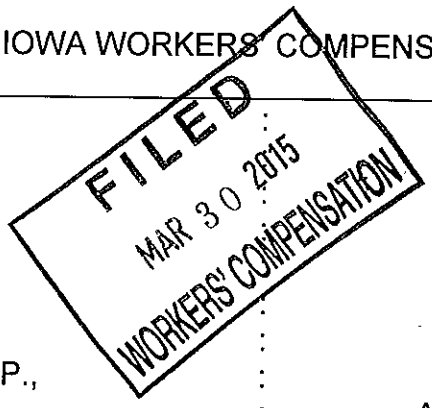
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



DENISE LARSON,

Claimant,

vs.

TRANSAMERICA CORP.,

Employer,

and

INDEMNITY INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 5052360

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. Claimant, Denise Larson, sustained a stipulated work injury in the employ of defendant Transamerica Corporation on approximately April 29, 2013. She now seeks an award of alternate medical care under Iowa Code section 85.27 and 876 Iowa Administrative Code 4.48.

The case was heard by telephone conference call and fully submitted on March 30, 2015. The entire hearing was recorded via audio tape, which constitutes the official record of proceedings. By standing order of the workers' compensation commissioner, the undersigned was delegated authority to issue final agency action in the proceeding.

ISSUES

Liability is admitted on this claim. The sole issue presented for resolution is whether or not claimant is entitled to an award of alternate medical care.

FINDINGS OF FACT

The claimant was employed by the Transamerica in Cedar Rapids, Iowa on about April 29, 2013 when she suffered an injury which the parties stipulate arose out of and in the course of employment.

Dr. White performed two operations on the claimant's right shoulder. Defendants have approved continuing care to be provided by Sunny Kim, M.D. Dr. Kim has recommended an Amniofix allograft injection procedure to treat the work injury. The insurer, via Broadspire, has refused to authorize the care recommended by its own selected physician. Dr. Kim then reiterated that the care recommended by him was "a reasonable therapeutic option to fill, seal and replace lost and damaged tissue." (Exhibit 2, page 7)

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, 526 2 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. 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" 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.

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. Assman v. Blue Star Foods, Declaratory Ruling, File No. 866389 (May 18, 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).

The claimant has the burden of proving that the care authorized by the defendants has not been effective in treating her injury.

The defendants herein have exercised their choice of doctor, and yet still refuse to follow the care their own chosen doctor (Dr. Kim) believes necessary for treatment of the work injury. That is not reasonable.

ORDER

THEREFORE, IT IS ORDERED:

The application for alternate medical care is approved.

Signed and filed this 30th day of March, 2015.

STAN MCELDERRY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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