

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

STEVEN MILLER,

Claimant,

vs.

PMR PROPERTIES LLC,

Employer,

and

GALLAGHER BASSETT
SERVICES INC.

Third Party Administrator,
Defendants.

File No. 20012478.01

ALTERNATE MEDICAL
CARE DECISION

HEAD NOTE NO: 2701

On January 20, 2021, the claimant, Steven Miller, filed an Original Notice and Petition Concerning Application for Alternate Care (“Application for Alternate Care”) against the defendants, PMR Properties LLC (“PMR”) and its third party agent, Gallagher Bassett Services Inc. (“Gallagher Bassett”), alleging he sustained an injury to his left upper extremity while working for PMR, which required emergency surgery, and following surgery, the defendants referred Miller to Nagi Ayoub, M.D., a plastic surgeon, who did not address his complaints about his left upper extremity and released him from care. Miller requested a referral to a hand specialist, which the defendants denied.

On February, 1, 2021, a hearing was held on the Application for Alternate Care by telephone conference call. Attorney Sara Lamme represented Miller. Miller appeared and testified. Exhibits 1 through 5 were admitted into the record. Lamme made a professional statement she served the defendants with the Original Notice and Petition Concerning Application for Alternate Care by certified mail. The Division of Workers’ Compensation sent the defendants a copy of the Notice of Hearing scheduling the date and time of the hearing by regular mail on January 22, 2021. Defendants did not file an appearance or answer. The proceeding was recorded digitally by iPhone, and the digital record is the official record of the proceeding.

The undersigned has been delegated with the authority to issue final agency action in this matter. Appeal of this decision, if any, is to the district court pursuant to Iowa Code section 17A.19.

FINDINGS OF FACT

Miller worked full-time for PMR as a general laborer, performing landscaping, trash removal, and maintenance repairs at PMR's rental properties. (Miller Testimony) Miller also performed evictions. (Miller Testimony)

On October 14, 2020, Miller was performing an eviction at a three-story home owned by PMR. (Miller Testimony) Miller and his coworker opened the windows of the home while removing the home's contents. (Miller Testimony) After the contents had been removed, Miller closed the windows of the home. (Miller Testimony) While closing a window in the basement, he accidentally put his left upper extremity through the window. (Miller Testimony) Blood was gushing from his arm and a coworker drove him to the hospital. (Miller Testimony)

Miller had cut an artery in his left arm. (Miller Testimony) The hospital did not have a surgeon on staff that could perform the surgery. (Miller Testimony) A tourniquet was placed on Miller's left upper extremity and Miller was transported by ambulance to another hospital where he underwent emergency surgery. (Miller Testimony) Miller testified the defendants accepted his claim. (Miller Testimony)

PMR arranged follow-up care for Miller with Nagi Ayoub, M.D., a plastic surgeon. Miller received occupational therapy. (Miller Testimony) Miller complained of nerve pain and numbness in his left upper extremity above and below his incision. (Miller Testimony) During an appointment on January 3, 2021, Dr. Ayoub told Miller he did not have any further treatment to offer him, but recommended he continue with occupational therapy. (Miller Testimony) Miller told the defendants he was continuing to experience symptoms and he requested a referral to Nicholas Bruggeman, M.D., an orthopedic surgeon specializing in the elbow, hand, wrist, and shoulder. (Exhibit 1) Defendants refused Miller's request and informed him he could return to Dr. Ayoub.

CONCLUSIONS OF LAW

Under Iowa Code section 85.27 (2020), an employer is required to furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under Iowa Code chapters 85 and 85A. The employer has the right to choose the provider of care, except when the employer has denied liability for the injury. Id.

"The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." Id. § 85.27(4). If the employee is dissatisfied with the care, the employee should communicate the basis for the dissatisfaction to the employer. Id. If the employer and employee cannot agree on

alternate care, the commissioner “may, upon application and reasonable proofs of the necessity therefor, allow and order other care.” Id.


The employee bears the burden of proving the care authorized by the employer is unreasonable. R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 196 (Iowa 2003). “The employer’s obligation under the statute turns on the question of reasonable necessity, not desirability.” Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995). The care authorized by the employer is unreasonable if it is ineffective, inferior, or less extensive than the care requested by the employee. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997). The determination of whether care is reasonable is a question of fact. Long, 528 N.W.2d at 123.

Miller received emergency surgery on his left upper extremity when he severed an artery in his arm while working for PMR. Defendants arranged for follow-up care with a plastic surgeon, Dr. Ayoub. Miller received occupational therapy. He has continued to complain about nerve symptoms in his left upper extremity above and below the incision site. (Miller Testimony) Miller requested a referral to a hand specialist, which the defendants denied. (Ex. 1) Defendants informed Miller he could return to Dr. Ayoub who told Miller he had nothing to offer him. (Miller Testimony) I find the care offered by the defendants is ineffective, inferior, and less extensive than the care requested by Miller. Miller’s request for treatment with Dr. Bruggeman, an orthopedic surgeon, at the defendants’ expense is granted. Defendants are responsible for all treatment and treatment recommendations from Dr. Bruggeman.

ORDER

Claimant’s Application for Alternate Care is GRANTED. Defendants are responsible for all treatment and treatment recommendations from Dr. Bruggeman.

Signed and filed this 1st day of February, 2021.



HEATHER L. PALMER
DEPUTY WORKERS’
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Sara Lamme (via WCES)

PMR Properties LLC (via regular and certified mail)
403 N 17th St
Council Bluffs, IA 51501

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Gallagher Bassett (via regular and certified mail)
PO Box 2934
Clinton, IA 52733