

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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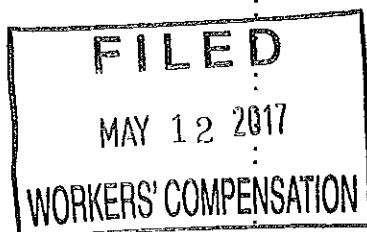
JAMES BLOOMER,

Claimant,

vs.

CITY OF DAVENPORT,

Employer,  
Self-Insured,  
Defendants.



File No. 5063173

ALTERNATE MEDICAL

CARE DECISION

Head Note No.: 2701

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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, James Bloomer.

The alternate medical care claim came on for hearing on May 11, 2017. 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 consists of claimant's exhibits 1-3; defendants' exhibits A1-A4. Claimant alleges a date of injury of August 8, 2016. During the course of hearing, defendants admitted the occurrence of a work injury on August 8, 2016, and liability for the conditions sought to be treated by this proceeding. Claimant, James Bloomer, was the only witness to testify at the hearing.

ISSUE

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

FINDINGS OF FACT

Claimant, James Bloomer, sustained an injury arising out of and in the course of his employment with the City of Davenport on August 8, 2016. The relief claimant is seeking through his alternate medical care petition is, "Referral to University of Iowa Shoulder Clinic." (Alt. Care Pet., p. 1)

Claimant previously filed another alternate care petition on February 10, 2017. Claimant's February petition for alternate medical care sought the following relief: "Referral to an Orthopedic Surgeon and/or Neurosurgeon for neck and left shoulder injury." (Feb. Alt. Care Pet., p. 1) The matter proceeded to an alternate care hearing on February 22, 2017; another deputy issued an alternate care decision on that same date. In the alternate care decision claimant's alternate care petition was denied. The deputy found that claimant's desire to forgo the offered trigger point injections was reasonable and his desire to pursue all other potential treatment and evaluation options was also reasonable. The deputy also found that it was reasonable for claimant to desire to be evaluated by a shoulder specialist. However, at the time of the prior alternate medical care hearing the only medical opinion offered was that of Dr. Garrels, an occupational medicine physician at Genesis Occupational Health. Dr. Garrels saw no reason for any other referrals. Therefore, claimant's petition for alternate care was denied.

Since that February alternate care decision, claimant has been evaluated by orthopaedic surgeon, Richard L. Kreiter, M.D. Dr. Kreiter stated:

After my review of records, taking a history, and doing a physical exam, my diagnosis does not involve a cervical strain or thoracic strain; the working diagnosis of Genesis Occupational Health. The problem seems more located around the sternoclavicular or medial articulation of the clavicle into the sternum, as seen in the pain diagram plaintiff's exhibit #3. This could be an injury to the sternoclavicular joint on the left, where today I found localized tenderness, and is the area of pain complaint."

(Ex. 2, p.1)

Dr. Kreiter suggested a "referral to the University of Iowa Shoulder Clinic for their opinion and treatment options." (Ex. 2, p. 1)

At the hearing before the undersigned, Mr. Bloomer testified that Dr. Kreiter performed a very thorough examination of his shoulder. Dr. Kreiter touched a spot near where his shoulder meets his neck and he felt instant pain. Mr. Bloomer felt that Dr. Kreiter had found the location of the injury or source of pain. Mr. Bloomer would like to follow the recommendation of Dr. Kreiter to go to the University of Iowa to find out what is wrong with his shoulder. He has been in constant pain for over nine months and wants to know what can be done to help him. (Testimony)

Mr. Bloomer testified that since the time of the injury he has had constant pain and discomfort at the front of his left shoulder, close to his neck. He has seen Dr. Garrels for treatment on at least two occasions. Dr. Garrels has never offered to refer him to a shoulder specialist. He has offered Mr. Bloomer an injection. However, Mr. Bloomer testified that it is not clear to him where the injection would be on his person or what the doctor would inject into him. Mr. Bloomer is concerned about receiving an injection because he does not know if it will help him or cause his shoulder to

deteriorate. He wants an injection to be a last resort. Dr. Garrels placed him at MMI and there was no follow-up appointment for Mr. Bloomer. Mr. Bloomer knew that Dr. Garrels had placed him at MMI. Mr. Bloomer had lost his job with the City and no longer had health insurance through the City. He testified that he did not know that a follow-up appointment with Dr. Garrels was even an option. (Testimony)

Defendant sent Dr. Kreiter's report to Rick Garrels, M.D. for his review. Dr. Garrels is an occupational medicine doctor who has been providing treatment to the claimant. Dr. Garrels last saw Mr. Bloomer on February 13, 2017. In Dr. Kreiter's letter to defense counsel dated May 1, 2017, Dr. Garrels notes that when he last saw Mr. Bloomer a referral to a shoulder specialist was not warranted or medical necessary to treat the work injury. He noted that Mr. Bloomer had full range of motion in his shoulder and good strength. (Ex. A)

Defendant indicates they are willing to send the claimant back to see occupational medicine doctor, Dr. Garrels; however, no appointment has been made for Mr. Bloomer. Defendant has not offered an orthopaedic specialist for the complaints that claimant has now had for over nine months. On his own, claimant sought an evaluation with an orthopedic specialist who is now recommending that he be seen at the University of Iowa Shoulder Clinic. Defendant is offering to return the claimant back to the occupational medicine doctor who has already seen him on more than one occasion. Despite seeing claimant on more than one occasion, the claimant still has questions about the injections he is offering. It appears the doctor is unable to adequately explain the recommended injections to the claimant. I find that the treatment defendant is offering to the claimant is inferior to the treatment being requested by the claimant. Treatment with Genesis Occupational Health has not been effective in the sense that they have failed to explain, in a manner that claimant understands, what exact treatment is being offered and the potential effects of such treatment. Additionally, despite treatment at Genesis, claimant's symptoms have remained constant for over nine months. Furthermore, I find that in this instance treatment with an occupational medicine doctor is inferior and less extensive than treatment with an orthopedic doctor at the University of Iowa Shoulder Clinic.

#### 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.

Based on the above findings of fact, I conclude that the treatment offered by the defendant at Genesis has not been effective and the evidence shows that such care is "inferior or less extensive" care than other available care requested by the employee. Therefore, I conclude that claimant's petition for alternate medical care should be granted.

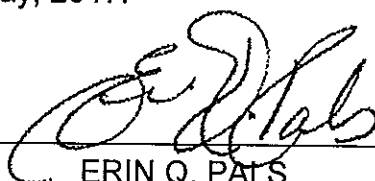
ORDER

THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care is granted.

Defendant shall authorize referral to the University of Iowa Shoulder Clinic.

Signed and filed this 12<sup>th</sup> day of May, 2017.

  
ERIN Q. PALS  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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