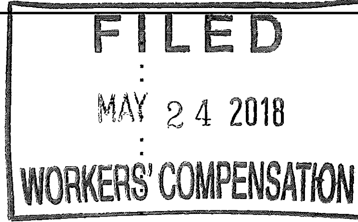
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



DEAN L. GLAWE,	:	
Claimant,	:	
vs.	:	File No. 5063385
BUILDERS FIRSTSOURCE, INC., f/k/a PROBUILD HOLDINGS, LLC,	:	
Employer,	:	ALTERNATE MEDICAL CARE DECISION
and	:	
LIBERTY MUTUAL INSURANCE COMPANY,	:	
Insurance Carrier, Defendants.	:	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, Dean L. Glawe.

The alternate medical care claim came on for hearing on May 24, 2018. The proceedings were digitally recorded, which constitutes the official record of this proceeding. By order filed February 16, 2015, this ruling is designated final agency action.

The record does not contain any exhibits from claimant or defendants. Neither side offered any testimony. Claimant alleges a date of injury of September 28, 2016. During the course of the hearing, defendants admitted the occurrence of a work injury on September 28, 2016, and liability for the conditions sought to be treated by this proceeding. Counsel offered oral arguments to support their positions; no evidence was offered.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care.

FINDINGS OF FACT

No exhibits, testimony, or stipulations were offered by either party. Neither party requested that administrative notice be taken of any information. Without any evidence, the undersigned cannot make any findings of fact.

It is noted that prior to the hearing, the defendants filed a brief in resistance to claimant's petition for alternate care and a request for an in-person hearing. Claimant filed a response to defendants' brief and resistance to alternate care and request for in-person hearing. No exhibits were attached to any of the filings. At the alternate care hearing, counsel for each side presented oral arguments in support of their positions. Arguments are not evidence. However, even if I were to assume that the information contained in the arguments were evidence, claimant's petition for alternate care would be denied based on the following.

Dean Glawe, sustained an injury arising out of and in the course of his employment with the defendant employer on September 28, 2016. According to the arguments and filings, the authorized treating physician, Dr. Erin Kennedy, placed the claimant at MMI in April of 2017 and prescribed compression stockings and medications. Defendants have been providing the compression stockings and medications. In July of 2017, claimant advised defendants that he was having difficulty with his hand and requested a follow-up appointment with Dr. Kennedy. In November of 2017, Dr. Kennedy confirmed maximum medical improvement (MMI) and her care recommendations.

Apparently on April 11, 2018 a report was sent to claimant from claimant's independent medical examination (IME) doctor, Dr. Stanley Mathew, noting claimant should see a pain specialist, physical medicine and rehabilitation physician and a neurologist. Approximately, three weeks later, on Friday, May 4, 2018 at 5:26 p.m. claimant sent a letter to defendants requesting follow-up care consistent with the IME report. On May 8, 2018 claimant sent a follow up letter to defense counsel stating that the requested treatment was related to claimant's CRPS Type I. On that same day, defendants faxed a letter to Dr. Kennedy requesting her opinion on the requested additional treatment. A copy of that letter was sent to claimant. The next day, May 9, 2018, claimant filed the pending alternate care petition.

At hearing, claimant argued that defendants were not offering any treatment. However, defendants are continuing to provide the care as recommended by the authorized treating physician. Additionally, if Dr. Kennedy states she would like to see the claimant again they will authorize the visit. It is reasonable for the defendants to promptly request the authorized treating physician's opinion before rendering a decision on whether to authorize the recommendations made by an IME physician.

Furthermore, it is not clear to the undersigned if claimant communicated his basis for dissatisfaction of care to the defendants. However, even if the May 8, 2018

correspondence that claimant sent to defendants constituted notice of dissatisfaction of care, defendants promptly sought the opinion of the treating physician.

REASONING AND 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, 562 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., 562 N.W.2d at 433, 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.

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).

Reasonable care includes care necessary to diagnose the condition, and defendants are not entitled to interfere with the medical judgment of its own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening Decision June 17, 1986).

First, claimant has failed to prove that the dissatisfaction with care was communicated to the defendant. Iowa Code section 85.27. It is only after an employee and employer cannot agree on alternate care that an application for other care can be made. In the present case, the May 9 application is too close in time to the May 8 letter from claimant to defendant. As such, there was no issue ripe for hearing.

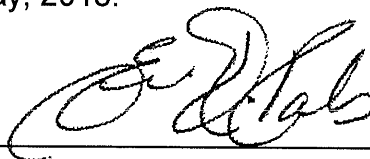
Second, by challenging the employer's choice of treatment Mr. Glawe assumes the burden of proving the authorized care is unreasonable. In the present case, there is no evidence to show that the authorized care is unreasonable. I conclude that claimant has failed to carry his burden of proof.

ORDER

THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care is denied.

Signed and filed this 24th day of May, 2018.



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DEPUTY WORKERS'
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