BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RICHARD ROSS, Claimant, vs. OLD DOMINION FREIGHT LINE, INC., Employer, and INDEMNITY INSURANCE CO. OF NORTH AMERICA, Insurance Carrier, Defendants.	File No. 5068577.07 ALTERNATE MEDICAL CARE DECISION Headnote 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, Richard Ross.

This alternate medical care claim came on for hearing on May 21, 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 Exhibit 1, Defendants' Exhibits A-C, and the testimony of claimant. Claimant's Exhibit 1 was attached to the petition, and is identified as Exhibit 1 for clarity of the record.

ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of a plan for claimant to receive future prescription medications.

FINDINGS OF FACT

Judicial notice is taken of the findings of facts in prior hearings on this matter before this agency.

Claimant was involved in a multi-vehicle crash on April 25, 2019. Claimant sustained a number of injuries in that accident including, but not limited to head trauma, a spleen injury, and fractures to his knees, vertebrae, ribs, face and hands (Alternate Medical care Decision, File No 5068577.01, August 28, 2019) Defendants admit liability for this work injury.

On November 11, 2020, claimant was seen by David Berg, M.D. for an impairment rating. At that time claimant was prescribed diclofenac, gabapentin and baclofen. Claimant was to return to Dr. Berg in three months for a reevaluation and for refills of his medications. (Exhibit C, page 5)

On May 6, 2021, claimant's counsel wrote defense counsel asking when claimant could get his prescription medicine. (Ex. 1)

In a May 19, 2021 email, defense counsel responded to claimant's counsel indicating claimant was to follow-up with Dr. Berg in February of 2021 for medication refill but failed to do so. The note indicated Dr. Berg sent a new prescription for the medication to the pharmacy and that claimant had already picked up the medication. (Ex. A, p. 1)

In a May 20, 2021 email, defendants' counsel indicated that since claimant had his medication, he saw no reason for an alternate medical care hearing. Defense counsel indicated claimant needed to attend future authorized visits with his doctor. (Ex. B, p. 2)

Dr. Berg is an authorized treating physician.

Claimant testified that in the past, when he needed prescription medications, he contacted his pharmacy, and the prescriptions for medications were filled. He testified he was not instructed by Dr. Berg's office, or a nurse case manager, to return to Dr. Berg's office to have prescriptions refilled. Claimant testified he would be willing to return to Dr. Berg's office to have prescriptions refilled.

Claimant testified that when his prescriptions recently ran out, he contacted his pharmacy and was told the prescription could not be refilled. He said he went without medications for several days. He said he recently contacted the pharmacy and the prescriptions had been refilled.

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 R. App. P. 6.904(3)(e).

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.

The record suggests the claimant was to return to Dr. Berg in follow-up for examination and for a refill of his prescription medications. (Ex. C, p. 5) Claimant

testified he was not instructed to do this. He testified that in the past, when he needed the medications at issue, he merely contacted his pharmacy. The record indicates there was apparently a miscommunication between how claimant thought he would get prescription refills. To ensure this does not happen in the future, defendants will devise a plan for claimant to get future prescription medications and communicate that plan to claimant. This may include, but is not limited to, claimant returning to Dr. Berg's office periodically to get refills from Dr. Berg.

ORDER

Therefore it is ordered that claimant's petition is granted. Defendants will devise a plan for claimant to get future prescription medications. This may include, but is not limited to, claimant returning to Dr. Berg's office periodically to get refills from Dr. Berg.

Signed and filed this 21st day of May, 2021.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Christopher Spaulding (via WCES)

Stephen Spencer (via WCES)