

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TRACEY BAKER,

Claimant,

vs.

FARMCHEM CORP.,

Employer,

and

TRAVELERS INDEMNITY CO. OF CT.,

Insurance Carrier,
Defendants.

File No. 1665345.02

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, Tracey L. Baker. Claimant appeared personally and through his attorney, Barbara Diment. Defendants appeared through their attorney, Kevin Rutan.

The alternate medical care claim came on for hearing on April 27, 2021. 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 and Claimant's Exhibit 2, pp. 2-5, Defendants' Exhibit A, pages 1-10, and Claimant's testimony during the telephonic hearing. During the course of the hearing defendants accepted liability for the June 5, 2019 work injury and for the conditions 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, Tracey Baker, was involved in a work-related motor vehicle accident wherein he sustained injuries including, but not limited to, his left hip, left lower extremity, foot, knee, and leg. He continues to have difficulty with his left leg, foot drop, and issues with edema in his ankles. Claimant would like to return to see Christopher Wise, M.D., an orthopedic surgeon in Independence, Missouri. Dr. Wise performed surgery on Mr. Baker shortly after the accident. More recently, Mr. Baker has been treating with Michael Stover, M.D., an orthopedic surgeon in Chicago, Illinois. Mr. Baker last saw Dr. Stover on April 19, 2021. According to Mr. Baker, Dr. Stover does not have a problem with Mr. Baker returning to Dr. Wise for a second opinion. Unfortunately, the records from the April 19, 2021 appointment with Dr. Stover were not available at the time of the hearing. It is not known if Dr. Stover is recommending that Mr. Baker see Dr. Wise, or if he simply does not object to him returning to Dr. Wise. (Def. Ex. A; testimony)

Mr. Baker currently resides in Bradford, Illinois, which is 129 miles from Dr. Stover's office and 387 miles from the office of Dr. Wise. On March 24, 2021, claimant's counsel sent an email to defense counsel which stated: "I don't expect him [Dr. Wise] to have anything further to offer but Tracey would feel best to follow up with him because he did the surgery and Tracey would take the recent CT exam. His wife would help drive and it would be a two day trip in Tracey's old territory." (Def. Ex. A, p. 1)

Defendants want to see the most recent treatment notes from the current authorized provider, Dr. Stover, before they decide whether they should authorize Mr. Baker to see Dr. Wise. Both Dr. Stover and Dr. Wise are orthopedic surgeons. (Def. Ex. A)

It should be noted that Mr. Baker has also seen Giovanni Colombo, M.D., a urologist. On February 10, 2021, Dr. Colombo indicated in a check-the-box letter that it would be reasonable for Mr. Baker to follow up with Dr. Wise. The letter does not indicate what, if any, additional treatment Dr. Colombo believes Dr. Wise will provide to Mr. Baker. (Cl. Ex. 2, p. 3)

I find that claimant has failed to demonstrate that the care offered by defendants is unreasonable. Defendants have authorized care with Dr. Stover. Claimant filed his petition for alternate medical care on April 15, 2021; four days later he saw Dr. Stover. Defendants are waiting to see the most recent treatment notes before deciding if they should authorize claimant to see Dr. Wise who is 387 miles away from the claimant or if he should continue treatment with Dr. Stover. I find that the care defendants are offering is reasonable.

Furthermore, even claimant's counsel has indicated that she does not expect Dr. Wise to have anything further to offer Mr. Baker. I find claimant has failed to demonstrate that the 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.

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.

[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).

Based on the above findings of fact, I conclude claimant has failed to demonstrate the authorized care is unreasonable. Additionally, I conclude claimant has failed to prove the care he is receiving is "inferior or less extensive" care than other available care requested by the employee.

ORDER

THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care is denied.

Signed and filed this 28th day of April, 2021.



ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Barbara Diment (via WCES)

Kevin Rutan (via WCES)