BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RICKY MARTIN, Claimant, vs. EARLING GRAIN AND FEED, Employer, and FIREMENS INSURANCE CO. OF WASHINGTON, D.C., Insurance Carrier, Defendants.	File No. 5064897.02 ALTERNATE MEDICAL CARE DECISION HEAD NOTE NO: 2701

This is a contested case proceeding under Iowa Code chapters 85 and 17A. The expedited procedures of rule 876 IAC 4.48, the "alternate medical care" rule, are invoked by claimant, Ricky Martin.

This alternate medical care claim came on for hearing on February 4, 2021. The proceedings were recorded digitally and constitute the official record of the hearing. By an order filed by the Workers' Compensation Commissioner, this decision is designated final agency action. Any appeal would be by petition for judicial review under Iowa Code section 17A.19.

The record in this case consists of Claimant's Exhibits 1-6 and Defendants' Exhibit A and B, pages 1-10. Exhibit B, pages 11-15 and Exhibit C were excluded. Judicial notice was taken of the decision in Harris Steel Group v Botkin, No 19-0015 (Iowa Ct. App. January 9, 2020). Judicial notice is taken of the arbitration decision, the appeal decision and records found in the administrative file in this case.

At hearing defendants moved to amend their answer to contend the statutory proceedings for alternate medical care hearings were an abuse of due process or an unconstitutional taking under both Federal and State constitutions. That amendment to the answer was granted.

At hearing defendants also moved for a continuance to allow further time to submit exhibits for hearing. Rules before this agency require a decision be issued

within ten working days of receipt of a petition for alternate medical care. Rule 876 IAC 4.48(14) The record also reflects claimant requested the alternate medical care at issue by letter dated January 13, 2021. There is no evidence in the record there was a response to that request. Defendants did not make an inquiry regarding causation until a letter dated February 1, 2021, approximately two weeks after the request for alternate medical care was made.

The rules before this agency do not allow for a continuance in an alternate medical care proceeding. Even if they did, the record reflects defendants had an adequate time to investigate allegations of causation. Defendants waited until three days before hearing to begin to obtain evidence regarding causation. For these reasons, the motion to continue was denied.

ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of authorization for continued physical therapy for claimant's cervical spine.

FINDINGS OF FACT

On July 21, 2017, claimant was involved in a truck accident.

An arbitration decision was filed in this case on July 1, 2020. That decision found claimant had a permanent impairment to his cervical spine, a traumatic brain injury (TBI), and tinnitus caused by the July 21, 2017, truck accident. The findings of fact and conclusions of law that claimant had a permanent impairment to his cervical spine, TBI and tinnitus was affirmed in a January 27, 2021, appeal decision.

In an August 6, 2019, note, Morgan LaHolt, M.D., indicated claimant continued to suffer neck pain from the July of 2017 accident. Dr. LaHolt indicated claimant's neck condition was permanent and would require future medical care. (Exhibit 2)

On June 24, 2020, Dr. LaHolt recommended claimant have physical therapy for cervicalgia. (Ex. 1)

In a January 13, 2021, letter to defendants' counsel, claimant's attorney indicated that physical therapy recommend by Dr. LaHolt was no longer being paid. The letter requested defendants pay for the recommended physical therapy. (Ex. 4)

In a January 20, 2021, email, staff from the physical therapy provider, Athletico, indicated that both the referring doctor and physical therapist believed physical therapy was medically necessary for claimant and requested that outstanding bills be paid. (Ex. 5)

In a February 1, 2021, letter to Dr. LaHolt, defendants' attorney asked Dr. LaHolt if claimant's neck injury was related to his July 21, 2017, accident. That letter is unsigned. (Ex. A)

On February 3, 2021, in response to the petition for alternate medical care recommended by Dr. LaHolt, defendants denied that the requested care is casually related to the July 21, 2017, work injury.

