

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TONY MACK,

Claimant,

vs.

RYAN & ASSOCIATES,

Employer,

and

AIG,

Insurance Carrier,
Defendants.

FILED

DEC 21 2015

WORKERS COMPENSATION

File No. 5052951

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

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, Tony Mack. Claimant appeared through his attorney, Randall P. Schueller. Defendants appeared through their attorney, Clarissa Bierstedt. All parties were well-represented by counsel, who presented articulate and convincing arguments on behalf of all parties.

The alternate medical care claim came on for hearing on December 18, 2015. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Iowa Workers' Compensation 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 record consists of claimant's exhibits 1 and 2. The exhibits were offered without objection and received into evidence. No witnesses testified.

FINDINGS OF FACT

Claimant sustained a work-related injury to his right knee on July 24, 2015.

Claimant initially treated in Des Moines, Iowa. The physician recommended MRI testing. However, the testing did not occur.

Claimant moved to his home in Montgomery, Alabama. Counsel for claimant requested the MRI testing be conducted in the Montgomery, Alabama area. The initial request was made on August 31, 2015. (Exhibit 1) Counsel for claimant made several other requests on November 4, 2015 and November 17, 2015. No MRI testing was scheduled in the Montgomery, Alabama area.

The petition for alternate medical care was filed on December 7, 2015. Claimant alleged at paragraph 5: "Defendant refuses to provide an MRI in Alabama pursuant to the authorized treating physician's recommendation."

Eventually, claimant, on his own initiative, had an MRI on December 8, 2015 at High Tech Imaging in Montgomery, Alabama.

Claimant was without any medical treatment from August 31, 2015 until December 8, 2015.

REASONING AND CONCLUSIONS OF LAW

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).

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).

An employer's failure to follow recommendations of an authorized physician in matters of treatment is commonly a failure to provide reasonable treatment. Boggs v. Cargill, Inc., File No. 1050396 (Alt. Care Dec., January 31, 1994).

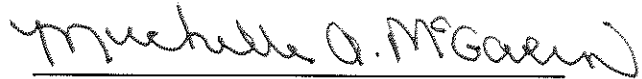
Here, defendants acted unreasonably in not scheduling MRI testing in the geographical area where claimant resides. Claimant has had to wait nearly four months for a simple test to be scheduled. Alternate medical care is granted.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's petition for alternate medical care is granted. Claimant is entitled to MRI testing at High Tech Imaging in Montgomery, Alabama.

Signed and filed this 21st day of December, 2015.



MICHELLE A. MCGOVERN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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