BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JENNIFER VERMAST, Claimant, vs. JOHN DEERE WATERLOO WORKS, Employer, Self-Insured, Defendants.	File No. 5053803 ALTERNATE MEDICAL CARE DECISION Head Note No.: 2701

STATEMENT OF THE CASE

This is an alternate medical care proceeding that was initiated by the filing of a petition by the claimant, Jennifer Vermast. The petition was filed on January 7, 2016, requesting claimant be referred to a pain management doctor.

Defendants filed an answer and resistance on January 19, 2016.

Pursuant to a standing order of delegation of authority by the workers' compensation commissioner pursuant to Iowa Code section 86.3, the undersigned enters this decision for the workers' compensation commissioner. There is no right of appeal of this decision to the workers' compensation commissioner. Appeal of this decision, if any, would be by judicial review pursuant to Iowa Code section 17A.19.

The hearing was recorded by means of a digital voice recorder. The digital recording is the official transcript of the proceedings.

ISSUES

Whether claimant is entitled to alternate medical care.

FINDINGS OF FACT

Claimant sustained a work related injury on September 1, 2015,[1] which resulted in mid to low back pain. Defendant accepted this claim and provided treatment through Deere's Medical Department with Dr. Lester Kelty and Nurse Practitioner Mary Huesmann. Claimant reported positive results to therapist Michelle Whiteside from

[1] Defendant asserts in its brief the correct date of injury is August 28, 2015, but there was no motion on the record to correct the injury date and therefore, the only date of injury in the record is September 1, 2015.

treatment and medication, reporting 90 percent resolution of symptoms by November 11, 2015. (Exhibit A)

On November 18, 2015, claimant again reported doing well despite missing a previous appointment. (Ex. A) She did not attend her November 20, 2015, appointment but did text that her back condition was worsening. (Ex. A) On November 23, 2015, she missed another appointment. Her husband replied to a text inquiry saying that she was in the bed with the flu. (Ex. A)

On November 25, 2015, claimant missed another appointment, reporting that she wanted to reschedule and that she had gone to the emergency room because her pain was so severe. (Ex. A)

On December 2, 2015, therapist Whiteside sent claimant a text inquiring as to her condition and did not receive a response. (Ex. A)

Claimant testified that in a visit with Dr. Kelty, he informed her he had no further care he could provide. In response, she consulted with her family physician, Dr. Bollaert who recommended she seek care from a pain clinic.

On December 18, 2015, claimant's counsel wrote a letter to defendant expressing dissatisfaction with her current medical treatment.

> [I]t is my understanding that she was released to maximum medical improvement on 10/30/15 and was further released to full duty. This is despite ongoing low back problems. As a result of ongoing back problems related to the work injury, Ms. Vermast presented herself to Dr. Michael Bollaert for treatment/evaluation. Dr. Bollaert indicated on 12/15/15 that as a result of her ongoing problems, Ms. Vermast should be referred to a pain clinic for further treatment/evaluation. (Ex. 1)

Defendant did not agree to this but instead offered for claimant to return to Dr. Kelty.

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.
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> [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.

In the present case, the claimant has not met her burden to show that the employer-authorized care has not been effective and that the care is inferior and/or less extensive than the care recommended by Dr. Bollaert. Claimant has missed several physical therapy appointments. At her last visits, she reported doing well and returning to baseline. The new complaints of back pain have not been assessed by the therapist or Dr. Kelty.

ORDER

THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care is denied.

Signed and filed this 22nd day of January, 2016.

JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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