

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LOGAN WOODS,

Claimant,

vs.

CLEMONS, INC.,

Employer,

and

EMPLOYERS ASSURANCE CO.,

Insurance Carrier,
Defendants.

File No. 20007363.01

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, Logan Woods.

This alternate medical care claim came on for hearing on June 10, 2021. 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 1-2 and the testimony of claimant.

Defendants failed to appear at the hearing. Defendants failed to file an answer or appearance regarding the petition for alternate medical care. Defendants failed to defend the petition for alternate medical care. Given this record, defendants are found in default. All allegations of claimant's petition for alternate medical care are accepted as accurate.

ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of left shoulder surgery as recommended by Kyle Galles, M.D.

FINDINGS OF FACTS

Claimant sustained a work-related injury to his left shoulder on May 18, 2020.

On January 14, 2021, claimant was evaluated by Dr. Galles. Dr. Galles is an orthopedic surgeon. Claimant was assessed as having left shoulder posterior instability not resolved by conservative care. Surgery was discussed and chosen as a treatment option. (Exhibit 1)

Claimant testified defendants referred him to, and authorized his treatment with, Dr. Galles.

Claimant testified that since that visit with Dr. Galles, defendants have not authorized the surgery recommended by Dr. Galles. Claimant testified he wants to proceed with the left shoulder surgery recommend by Dr. Galles.

In a May 14, 2021 email, claimant's counsel requested defendants to authorize the shoulder surgery recommend by Dr. Galles. There is no evidence in the record defendants responded to that request. (Exhibit 2)

On May 28, 2021, defendants accepted service of the alternate medical care petition.

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 R. App. P. 6.904(3).

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 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).

Claimant had a work-related injury to his left shoulder. Claimant was evaluated by a surgeon, authorized by defendants, who recommends surgery. Claimant has attempted to have the surgery authorized by defendants. Defendants have failed to respond, despite attempts by claimant's counsel to communicate with the insurer.

In this case, claimant has clearly demonstrated that defendants have not offered prompt or reasonable medical care. Defendants' failure to offer medical care is unreasonable and constitutes an abandonment of defendants' obligation to provide claimant medical care under Iowa Code section 85.27. Claimant has clearly established that defendants have not provided prompt medical care that is reasonably suited to treat his injury.

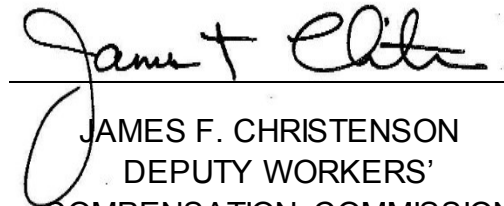
Given the claimant's requests for care and the lack of communications from the defendants, I find that defendants have not offered prompt medical care that is reasonably suited to treat the claimant's work injury. I find that defendants have abandoned claimant's medical care. I find that defendants' failure to offer authorized medical care is unreasonable. Defendants are ordered to authorize the surgery recommended by Dr. Galles and sought by claimant.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is granted. Defendants are ordered to provide claimant the surgery recommended by Dr. Galles for his work-related injury to his left shoulder.

Signed and filed this 10th day of June, 2021.


JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Erik Bair (via WCES)

Clemons, Inc. (via regular and certified mail)

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