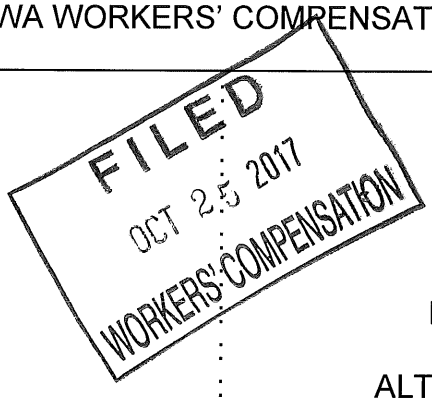
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



LOIS ECKHARDT, Claimant, vs. PARKVIEW MANOR, Employer, and ARGENT, A DIVISION OF WEST BEND, Insurance Carrier, Defendants.	File No. 5059806 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, Lois Eckhardt.

The alternate medical care claim came on for hearing on October 24, 2017. The proceedings were digitally recorded, which constitutes the official record of this proceeding. By order filed February 16, 2015, this ruling is designated final agency action.

The record consists of claimant's exhibit 1; defendants' exhibits A and B. Claimant alleges a date of injury of December 23, 2016. During the course of hearing, defendants admitted the occurrence of a work injury on December 23, 2016. Lois Eckhardt and Kimberly Westphal both testified live via telephone.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care.

FINDINGS OF FACT

Claimant, Lois Eckhardt, sustained an injury arising out of and in the course of her employment with Parkview Manor on December 23, 2016. The relief claimant is seeking through her alternate medical care petition is a more convenient neurological assessment. (Alternate Care Petition)

Ms. Eckhardt lives in Wellman, Iowa which is approximately 25 miles south of Iowa City. Defendants authorized treatment with Timothy J. Miller, M.D. On August 4, 2017, Dr. Miller recommended that Ms. Eckhardt be evaluated at the University of Iowa Neurology Department. (Exhibit A; Testimony)

Following the August 4, 2017 appointment, Dr. Miller's office contacted Argent and advised that the doctor was concerned about Ms. Eckhardt's gait and stated that she was deteriorating. The doctor's office advised the adjuster, Kimberly Westphal, that he was referring claimant to a neurologist. The insurance company contacted the office of a neurologist that claimant had seen early on in this claim, Kimberly Stern, M.D. at Mercy Clinics in Iowa City. Dr. Stern's office was provided all of Ms. Westphal's medical records and the referral form from Dr. Miller's office. To the insurance carrier's credit, they diligently followed-up with Dr. Stern's office on August 8, 15, and 21 to see if the doctor was willing to see the claimant. On August 23, 2017, Dr. Stern's office advised the carrier that the doctor was not willing to get involved in this matter. Dr. Stern's office stated that there may be other doctors at Mercy who would be willing to become involved but the first available appointment would not be until the end of 2017. (Testimony)

It should be noted that claimant's counsel made a professional statement that his office had sent the records to Dr. Stern's office for their review approximately one week prior to this alternate care hearing. Claimant's counsel felt optimistic that Dr. Stern would agree to see Ms. Eckhardt but he admitted he has received absolutely no response from the doctor's office. Thus, the only response from Dr. Stern's office that is in evidence is the one wherein defendants were told she would not be involved in this matter.

After learning that Dr. Stern would not see the claimant, the defendants attempted to have a neurologist at the University of Iowa see Ms. Eckhardt. On August 24, 2017, the carrier contacted the U of I who advised that they would have to review the records and go through the typical triage process to determine if they would be willing to see Ms. Eckhardt. However, even if they were willing to see her the first available appointment was not until the end of the year. (Testimony)

Ms. Westphal testified that because Dr. Miller had told her the claimant was deteriorating and because trying to find a specialist is a time consuming process she decided to try to find a neurologist she was familiar with in the hopes of being able to obtain a prompt appointment. On August 24, 2017, the defendants contacted Ruan

Neurology in Des Moines. Once again the facility required a triage process before they would determine if they would see Ms. Eckhardt. The defendants did not receive Dr. Miller's August 4, 2017 dictation notes until September 15, 2017; they provided these to Ruan. Defendants followed-up with Ruan on September 19 and 23, 2017. On September 26, 2017, Ruan advised the defendants that they would see the claimant. The first available appointment was October 18, 2017. However, due to the distance from Wellman to Des Moines, (115 miles) claimant's counsel advised defendants that claimant would not be attending that appointment and instead would file a petition for alternate medical care. Defendants have secured Dr. Adelman's next available appointment which is November 8, 2017. (Testimony)

Ms. Eckhardt argues that the appointment with Dr. Adelman is not reasonable or convenient because it requires her to travel approximately 115 miles each way. She contends that this ride would be too physically difficult for her given her physical condition and her age; she is in her mid-eighties. Defendants have stated that they will provide the vehicle and the driver to take Ms. Eckhardt from her doorstep to the doctor's appointments at no cost to her. Defendants have provided transportation for all of her medical appointments. During cross-examination, the insurance adjuster admitted that no effort was made to try to obtain an appointment for Ms. Eckhardt to be seen at any other facilities in the Iowa City and/or Cedar Rapids area. (Testimony)

On October 5, 2017, defendants wrote to Dr. Miller to seek his opinion regarding the upcoming appointment with Dr. Adelman. Defendants indicated that they had attempted to have claimant seen by Dr. Stern and at the U of I and advised him of the responses they received. Defendants then advised Dr. Miller that they were able to secure an appointment for Ms. Eckhardt in Des Moines and would provide transportation for her. Dr. Miller indicated that he was in agreement with the referral to Dr. Adelman and that this was an adequate continued care plan. (Ex. B, p. 2)

While 115 miles is farther than is generally found to be an acceptable distance by this agency, in these specific circumstances, I find that it is reasonable. The defendants have demonstrated that they diligently attempted to obtain a prompt appointment for the claimant with two neurology groups in her area but were unsuccessful. The adjuster testified that because Dr. Miller's office indicated to her that the claimant was deteriorating she sought an appointment with Ruan Neurology in the hopes of securing an earlier appointment date. The defendants were able to secure a relatively quick appointment with the specialist. Once that was obtained the defendants then secured the opinion of the referring physician on their plan. I find that the authorized, referring physician is in the best position to render an informed decision on whether Ms. Eckhardt is able to physically attend the appointment in Des Moines. Dr. Miller has opined that the plan to send her to Des Moines for the appointment is an adequate plan. Ms. Eckhardt's objection to the appointment was that the trip would be physically difficult for her. However, Dr. Miller, the treating physician has indicated that he agrees with the appointment for her to see Dr. Adelman in Des Moines. I find that the appointment for claimant to see Dr. Adelman is reasonable.

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).

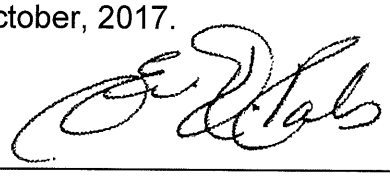
Based on the above findings of fact, I conclude that claimant has failed to show that the authorized care is unreasonable. While it may be desirable for Ms. Eckhardt to see a neurologist closer to her home, given this particular set of facts, I find the appointment for her to see Dr. Adelman is reasonable.

ORDER

THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care is denied.

Signed and filed this 25th day of October, 2017.



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