

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ALIX JN LOUIS,

Claimant,

vs.

SCHNEIDER NATIONAL CARRIERS,
INC.,

Employer,

and

OLD REPUBLIC INSURANCE CO.,

Insurance Carrier,
Defendants.

File No. 22700197.02

ALTERNATE MEDICAL
CARE DECISION

Head Note No.: 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, Alix Jn Louis. Claimant appeared personally and through his attorney, James Hoffman. Defendants appeared through their attorney, Aaron Oliver.

The alternate medical care claim came on for hearing on December 9, 2022. 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 Defendants' Exhibit A-C, and claimant's testimony during the telephonic hearing. During the course of the hearing defendants accepted liability for the January 14, 2022, work injury and for the left shoulder condition that 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, Alix Jn Louis, was involved in a work-related accident wherein he sustained injuries including, to his left shoulder. Claimant has filed this proceeding seeking treatment for his left shoulder. His petition states he:

requests that he be furnished a physician to accomplish his treatment for what is perceived as frozen shoulder. Claimant states the present treating doctor has related a surgical process for purposing of relieving him from this situation and the insurance company has turned the same down, giving no alternative that is satisfactory or reasonable to relieve the same and to improve his condition.

(Attachment to Original Notice & Petition Concerning Application for Alternate Care).

The authorized treating physician in this case is Mark Bridges, M.D. (Testimony) He performed authorized surgery on Mr. Jn Louis's left shoulder. Mr. Jn Louis has continued to follow-up with Dr. Bridges since the surgery. The last time he saw Dr. Bridges was on November 21, 2022. He reported continued stiffness despite physical therapy. He also had pain with overhead activities. Dr. Bridges felt Mr. Jn Louis would benefit from manipulation under anesthesia to regain his full motion of his left shoulder. He also felt he would benefit from the ERMI Flexionator to help increase his regain of motion. (Defendants' Exhibit. A, pp. 1-3)

Defendants, Schneider National Carriers, Inc., employer and Old Republic, insurance carrier, contend the procedure recommended by the authorized treating physician is not medically necessary. In support of their position defendants offer the opinion of James Gill, M.D.

James Gill, M.D., performed a peer review report. The referral date and report date are November 22, 2022. The client is Sedgwick. Dr. Gill reviewed the records that were provided to him by Sedgwick. He did not interview or examine Mr. Jn Louis. Based on his review of the records, Dr. Gill concluded that the manipulation under anesthesia is not medically necessary. He noted that Mr. Jn Louis has an adequate range of motion which exceed the guidelines for undergoing a manipulation under anesthesia. (Def. Ex. B)

Mr. Jn Louis testified that he continues to have ongoing problems with his left shoulder. He testified that he is not able to move his left upper extremity on his own as far as the medical providers are able to move his arm when they push on it. He would like to undergo the treatment recommended by the authorized treating physician, Dr. Bridges. (Testimony)

I find that Dr. Bridges is the authorized treating physician in this case. I further find that Dr. Bridges has additional treatment for Mr. Jn Louis. I find Mr. Jn Louis wants to undergo the recommended treatment. There is no evidence in the record that defendants are offering any other treatment. I further find that defendants are interfering with the medical judgment of their own authorized treating physician in this case.

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. 5.904(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., 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.

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 June 17, 1986).


Based on the above findings of fact, I conclude that by questioning whether the treatment recommended by the authorized physician is medically necessary the defendants are interfering with the medical judgment of its own treating physician. Thus, under binding Iowa law, I conclude the defendants are not offering reasonable care. I conclude claimant has demonstrated the authorized care is unreasonable.

ORDER

THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care is granted. Defendants shall promptly authorize the treatment recommended by the authorized treating physician, Dr. Bridges.

Signed and filed this 9th day of December, 2022.


ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

James Hoffman (via WCES)

Aaron Oliver (via WCES)