BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

AMY JOHNSON,	:	
Claimant,	:	File No. 19700195.02
vs.	:	ALTERNATE MEDICAL
CARE INITIATIVES D/B/A MECHANICSVILLE SPECIALTY CARE,	:	CARE DECISION
Employer, Self-Insured, Defendant.	:	Head Note: 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, Amy Johnson against Care Initiatives d/b/a Mechanicsville Specialty Care, self-insured employer. Claimant appeared personally and through her attorney, Mark Chipokas. Defendant appeared through their attorney, Joseph Thornton.

The alternate medical care claim came on for hearing on February 26, 2020. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's February 16, 2015 Order, the undersigned has been delegated authority to issue a final agency decision in this alternate medical care proceeding. Therefore, this ruling is designated final agency action and any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code section 17A.

The evidentiary record consists of Claimant's Exhibit 1, pages 1-9 and Defendants' Exhibits A-E, and claimant's testimony during the telephonic hearing. During the course of the hearing defendants accepted liability for the November 7, 2018 work injury and for the lower extremities and low back conditions for which claimant is seeking treatment.

ISSUE

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

FINDINGS OF FACT

Claimant, Amy Johnson, sustained an injury to her low back and lower extremities as the result of an injury on November 7, 2018 which arose out of and in the course of her employment with Care Initiatives d/b/a Mechanicsville Specialty Care ("Care Initiatives"). Defendant has accepted liability for the injury and current causal connection of the treatment claimant is seeking via this alternate care proceeding. The dispute in this case is the location of the treatment. Ms. Johnson lives in Mechanicsville, Iowa. Defendant has authorized treatment with Jonathan Fields, M.D. at Allen Occupational Health in Waterloo, Iowa. The office of Dr. Fields is located 82 miles away from Ms. Johnson's home. Ms. Johnson would have to travel 164 miles round-trip for treatment. Claimant is seeking treatment in Cedar Rapids, Iowa which is only 25 miles from her home. Defendant contends it is reasonable for Ms. Johnson to have to travel 82 miles each way for treatment because she has done it before. Defendant argues that Ms. Johnson is merely using distance as an excuse to try to select a different doctor. I do not find defendant's arguments to be persuasive.

Ms. Johnson testified that she continues to experience constant pain due to her back injury. Her pain is typically at a 5 or 6 out of 10. When she walks her pain increases to a 7 or 8. She relies on a cane when walking. Ms. Johnson has other ongoing health issues. On January 22, 2020, Ms. Johnson had a heart attack. This was her fourth heart attack in less than 4 years. On January 30, 2020, Ms. Johnson underwent by-pass heart surgery. She is currently taking several medications for her diabetes, high cholesterol, high blood-pressure, and atrial fibrillation. Additionally, she is taking blood thinners for deep vein thrombosis (DVT). The blood thinners are to help prevent any additional blood clots and to help prevent any blood clots from coming loose and traveling through her bloodstream. She has not received any treatment from an authorized physician since March 6, 2019. (Testimony)

Ms. Johnson has not driven a vehicle in over 60 days. The farthest she has been a passenger in a vehicle at one time in the last 60 days is 26 miles, from her home to Cedar Rapids. No doctor has restricted her from driving. A doctor has advised her that if she is riding in a vehicle she needs to stop and stretch or walk around every 30 minutes. (Testimony)

Claimant is dissatisfied with the care offered by defendant due to the distance between her residence and the offered treatment. Defendant seeks to have claimant travel 164 miles round-trip for each treatment visit with an occupational medicine doctor. This is not a situation where claimant lives in a very rural area and Waterloo/Cedar Falls is the closest metropolitan area that could provide her specialized treatment. In this instance, claimant lives closer to Cedar Rapids, a city with numerous medical facilities. While defendant does have the right to select the care, the care offered must be reasonable. I find that it is not reasonable to require Ms. Johnson to travel 164 miles' round trip to see an occupational medicine physician. I further find it is unduly inconvenient for the claimant to essentially have to drive such 164 miles for treatment.

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.
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> [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).

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he/she 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).

In the present case defendant is requiring Ms. Johnson to travel 82 miles, each way from her residence for treatment with an occupational medicine doctor. This agency has routinely held that requiring a claimant to travel excessive distances to obtain medical treatment is unduly inconvenient for claimant, and is a claim properly brought under petition for alternate medical care pursuant to rule 876 IAC 4.48. Myers v. Trace, Inc., File No. 1238262 (Alt. Care Dec. November 22, 2002); Bitner v. Cedar Falls Construction Co., File No. 5013852 (Alt. Care Dec. September 24, 2004); Solland v. Fleetguard, Inc., File No. 5006970 (Alt. Care Dec. April 19, 2004); Chamness v. Richers Trucking, File No. 5030847 (Alt. Care Dec. October 15, 2009). Generally, care should be provided within a reasonable distance from claimant's residence. Trade Professionals, Inc. v. Shriver, 661 N.W.2d 119, 124 (Iowa 2003); Schrock v. Corkery Waste Disposal, Inc., File No. 1133725 (Alt. Med. Care Dec. June 26, 1996) (120 mile round trip excessive); Schulte v. Vocational Services of Area Residential Care, File No. 1134342 (Alt. Med. Care Dec. September 6, 1996) (care more than 70 miles away unreasonable). A 50-mile radius is generally considered a reasonable distance to travel for treatment in workers' compensation cases. Bitner v. Cedar Falls Construction Co., File No. 5013852 (Alt. Med. Care Dec. September 24, 2004). Treatment offered 82 miles, one way, from Ms. Johnson's residence is unreasonable and unduly inconvenient for claimant.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's petition for alternate medical care is granted.

Defendant shall authorize treatment with a qualified physician in Cedar Rapids, Iowa.

Signed and filed this 26th day of February, 2020.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Joseph Thornton (via WCES)
Mark Chipokas (via WCES)