BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TAMMY ROBERSON, Claimant, vs. SEARS HOLDING CORPORATION, Employer, and INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, Insurance Carrier, Defendants.	File No. 1589454.01 ALTERNATE MEDICAL CARE DECISION Head Note No.: 2701

STATEMENT OF THE CASE

On May 13, 2022, claimant Tammy Roberson applied with the agency for alternate care under Iowa Code section 85.27 and agency rule 876 IAC 4.48. Claimant's counsel served the original notice and petition on the defendants by certified mail, return receipt requested, that same day. The defendants, employer Sears Holding Corporation (Sears) and insurance carrier Indemnity Insurance Company of North America (Indemnity), did not file an answer. No attorney appeared on behalf of a defendant.

The undersigned presided over an alternate care hearing held by telephone and recorded on May 25, 2022. That recording constitutes the official record of the proceeding under agency rule 876 IAC 4.48(12). Roberson participated personally and through attorney Joanie Grife. The defendants did not participate. The record consists of:

- Claimant's Exhibits 1 through 4; and
- Testimony by Roberson.

Roberson previously filed a petition in arbitration with the agency seeking workers' compensation benefits from the defendants and the Second Injury Fund of Iowa. Deputy Gerrish-Lampe issued an arbitration decision in the case in which she found Roberson had "lumbar and hip pains associated with the work injury," concluded

she "is entitled to Dr. [Thomas] Atteberry's ongoing care as well as any other care that is reasonable in the treatment of claimant's right knee, low back, and hip problems.". Roberson v. Sears Holding Corp. & Second Injury Fund of Iowa, File No. 5055975 (Arb. Nov. 1, 2017). On appeal, Commissioner Cortese affirmed and adopted the arbitration decision. Roberson v. Sears Holding Corp. & Second Injury Fund of Iowa, File No. 5055975 (App. May 19, 2019) The undersigned took administrative notice of the decisions during the hearing.

ISSUE

The issue under consideration is whether Roberson is entitled to alternate care in the form of a total hip replacement.

FINDINGS OF FACT

Roberson received care for her knee injury that culminated in right knee replacement with Dr. Atteberry. She also sought care for her hip pain after the decision. Dr. Atteberry referred Roberson to Clifford Boese, M.D. (Testimony) After conservative care failed to address Roberson's ongoing symptoms, Dr. Boese recommended total hip replacement on November 24, 2021. (Testimony; Ex. 1)

The defendants did not authorize Dr. Boese to perform a total left hip replacement. Through a letter from claimant's counsel dated March 1, 2022, Roberson notified the defendants of her dissatisfaction with their failure to authorize care. (Ex. 2) After the defendants did not authorize care, Roberson applied to the agency for alternate care.

CONCLUSIONS OF LAW

"Iowa Code section 85.27(4) affords an employer who does not contest the compensability of a workplace injury a qualified statutory right to control the medical care provided to an injured employee." Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 769 (Iowa 2016) (citing R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 195, 197 (Iowa 2003)). Under the law, the employer must "furnish reasonable medical services and supplies *and* reasonable and necessary appliances to treat an injured employee." Stone Container Corp. v. Castle, 657 N.W.2d 485, 490 (Iowa 2003) (emphasis in original). Such employer-provided care "must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." Iowa Code § 85.27(4).

An injured employee dissatisfied with the employer-furnished care (or lack thereof) may share the employee's discontent with the employer and if the parties cannot reach an agreement on alternate care, "the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care." Id. "Determining what care is reasonable under the statute is a question of fact." Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995); Pirelli-Armstrong Tire Co. v.

Reynolds, 562 N.W.2d 433, 436 (Iowa 1997). As the party seeking relief in the form of alternate care, the employee bears the burden of proving that the authorized care is unreasonable. Id. at 124; Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); Reynolds, 562 N.W.2d at 436; Long, 528 N.W.2d at 124. Because "the employer's obligation under the statute turns on the question of reasonable necessity, not desirability," an injured employee's dissatisfaction with employer-provided care, standing alone, is not enough to find such care unreasonable. Id.

The agency previously ordered the defendants to provide reasonable care for Roberson's hip problems. Roberson underwent conservative care for left hip complaints. The conservative care failed. Dr. Boese recommended total left hip replacement because conservative care failed. Under these circumstances, the defendants' refusal to authorize the procedure is unreasonable under the Iowa Workers' Compensation Act.

ORDER

Under the above findings of facts and conclusions of law, it is ordered:

1) Roberson's application is GRANTED.

2) The defendants shall authorize care in the form of left total hip replacement by Dr. Boese and other reasonable care and appliances relating to the procedure.

Signed and filed this 25th day of May, 2022.

BEN HUMPHREY
Deputy Workers' Compensation Commissioner

The parties have been served, as follows:

Joanie Grife (via WCES)

Sears Holding Corporation (via regular and certified U.S. Mail)
3333 Beverly Road
Hoffman Estates, IL 60179

Indemnity Insurance Company of North America (via regular and certified U.S. Mail)
436 Walnut Street
Philadelphia, PA 19106-3703