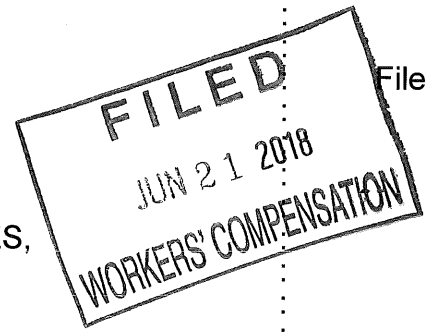
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LENNIE TERRELL, Claimant, vs. CITY OF DES MOINES, Employer, Self-Insured. Defendant.		File Nos.: 5061399 & 5061400 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, Lennie Terrell.

The alternate medical care claim came on for telephonic hearing on June 20, 2018 at 1:00 p.m. 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 & 2 and defendant's Exhibit A.

At the outset of the hearing, claimant moved to amend the injury date in both petitions to November 8, 2013, a date of injury accepted by defendant. Defendant offered no objection and the amendment was granted.

There was no testimony at hearing. Counsel provided argument.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of a second opinion with Kyle Galles, M.D.

FINDINGS OF FACT

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

Defendant admits liability for an injury involving claimant's bilateral shoulders occurring on November 8, 2013 and the current condition for which claimant seeks alternate medical care.

Claimant seeks an order for alternate medical care compelling defendant to provide a second opinion with Dr. Galles at Iowa Ortho following the indication that nothing further would be offered from Dr. Sullivan to address claimant's bilateral shoulder condition. (Ex. 1)

Claimant submitted evidence consisting of a letter written by claimant's counsel to defense counsel dated May 17, 2018, requesting the second opinion for claimant's bilateral shoulder condition with Dr. Galles of Iowa Ortho, or a shoulder surgeon at Capital Ortho, Dr. Fish, Dr. Crites or Dr. Jacobson. (Ex. 1) At hearing, the request was limited to only Dr. Galles at Iowa Ortho.

The only other evidence offered by claimant was an email from claimant's counsel to defense counsel asking for an update regarding the requested second opinion. (Ex. 2) No medical opinion was offered.

Defendant submitted evidence including an email from defense counsel to claimant's counsel authorizing a second opinion evaluation with Dr. Aviles at Iowa Ortho, and advising that an appointment has been scheduled for claimant on July 11, 2018. (Ex. A, p. 1) No medical opinion was offered. Defense counsel then confirmed at hearing that the second opinion evaluation with Dr. Aviles remains available to claimant.

Claimant argued at hearing that claimant's counsel's experience would indicate to him that Dr. Galles has experience taking on complicated, difficult shoulder cases, and claimant's counsel has confidence in the ability of Dr. Galles. However, there was no evidence to this effect and there was likewise no evidence presented that Dr. Galles was willing to provide a second opinion in this particular case. Also, claimant's counsel argued that based on his experience, he was uncertain whether Dr. Aviles would be the treating physician, if any treatment was recommended. However, again there was no evidence presented on this issue.

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.

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).

In this case the claimant has not proven that the care offered by defendant is unreasonable. Claimant has requested a second opinion and defendant has offered a second opinion with Dr. Aviles at Iowa Ortho. I am unable to determine from the evidence provided that there is anything unreasonable about defendant's offer of a second opinion with Dr. Aviles. Claimant has failed to carry his burden of proof.

ORDER

IT IS THEREFORE ORDERED that claimant's petition for alternate medical care is denied.

Signed and filed this 21st day of June, 2018.

TOBY J. GORDON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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