In a professional statement, claimant's counsel indicated Dr. LaHolt was an authorized treating physician for claimant. In a professional statement, claimant's counsel also indicated claimant had been receiving, and defendants had authorized, physical therapy for claimant's neck beginning in September, 2020. Exhibit 6 suggests that payments for physical therapy were stopped by the defendants sometime in December, 2020.

In a professional statement defendants' counsel indicated defendants would pay for all physical therapy billing up to the date of the submission of the answer in this case.

CONCLUSION OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.14(6).

Iowa Code section 85.27(4) provides, in relevant part:

> For purposes of this section, the 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.

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).

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 Rule of Appellate Procedure 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.
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> [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.

Before any benefits can be ordered, including medical benefits, compensability of the claim must be established, either by admission of liability or by adjudication. The summary provisions of Iowa Code section 85.27, as more particularly described in rule 876 IAC 4.48, are not designed to adjudicate disputed compensability of claims. Therefore, this action must be dismissed. However, defendants are barred from asserting a "lack of authorization" defense to any medical expenses accrued by claimant, if they are otherwise compensable. Defendants cannot deny liability and simultaneously direct the course of treatment. Barnhart v. MAQ Incorporated, I Iowa Industrial Comm'r Report 16 (App. March 9, 1981).

As detailed above, under Barnhart, an alternate care proceeding is not applicable where defendants have denied liability for the injury at issue. See also rule 876 IAC 4.48(7) ("Application cannot be filed under this rule if the liability of the employer is an issue").

That is not the situation with this case. In this case defendants deny the requested care is causally related to the injury. Claimant's neck injury has already been adjudicated to have been caused by the July 2017 work injury. Defendants stipulated to raise liability for claimant's neck injury at the arbitration hearing. Defendants have already been found liable for the neck injury. Dr. LaHolt is an authorized physician. Dr. LaHolt recommended claimant receive physical therapy for his neck condition (Ex. 1.The record suggests defendants were authorizing and paying for claimant's physical therapy from approximately September through December, 2020 (Ex. 6), and then in December, 2020, defendants suddenly stopped paying for the recommended physical therapy for no apparent reason.

Defendants' stipulated at the arbitration hearing claimant's neck injury was work related. Defendants' liability for the neck has already been adjudicated. An authorized

treating physician recommended claimant receive physical therapy for his neck condition. The record suggests defendants were authorizing and paying for that physical therapy from approximately September through December, 2020. The record indicates defendants did not attempt to investigate causation between claimant's neck injury and the physical therapy until three days before hearing. No expert has opined the physical therapy recommend by Dr. LaHolt is not causally related to the accepted work injury. Given this record, defendants' denial of continued physical therapy is found unreasonable.

I appreciate defendants' position, to some degree, in this case. There are situations where defendants can be limited in their opportunity to present evidence to contest a request for alternate medical care, given time restrictions under rule 876 IAC 4.48(14). This is not one of those cases. Defendants could have gotten a causation opinion regarding physical therapy and claimant's neck condition in 2020. They did not. Defendants could have gotten a causation opinion regarding physical therapy and claimant's neck condition before they stopped paying benefits. They did not. Defendants just stopped paying for previously authorized care recommended by a provider chosen by defendants. Defendants did not make an inquiry regarding causation until three days before the alternate medical care hearing. Given the record as detailed above, this constitutes unreasonable care.

As noted, defendants did raise constitutional issues regarding the alternate medical care proceedings of this agency. The Iowa Supreme Court has ruled that agencies cannot decide issues of statutory validity or the constitutional validity of a statute. Salsbury Laboratories v. Iowa, Etc., 276 N.W.2d 830, 836 (Iowa 1979). Based on this precedent, I am unable to rule whether the alternate medical care procedures used by this agency are unconstitutional and legally invalid.

ORDER

Therefore, it is ordered that claimant's petition for alternate medical care is granted. Defendants shall authorize and pay for the physical therapy for claimant's work-related cervical condition.

Signed and filed this __5th__ day of February, 2021.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Corey J.L. Walker (via WCES)

David Brian Scieszinski (via WCES)