BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ALLEN WERNER, Claimant, vs. NCI BUILDING SYSTEMS, Employer, and INS. CO. OF THE STATE OF PENNSYLVANIA, Insurance Carrier, Defendants.	File No. 5044478.01 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, Allen Werner. Claimant appeared through his attorney, Mark Sullivan. Defendants appeared through their attorney, Stephen Spencer.

The alternate medical care claim came on for hearing on November 19, 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 Exhibits 1 and 2 and Defendants' Exhibits A-C. Counsel offered arguments, but no other evidence was presented. Prior to the hearing defendants filed an answer to the petition for alternate medical care which accepted liability for the July 30, 2012, work injury and for the 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, Allen Werner, filed his alternate care petition on November 5, 2020. In that petition, claimant states he sustained an injury that arose out of and in the course of his employment on July 30, 2012. As the result of that injury the following body parts were affected, back, hips, feet, spine, pelvis, erectile dysfunction, and mental health. Claimant's petition for alternate care seeks treatment for these body parts. Claimant's petition states he seeks the following relief under Iowa Code section 85.27, "Claimant seeks referral to Dr. Hoxie, a urologist for treatment of his erectile dysfunction. Referral to a pain specialist for his ongoing chronic back pain and chiropractic care with Dr. Emily Recker at Monticello Family Chiropractic and the screening spine x-ray that she [sic] requires." (Alt Care Pet., paragraph number 9)

On November 18, 2020, defendants filed an answer admitting liability for the claim. Defendants stated that they "authorized Dr. Hoxie appointment and appointment with the Mayo Clinic pain clinic." (Def. Answer, paragraph 5).

On November 12, 2020, defendants sent an email to claimant advising that treatment would be authorized. (Def. Ex. A, p. 1) At the onset of the hearing the undersigned asked if there was any treatment claimant was seeking that defendants had not agreed to authorize in their email. Claimant stated that while defendants had been paying for the blood thinners prescribed by Dr. Westin, defendants had not been paying for the clinical visits associated with those prescriptions. Dr. Westin is claimant's primary physician and is also an authorized physician in this case. At the hearing, defendants agreed to pay for those visits if Mr. Werner goes to Dr. Westin for the sole purpose of getting his work-related prescription(s). Without a separate visit, the defendants did not know how to separate the billing for what is and what is not work-related. The parties agreed that claimant would make a separate appointment with Dr. Westin when he needs to get prescriptions related to the work injury and defendants would pay for those visits.

At the hearing, claimant requested that because defendants have delayed authorizing treatment, defendants lose the right to control medical treatment. The undersigned previously heard the underlying arbitration case and issued an arbitration decision on January 16, 2019. That decision was appealed to the Iowa Workers' Compensation Commissioner. The Commissioner issued an appeal decision on March 12, 2020. The case was not appealed further. In those agency decisions, the defendants were ordered to provide prompt medical care for the work-related conditions.

A review of the evidence in this alternate medical care proceeding shows that on June 22, 2020, claimant's counsel sent an email to defense counsel requesting treatment and providing notice of dissatisfaction of care. (Cl. Ex. 1) On October 26, 2020, claimant's counsel sent another email to defense counsel which states in pertinent part:

> Attached is an email that I sent to you back in June which you or your clients have completely ignored. . . . We will be filing an alternate petition . . . . We will be asking that the deputy allow Allen to direct his care going forward since your clients don't seem to have much interest in doing any of the things they were ordered to do in the arbitration decision.

(Ex. 1, p. 1)

On November 12, 2020, defense counsel sent an email to claimant's counsel in response to the claimant's requests. (Def. Ex. A) On November 18, 2020, defense counsel sent another email to claimant's counsel which states in pertinent part, "I understand when we talked this morning you had not yet seen my email below. I forwarded to you again. Please dismiss the Alt Care Petition ASAP." (Def. Ex. A)

I find that defendants were previously ordered by this agency to provide prompt and reasonable medical care related to the work injury. I further find that prior to claimant filing the petition for alternate medical care, defendants failed to respond to one email requesting treatment. Defendants have now authorized all treatment that the claimant is seeking. I find that the treatment authorized by the defendants is reasonable.

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 the present case, defendants have now agreed to authorize the treatment claimant is seeking. I conclude that this is reasonable care.

Claimant is also seeking to have claimant direct his own care. In support of his position, claimant points out that defendants were ordered by this agency to promptly provide medical treatment for the work-related conditions. Claimant contends defendants have failed to comply with the previous order. When a party does not comply with an order, there are other remedies available to the claimant. However, this is an alternate medical care proceeding pursuant to Iowa Code section 85.27. The standard I must apply is whether the authorized care is unreasonable. Since the appeal decision in this case became final agency action, it appears that defendants have failed to respond to one email. While I appreciate claimant's frustration with the situation, I conclude that defendants' failure to respond to one email does not justify revoking the defendants' statutory right to control the medical care. Naturally, if this becomes a pattern, then such a harsh remedy may be justified. However, based on the evidence before me, I conclude the treatment offered by defendants is reasonable.

ORDER

THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care is denied.

Signed and filed this 19th day of November, 2020.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Stephen Spencer (via WCES)

Mark Sullivan (via WCES)