through attorney, Matthew Dake. Defendants appeared through their attorney, Abigail Wenninghoff.

The alternate medical care claim came on for hearing on February 2, 2023. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's 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 5 and defense exhibits 5 through 7, which were received without objection. The defendants do not dispute liability for claimant's February 9-10, 2022, work injuries.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care.

FINDINGS OF FACT

The claimant, John Chaney, sustained workplace injuries on February 9 and 10, 2022. The injuries resulted in symptoms in his neck, shoulder, arm, as well as symptoms in the brachial plexus region near his shoulder. The defendants have directed reasonable medical care throughout the majority of his treatment. Mr. Chaney resides in the Cedar Rapids area, although his exact address is not in the record.

In October 2022, two different authorized treating physicians recommended that Mr. Chaney be evaluated by a "brachial plexus expert". (Claimant's Exhibits 1 and 2) On October 10, 2022, Timothy Vinyard, M.D., documented the following:

> I told the patient as a shoulder specialist, I really do not think that his symptoms are coming from his shoulder. . . . He does have an EMG evidence of damage to his brachial plexus. I really think that we need to get him to a brachial plexus specialist.

(Cl. Ex. 1, p. 3)

Chad Abernathey, M.D., who performed a low back surgery on Mr. Chaney (for this injury as well), offered a similar opinion on October 31, 2022. "I advised him that this [brachial plexopathy] does not fall within my area of expertise." (Cl. Ex. 2) He ultimately did not make any referral to a specific physician or clinic. Both of those physicians were authorized providers and could have recommended a specific treatment provider. Moreover, there is very little context in this record for what qualifies a physician as a "brachial plexus expert."[1]

The parties jointly agreed upon an effort to have Mr. Chaney seen by the Mayo Clinic in Rochester, Minnesota, which would have caused claimant significant medical travel. This effort fell through when Mr. Chaney told his attorney that the Mayo Clinic would not schedule him for an appointment. With no specific referral from any of the authorized treating physicians, both the defendants and the claimant began performing independent searches for a viable "brachial plexus expert."

In January 2023, defendants located a physician in Galena, Illinois, who apparently agreed to see Mr. Chaney. On January 9, 2023, defense counsel wrote to claimant's counsel, noting that they had authorized the Mayo Clinic. (Def. Ex. 5) On January 13, 2023, defense counsel wrote back, notifying she had arranged an appointment with an orthopedic surgeon, "Dr. Kenneth Schiffman on January 17, 2023 …" (Def. Ex. 6) Claimant's counsel responded on January 16, 2023 explaining that the Mayo Clinic was not an option. (Cl. Ex. 4) He also explained that he had not seen her letter notifying him of the appointment until that day, January 16, 2023. He stated that Galena, Illinois was too far for Mr. Chaney to travel for a physician that he

[1] The brachial plexus is a network of nerves that extends from the spinal cord through the neck over the first rib and into the armpit.

knows nothing about. (Cl. Ex. 4, p. 2) He stated claimant would reconsider if defendants would provide further information about Dr. Schiffman's qualifications and expertise in treating brachial plexus injuries. (Cl. Ex. 4, p. 2) In that same letter, claimant's counsel informed defendants that claimant had communicated with a physician in the Cedar Rapids area, Stanley Mathew, M.D., who was willing to treat the claimant's brachial plexus condition. At hearing, claimant submitted a January 6, 2023, letter signed by Dr. Mathew, wherein Dr. Mathew, a physiatrist, confirmed that he has treated brachial plexus injuries in the past. (Cl. Ex. 3)

Claimant filed his alternate medical care petition on January 20, 2023. Both parties submitted the case on the record and no testimony was secured from any witnesses. Claimant's counsel submitted that claimant resides 80 miles from the treatment offered in Galena, Illinois. Defense counsel submitted that it is only 70 miles.

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. Iowa Code section 85.27 (2013).

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See 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).

An employer's statutory right is to select the providers of care and the employer may consider cost and other pertinent factors when exercising its choice. Long, at 124. An employer (typically) is not a licensed health care provider and does not possess medical expertise. Accordingly, an employer does not have the right to control the methods the providers choose to evaluate, diagnose and treat the injured employee. An employer is not entitled to control a licensed health care provider's exercise of professional judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988). An employer's failure to follow recommendations of an

authorized physician in matters of treatment is commonly a failure to provide reasonable treatment. Boggs v. Cargill, Inc., File No. 1050396 (Alt. Care January 31, 1994).

This is a somewhat unusual case. Two authorized physicians have recommended that Mr. Chaney be evaluated for treatment purposes with expertise in brachial plexus injuries. None of the treating physicians have identified or referred the claimant to a specific physician meeting that qualification. The parties did jointly agree to allow the claimant to seek treatment at Mayo Clinic, which did not work out.

Based upon the record before me, I have no idea whether there are any brachial plexus experts in the Cedar Rapids area. Unfortunately, there was poor communication between opposing counsel in December 2022 and January 2023, when it was determined that Mayo Clinic was not viable. Both parties independently sought out a physician with brachial plexus expertise, having different ideas of what that phrase means.

