

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

 ELAINE MCDANIELS,

Claimant,

vs.

FAMILIA DENTAL,

Employer,

and

AMERISURE MUTUAL INS. CO.,

Insurance Carrier,
Defendants.

File No. 23701024.01

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, Elaine McDaniels.

This alternate medical care claim came on for hearing on December 12, 2023. 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 a petition for judicial review under Iowa Code section 17A.19.

The claimant properly served notice of this petition for alternate medical care on the defendant employer and insurer by certified mail. A copy of the return receipt of service of the petition and the original notice indicates both the employer and the insurer received these documents on or about December 5, 2023. (Claimant's Exhibit 2) No answer to the petition for alternate medical care was filed by the employer, insurance carrier or attorney representing the employer. Claimant's counsel indicated he had not been contacted by anyone on behalf of the employer or any insurance carrier in regard to this petition.

The undersigned examined the docket for this petition and there is no answer from the employer or its insurance carrier on file. A check of the agency's computer system also shows no answer has been filed. There is no indication that anyone representing the employer or its insurance carrier called in to the agency to provide a phone number to be called during the hearing. No phone calls were received by the

agency during the hearing inquiring why the employer was not called at the time designated for the hearing.

Thus, a finding was made that the claimant had properly served notice of the petition for alternate medical care on the defendant employer; that the employer had not filed an answer or otherwise appeared; and that the employer had not provided this agency with a phone number or person to be contacted for its participation in the hearing. The employer was found to be in default for purposes of this alternate medical care proceeding, and the employer is found to have abandoned the care of the claimant by its refusal to respond to claimant regarding further treatment or participation in this alternate medical care proceeding.

The record in this case consists of Claimant's Exhibits 1-3. Defendants did not participate in the hearing.

ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of authorization for continued care for claimant's work-related injury with specialists at ORA Orthopedics and physical therapy recommended by ORA.

FINDINGS OF FACT

Claimant is employed with Familia Dental. Claimant had a work-related injury to her right ankle during the week of September 4, 2023. (Ex. 1, pp. 2-3)

Claimant was recommended by her family practitioner to have treatment for her ankle with ORA Orthopedics (ORA).

On November 16, 2023, claimant was evaluated by Hannah Feldman, PA-C, with ORA for her ankle injury. Claimant was restricted to no standing or walking at work. (Ex. 1, p. 4)

On or about November 17, 2023, claimant was informed by her employer they could not accommodate her restrictions. (Ex. 1, p. 3)

In a November 21, 2023, email and letter, claimant's counsel requested defendants authorize medical care for claimant's ankle injury. (Ex. 1, pp 1-3)

On December 8, 2023, claimant was evaluated by Andrew Ganshirt, DPM, with ORA. Claimant was restricted from returning to work. (Ex. 3)

CONCLUSIONS OF LAW

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).

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 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 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.

[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.

Claimant injured her right ankle in a work-related injury. Claimant's counsel sent an email and a letter to defendants requesting medical care for claimant's work-related injury. There is no evidence in the record defendants responded to the email, the letter, or any communication. Defendants received the alternate medical care petition in this matter. Defendants did not file an answer, did not respond to the petition, and failed to appear at hearing.

Defendants have not communicated with the claimant or her attorney regarding claimant's requests for the recommended care. Defendants did not participate in the hearing on this alternate medical care petition. Based on this, it is found defendants have abandoned the claimant's care. There is evidence indicating the treatment provided by defendants was not appropriate or adequate. Defendants' failure to provide any care in this case is found to be unreasonable. Claimant seeks authorization for continued care for claimant's work-related injury with specialists at ORA Orthopedics and physical therapy recommended by ORA.

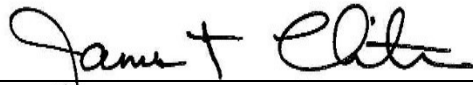
The petition for alternate medical care is granted.

ORDER

THEREFORE, IT IS ORDERED:

That claimant's petition for alternate medical care is granted. Defendants are ordered to immediately authorize and pay for continued care for claimant's work-related injury with specialists at ORA Orthopedics and physical therapy recommended by ORA.

Signed and filed this 12th day of December, 2023.



JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Nicholas Shaul (via WCES)

Familia Dental (via regular and certified mail)

3301 W Kimberly Rd, Ste 5

Davenport, IA 52806-3047

Amerisure Mutual Ins. Co. (via regular and certified mail)

Attn: Kamille Ferguson

PO Box 1515

Canonsburg, PA 15317-4515