BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KINDY AGUE, Claimant, vs. CPC LOGISTICS, INC., Employer, and INDEMNITY INSURANCE CO. OF NORTH AMERICA, Insurance Carrier, Defendants.	File No. 20004390.01 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, Kindy Ague. Claimant appeared personally and through her attorney, Barbara Diment. Defendants appeared through their attorney, Lee Hook.

The alternate medical care claim came on for hearing on June 12, 2020. 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 exhibit 1-10 and Defendants' Exhibits A-B, and claimant's testimony during the telephonic hearing. During the course of the hearing defendants accepted liability for the March 20, 2020 work injury and for the condition for which claimant is seeking treatment.

ISSUE

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

FINDINGS OF FACT

Claimant, Kindy Ague, sustained an injury to her bilateral wrists, hands, arms and upper extremities on March 20, 2020. Since that time Ms. Ague has sought treatment with authorized medical providers, including Rick Garrels, M.D. She also, on her own, sought unauthorized treatment with Justin Munns, M.D. (Testimony)

On March 20, 2020, Ms. Ague was unloading a truck when she noticed a pop in her forearm. She began noticing pain and numbness and tingling in her arms. She was seen by Rachel Ash, FNP at Genesis Occupational Health in Moline, Illinois. Ms. Ague received conservative treatment, but her symptoms persisted and even worsened. The last time that Ms. Ague saw Ms. Ash was on April 30, 2020. (Testimony, Def. Ex. A, pp. 1-6)

Ms. Ague saw her primary care physician, Namrata Mallik, M.D., on June 1, 2020. Dr. Mallik felt that Ms. Ague's need for continued medical treatment is likely related to her March 20, 2020 work injury. She recommended further treatment by an orthopaedic specialty, including diagnostic tests such as EMG. (Cl. Ex. 4)

Ms. Ague saw Justin Munns, M.D., at ORA Orthopaedics on June 8, 2020. His impression was bilateral hand numbness, tingling, and pain possible carpal tunnel syndrome. He recommended an EMG study and to continue to wear her braces at night. (Cl. Exs. 8-9)

On June 10, 2020, Rick Garrels, M.D., saw Ms. Ague at Genesis Occupational Health in Davenport, Iowa. His diagnoses included pain in right wrist, carpal tunnel syndrome, unspecified upper limb, and pain in left wrist. He stated that the cause of this problem was related to work activities. He recommended nerve testing to help work out the diagnosis and the need for orthopedic involvement. (Def. Ex. A, pp. 7-8)

Ms. Ague is seeking treatment for her work injury. Specifically, she would like defendants to authorize an EMG. Claimant would also like defendants to authorize Ms. Ague to follow-up with Dr. Munns, an orthopedic hand specialist. Pursuant to Dr. Garrell's June 10, 2020 recommendations, defendants are in the process of scheduling the EMG and intend to continue to follow the plan of the authorized provider, Dr. Garrels so that he may make additional recommendations regarding her care. (Def. Ex. B, p. 9)

Ms. Ague testified now that she is aware that defendants are in the process of scheduling the EMG testing and plan to follow the recommendations of Dr. Garrels. She does not have a reason to be dissatisfied with the care being offered. She was dissatisfied earlier in her claim because it took so long to get to this point. (Testimony; Def. Ex. B, p. 9)

Defendants' have set forth the treatment they are currently authorizing in Exhibit B, page 9. Defendants are in the process of scheduling an EMG pursuant to Dr. Garrels' June 10, 2020 recommendation. Dr. Garrels plans to review the EMG report

and make additional recommendations for care. Defendants have stated that if Dr. Garrels recommends a specialist the defendants will authorize a specialist. I find that the care currently being offered by 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.

While claimant might desire to see a hand specialist at this time, the test is not desirability, the test turns on the question of reasonable necessity. Based on the above findings of fact, I conclude that claimant has failed to carry her burden of proof to demonstrate by a preponderance of the evidence that the authorized care is unreasonable.

ORDER

THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care is denied at this time.

Signed and filed this ___15th___ day of June, 2020.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Barbara Diment (via WCES)

Lee Hook (via WCES)