Defendants sought an orthopedist and located one in Galena, Illinois, which is somewhere between 70 and 80 miles from claimant's house. Based upon the record provided, which is admittedly limited by statute, it does not appear the defendants provided any information to Mr. Chaney about this physician prior to scheduling the appointment. At hearing, defense counsel stated that this physician is affiliated with a prestigious college in Illinois and has expertise in brachial plexus injuries. Claimant's counsel argued this was the first time this information was communicated. In the meantime, claimant sought a physiatrist with experience treating brachial plexus injuries. He located a physiatrist, Dr. Mathew, in the immediate vicinity of claimant who indicated he has treated these types of injuries in the past and is willing to treat Mr. Chaney.

The agency has routinely held that requiring an injured worker to travel in excess of 50 miles (one way) for treatment when local options are available is unduly inconvenient and therefore not reasonable. A fifty (50) mile radius is generally considered a reasonable distance to travel for workers' compensation cases. Bitner v. Cedar Falls Construction, File No. 5013852 (September 24, 2004); Solland v. Fleetguard, File No. 5006970 (April 19, 2004); Richards v. Fast Food Merchandisers, File No. 1052224 (July 15, 1994); Ballanger v. IES Utilities, File No. 1056969 (November 20,1995); Perdue v. John Morrell and Company, File No. 1037297 (April 29, 1993); Hawk v. Pallister Pallets, File No. 1177543 (August 29, 1997); Germundson v. Express Personnel Services, File No. 1254558 (June 2, 2000); Crowell v. Schlegel Corp., File No. 1027719 (June 25, 1998); Arends v. Kwik Trip, Inc., File No. 1003290 (December 1, 1992); Meyers v. Trace, Inc, File No. 1238262 (November 22, 2002). This approach has been affirmed by the courts.

The only reason this case is challenging at all, is I am not entirely confident that either of the physicians sought out by opposing counsel (Dr. Mathew vs. Dr. Schiffman) is really a "brachial plexus expert." Each party believes that the physician that they located is such an expert, however, both are skeptical of the other's choice. For

purposes of this decision, I am going to presume that both Dr. Mathew and Dr. Schiffman have at least some expertise in treatment of brachial plexus injuries.

This case would, of course, be much easier had one of the authorized treating physicians simply made a referral to a specific clinic or physician, or if a treating physician had even commented on what constitutes a brachial plexus expert. Since that did not happen, I am left to determine whether it is reasonable for the defendants to refer the claimant to a physician with brachial plexus expertise 70 or 80 miles away when another expert is available locally.

I find that it is unduly inconvenient to require the claimant to travel 70 to 80 miles for treatment when a comparable physician is available locally based upon the foregoing authority. The defendants argued strenuously at hearing that a physiatrist cannot be a brachial plexus expert and if any physician had recommended a physiatrist, they would have authorized the same. I cannot find any support for this argument in the actual record of evidence. Neither Dr. Vinyard, nor Dr. Abernathey specified the type of physician who would qualify as a "brachial plexus expert." The only actual evidence in the record regarding Dr. Mathew's "expertise" is his own statement on claimant's counsel letterhead that he has treated similar conditions in the past and he is willing to treat Mr. Chaney for this condition.

The defendants also argue that since claimant was willing to travel a much farther distance to be evaluated at Mayo Clinic, he should be willing to travel to Galena, Illinois to see Dr. Schiffman. On its face, this argument is logical, however, it fails for a couple of reasons. The Mayo Clinic is widely recognized as an institution which is made up of world class physicians with specialties in virtually every area of medicine. Simply stated, the Mayo Clinic has an impeccable reputation, particularly in the Midwest United States. The claimant even expressed this through counsel in correspondence with defense counsel. The claimant learned about an appointment with Dr. Schiffman on or about January 16, 2023, the day before a scheduled January 17, 2023 appointment. He knew nothing about Dr. Schiffman, other than he was an orthopedist. Mr. Chaney had already seen a few orthopedists who did not have any expertise in brachial plexus injuries. To claimant's credit, his counsel asked for more information about Dr. Schiffman's expertise, indicating he may reconsider on this basis. There is no evidence in the record of any response until the day of hearing during arguments.

For all of these reasons, I find the defendants have offered care which is unduly inconvenient to the claimant and he is entitled to alternate medical care.

The defendants also filed a motion to discontinue temporary disability benefits. I conclude that I have no legal authority to rule on such a motion in these alternate medical care proceedings, however, by way of advisory opinion, I see no basis in this limited record for doing so. It appears on this limited record that the claimant has diligently sought reasonable treatment throughout this process.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is GRANTED. Defendants shall immediately authorize care with Dr. Mathew.

Signed and filed this __3RD__ day of February, 2023.

JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Matthew Dake (via WCES)

Abigail Wenninghoff (via WCES)