BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FAUSTINO MENDEZ, Claimant, vs. MIDSTATES PRECAST PRODUCTS, Employer, and AMERISURE INSURANCE, Insurance Carrier, Defendants.	File No. 19005718.02 ALTERNATE MEDICAL CARE DECISION HEAD NOTE NO: 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, Faustino Mendez.

This alternate medical care claim came on for hearing on October 2, 2020. 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 petition for judicial review under Iowa Code section 17A.19.

The record in this case consists of Claimant's Exhibits 1-4 and Defendants' Exhibit A, and the testimony of claimant.

ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of authorization for claimant to return to Joseph Buckwalter, M.D.

FINDINGS OF FACT

Defendants accept liability for a work-related injury occurring on May 24, 2019.

Claimant injured his right upper extremity when he lifted a steel beam and felt a pop in the right forearm and wrist. (Exhibit 3, page 1)

On August 7, 2019, claimant was evaluated by Dr. Buckwalter regarding his right wrist. Claimant was instructed to wear a right arm brace and to avoid use of the right arm. (Ex. 1)

In a July 15, 2020 letter, claimant was given an offer of modified work by his employer. Claimant was provided light duty work with the Caring Hands Outreach Center, a non-profit agency. (Ex. 2)

On September 10, 2020, claimant was evaluated by Rahul Rastogi, M.D. at the University of Iowa Hospitals and Clinics (UIHC) Pain Clinic. Claimant reported his forearm and hand were very painful. Claimant wore a splint at night. Claimant had a prior injury that resulted in complex regional pain syndrome (CRPS). A spinal cord stimulator (SCS) trial was recommended. A cervical epidural steroid injection (ESI) was also recommended. Dr. Rastogi indicated claimant's work restrictions were unchanged. (Ex. 3)

In a September 24, 2020 email exchange, claimant's and defendants' counsel discussed claimant's treatment options. Claimant's counsel suggested claimant be taken off work for a few weeks and paid temporary benefits so claimant could get his symptoms under control. Claimant's counsel indicated claimant was routinely going to urgent care to deal with symptom flare-ups. In the alternative, claimant's counsel requested claimant be sent to Dr. Buckwalter to reassess restrictions. Defense counsel noted Dr. Rastogi had already dealt with restrictions and that claimant was to be given a cervical ESI, as recommended, on September 24, 2020. (Ex. 4)

On September 24, 2020, claimant was evaluated by Dr. Rastogi for right hand and arm pain and a history of CRPS. Claimant was found not to be a candidate for an SCS. A cervical ESI was discussed and chosen as a treatment option for claimant's symptoms. Claimant's medication was also adjusted for muscle spasms. Claimant was to return to work with unchanged restrictions. (Ex. A, pp. 3-10)

On September 24, 2020 claimant underwent a cervical ESI. The procedure was performed by Dr. Rastogi. (Ex. A, pp. 1-2)

Claimant testified he was authorized to treat with Dr. Buckwalter who recommended surgery and restricted claimant to no use of the right arm. He testified physicians indicated his CRPS has flared up and he needs to treat for the CRPS before he has any surgery.

Claimant said he has been evaluated and treated by Dr. Rastogi at the UIHC Pain Clinic. At the Pain Clinic claimant has seen a pain psychologist, and had physical therapy specific for his CRPS. He said Dr. Rastogi told him that he, Dr. Rastogi, does not give restrictions.

Claimant said that when the pain in his right arm flares up he either goes to Urgent Care or goes home from work. The record indicates claimant has missed work due to flare-ups of his pain in his upper extremity.

CONCLUSION OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.14(6).

Iowa Code section 85.27(4) provides, in relevant part:

> For purposes of this section, the 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.

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

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 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. 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.

Based on the record, claimant's testimony and the professional statements of counsel, it appears claimant was authorized to treat with Dr. Buckwalter. Dr. Buckwalter

recommended surgery and restricted claimant to no use of his right arm. Claimant was eventually authorized to treat with Dr. Paulson (no first name given), who modified the restrictions indicating claimant could lift up to two pounds on the right. Claimant was also assessed as having flare-ups of his CRPS. Claimant has been told by treating physicians that his CRPS symptoms need to be addressed before surgery will occur.

Claimant received an ESI from Dr. Rastogi on September 24, 2020 to treat his symptoms. Dr. Rastogi did not change claimant's current restrictions. Claimant testified he was told by Rastogi that he, Dr. Rastogi, does not give restrictions. Claimant has received counseling, physical therapy, medications, and other treatment modalities for his CRPS.

I appreciate claimant's situation. He wants to have his restrictions to his right upper extremity re-evaluated so he doesn't have to take off work to go to doctor's visits for his flare-ups of his CRPS. Claimant's counsel's suggestion that claimant return to Dr. Buckwalter for a re-evaluation of restrictions appears to be one solution to claimant's situation, from a layperson's perspective.

However, defendants have provided claimant with counseling, physical therapy, ESI's and other treatment for the flare-ups of claimant's CRPS. Dr. Rastogi indicated, as of September 24, 2020, that current restrictions are unchanged. There is no expert opinion claimant needs to return to Dr. Buckwalter. There is no expert opinion indicating claimant needs to have his current restrictions changed. The most recent medical record indicates the restrictions are unchanged. Given the above-described record, claimant has failed to carry his burden of proof the current care given by defendants is unreasonable.

ORDER

Therefore, it is ordered that claimant's petition for alternate medical care is denied.

Signed and filed this 2nd day of October, 2020.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Nick Platt (via WCES)

Caitlin R. Kilburg (via WCES)