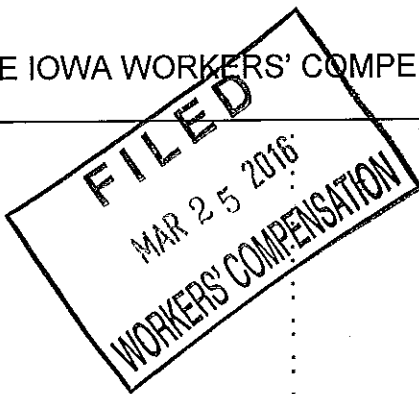


BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ROGER L. LIDDICK,  
Claimant,

vs.

CAMPING WORLD,  
Employer,  
Defendant.



File No. 5052583

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, Roger Liddick.

The alternate medical care claim came on for hearing on March 25, 2016. 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 exhibits 1 through 6 and defendants' exhibits A and B. The only witness to testify was claimant, Roger Liddick.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of referral to Charles Rosipal, M.D., an orthopedic specialist.

FINDINGS OF FACT

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

Claimant injured his shoulder while working for Camping World on September 25, 2014. Defendants<sup>1</sup> admitted liability for an injury occurring on

<sup>1</sup> The insurance carrier has not been identified. Gallagher Basset, a third party administrator, has been administrating the insurance claim. Defendant shall identify the insurance carrier and file an amended answer in the arbitration case to properly identify the insurance carrier within ten (10) days of this decision.

September 25, 2014. Claimant has expressed his dissatisfaction with the care offered by the employer.

Claimant was first seen by J.B. Gill, M.D. on April 7, 2015. Dr. Gill wrote,

The patient comes in today for second opinion for his pain in the right neck and right shoulder. I believe the patient has 2 problems at this time. One would be a right C6-7 disc herniation causing a right C7 radiculopathy. However, I think the right shoulder pathology is more pressing issue. It appears that he has a labral and rotator cuff tear. I think this is the likely source of his ongoing complaints. I would like for him to see Dr. Buzzell for evaluation and management. I think the patient is likely going to need surgery for his right shoulder. I will see him back after his right shoulder is taking [sic] care of. His symptoms and his mechanism injury seemed to be appropriate for what he describes it to me.

(Exhibit 1, page 3) On June 26, 2015 Dr. Gill noted that claimant had been seen by Dr. Buzzell, who could find nothing wrong. (Ex. 2, p. 1)

On September 16, 2015 Dr. Gill responded to defendants' attorney. Dr. Gill's diagnosis of claimant was:

**1. What is Mr. Liddick's complete diagnosis?** I initially saw the patient on April 7, 2015. At that time the diagnoses included:

1. Right C6-7 herniated disc.
2. Cervical spondylosis.
3. Cervicalgia.
4. Pain in limb.
5. Right C7 radiculopathy.

.....

**5. Upon what objective and subjective evidence do you base your surgical recommendation?** From a subjective standpoint the patient's history is consistent with a twisting type of motion which could cause a herniated disc in his neck. Furthermore, the patient is having pain that radiates all the way down into the arm below the elbow. This is related to a cervical radiculopathy. The objective would be the patient's paresthesias that he describes in his hand. Furthermore, the MRI scan of his neck shows a right C6-7 disc herniation. The patient does have other pain factors that are present which make the diagnosis more difficult. This includes pain around the shoulder with manipulation and examination of it.

His MRI scan of the shoulder does show a labral tear. The patient has been seen by a couple of shoulder specialists who do not feel that any surgical intervention is necessary at this point in time. I do think that the patient may continue to have ongoing shoulder issues even if he were to have surgery of his neck.

(Ex. 3, p. 1)

On December 7, 2015 Dr. Gill performed ACDF<sup>2</sup> surgery at C6-7. (Ex.4, p. 1)  
On March 4, 2016 Dr. Gill examined claimant for a three month post-operative follow up. Dr. Gill wrote,

Patient is not having any pain in his neck. His neck feels very good overall. His x-rays appear to show a solid fusion present. There is no motion at the spinous processes. At this time I do not think a CT scan is necessary. The patient is at maximum medical improvement for his neck. However, patient still remains symptomatic in his right shoulder. I think a second opinion for a short [sic] specialist would be appropriate. The patient elected [sic] see somebody to [sic] has a clinic at Burlington. This would be with GIKK. The patient can see Dr. Rosipal.

(Ex. 5, p. 2)

On March 11, 2016 defendants emailed claimant's attorney and stated that claimant was being referred to Dr. Buzzell, as he had already seen claimant and was in the best position to evaluate him. (Ex. A, p. 1) Claimant did not attend the March 24, 2016 appointment. On March 14, 2014 nurse case manager Lori Jansen, RN notified claimant an appointment was scheduled for him to see Dr. Buzzell on March 24, 2016. (Ex. B, p. 1)

#### 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 14(f)(5); Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). Determining

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<sup>2</sup> Anterior cervical discectomy and fusion (ACDF) is a surgery to remove a herniated or degenerative disc in the neck area of the spine.

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 its own treating physician. Pote v. Mickow Corp., File No. 694639 (review-reopening decision June 17, 1986).

In this case Dr. Gill made a specific referral that claimant be examined by Dr. Rosipal. Dr. Gill was aware that Dr. Buzzell had evaluated claimant in the past. Dr. Gill recently performed surgery and made the referral to Dr. Rosipal after he had performed surgery. As claimant's physician, he is in the best position to make recommendations as to treatment referrals.

The defendant's position is their offer of a referral to Dr. Buzzell is reasonable medical care. Defendant has not provided any evidence from a physician that the referral to Dr. Buzzell is reasonable. Defendant did not provide any medical evidence that the referral to Dr. Buzzell is reasonable medical care. There was no evidence that defendant communicated with Dr. Gill to ask him as to whether a referral to Dr. Buzzell would be reasonable medical care.

Given the specific recommendation by Dr. Gill of a referral to Dr. Rosipal, who was aware that Dr. Buzzell had treated claimant, and is the only physician opinion in evidence, I find that the failure to authorize Dr. Rosipal is not reasonable medical care.

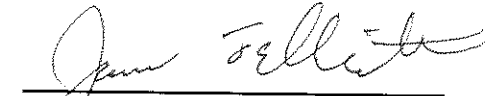
Based upon the evidence presented, I find that claimant's request for alternate medical care should be granted.

ORDER

Therefore it is ordered:

The claimant's petition for alternate medical care is granted

Signed and filed this 25<sup>th</sup> day of March, 2016.

  
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JAMES F. ELLIOTT  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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