BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

AMY AUSBORN, Claimant, vs. STATE OF IOWA, Employer, Self-Insured, Defendant.	:	File No. 22006561.01 ALTERNATE MEDICAL CARE DECISION Headnote: 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, Amy Ausborn.

This alternate medical care claim came on for hearing on December 6, 2022. 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, Defendant's Exhibits A through C, and the testimony of claimant and David Webb.

ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of authorization for another orthopedic opinion.

FINDINGS OF FACT

Defendant accepts liability for a work-related accident of May 23, 2022.

Claimant testified she is a Youth Service Worker at the Eldora State Training School. Claimant said she injured her knee while breaking up a large fight involving a number of students and while trying to restrain a student. Claimant testified that before her injury she had no restrictions in performing her job as a Youth Service Worker.

Claimant said she received initial care at Hansen Family Hospital. She said the provider at Hansen gave her medications and tried providing her with a knee brace. Claimant said she was eventually referred to David Sneller, M.D.

On June 22, 2022, claimant was evaluated by Dr. Sneller, an orthopedic specialist, for knee pain. Claimant was assessed as having a transient patellar dislocation with evidence of grade IV changes without loose bodies and an intact meniscus, collateral cruciate ligaments and extensor tendons. Claimant was told she had pre-existing patellofemoral DJD. Claimant was told to return to physical therapy to improve range of motion and strength in the knee. Claimant was given an injection for pain. (Exhibit B)

Claimant requested defendant send her to Iowa Orthopedics for further care. Defendant complied with that request and claimant was referred to Stephen Ash, M.D.

On August 5, 2022, claimant was evaluated by Dr. Ash, an orthopedic specialist, for knee pain. An MRI of the right knee showed degenerative changes in the patellofemoral compartment with lateral subluxation of the patella. Claimant was recommended to continue with physical therapy. Dr. Ash did not recommend surgery. Claimant was given restrictions of no kneeling or squatting and limited to one hour of standing. She was not to be put in a situation requiring restraining someone. (Ex. B, pp. 4-5)

Claimant returned to Dr. Ash on September 30, 2022, for knee pain. Claimant was assessed as having right knee pain and a right patellar dislocation with patellofemoral degenerative arthritis bilaterally. Claimant was recommended to continue with physical therapy. (Ex. B, p. 6)

Claimant saw Dr. Ash on October 28, 2022. Claimant was again assessed as having right knee pain and a right patellar dislocation with patellofemoral degenerative arthritis bilaterally. Claimant was told surgery would not help her with knee stiffness. Claimant was recommended to continue physical therapy. Claimant was continued on work restrictions. A functional capacity evaluation (FCE) was discussed. Claimant was found to be at maximum medical improvement (MMI) as of October 28, 2022. Claimant was recommended to return as needed. (Ex. B, p. 7)

Claimant said that after her last appointment with Dr. Ash, she was seen for an FCE. Claimant said it was her understanding the restrictions recommended by the FCE do not allow her to run, jump or squat, and that she is also limited in the time she can stand. Claimant said it is her understanding that, given these restrictions, she cannot return to her job at Eldora.

In a November 1, 2022, letter, claimant's counsel contended that Dr. Ash, on one hand, indicated claimant can benefit from further treatment yet found her at MMI. Claimant's counsel requested defendant authorize another orthopedic specialist to evaluate claimant's knee condition. (Ex. 1)

In a December 1, 2022, email to claimant's counsel, defendant's third-party administrator (TPA) indicated claimant had initially been evaluated at Hansen Family Medicine for her knee. Claimant was referred to an orthopedic specialist, Dr. Sneller.

Claimant requested a second opinion and was sent to Dr. Ash. Both Dr. Sneller and Dr. Ash recommended against surgery. (Ex. A)

Claimant said she wants to see a provider with Iowa Specialty Orthopedics but does not yet have the name of a provider. She said she is not satisfied with the care provided with Dr. Ash because her knee still does not function properly and because of the brevity of the appointments with Dr. Ash. Claimant said she cannot bend her knee and her knee will give out on her. Claimant said she has difficulty walking stairs, shopping and taking care of her children because of limitations with her knee.

David Webb testified he is an adjuster with defendant's TPA. He said he is not the primary adjuster in this case but is familiar with claimant's file. Mr. Webb testified claimant requested a second opinion after seeing Dr. Sneller, which was why claimant's care was transferred from Dr. Sneller to Dr. Ash.

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.

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. 6.904(3)(e) ; 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 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.

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).

This is a difficult case. The record indicates that given the present condition of her knee, claimant cannot return to her job at Eldora. Claimant is limited in using her knee and has difficulty with climbing stairs, grocery shopping and taking care of her children. Claimant wants to see another provider to see if there is further care that will improve her current function and strength of her injured knee.

However, the record indicates defendant initially authorized care for claimant at Hansen Family Hospital. Her care was then referred to an orthopedic specialist, Dr. Sneller. When claimant asked to be sent to Iowa Orthopedics, defendant complied with that request and claimant was eventually authorized for treatment with Dr. Ash. Claimant is now requesting a third referral to an orthopedic specialist. I am empathetic to claimant's situation. However, given the facts of this case, I cannot find the care provided by defendant has been unreasonable. Claimant has failed to carry her burden of proof the care provided by defendant is unreasonable and has failed to carry her burden of proof she is entitled to the requested care.

ORDER

Therefore, it is ordered:

Claimant's petition for alternate medical care is denied.

Signed and filed this 6th day of December, 2022.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Bryant Engbers (via WCES)

Meredith Cooney (via WCES)