BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

STEPHANIE BLAHNIK, Claimant, vs. NORDSTROM, INC., Employer, Self-Insured, Defendant.	File No. 19700465.01 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, Stephanie Blahnik. Claimant appeared personally and through her attorney, William Nicholson. Defendant appeared through their attorney, James Peters.

The alternate medical care claim came on for hearing on October 30, 2019. 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 Exhibits 1-3 and Defendant's Exhibits A and B, and claimant's testimony during the telephonic hearing. During the course of the hearing defendants accepted liability for the August 1, 2019 work injury. Defendant also admitted that the treatment being sought is related to the admitted condition, the partial-thickness rotator cuff tear.

ISSUE

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

FINDINGS OF FACT

Claimant, Stephanie Blahnik, sustained an injury to her right shoulder/right upper extremity on August 1, 2019. Defendant authorized treatment for Ms. Blahnik with WorkWell. On September 27, 2019, WorkWell recommended that Ms. Blahnik be referred to orthopedics for evaluation and treatment of her continued right shoulder pain. This is the treatment that claimant is seeking through this alternate care proceeding. (Claimant's Exhibits 1 and 3)

Following the injury, Ms. Blahnik received conservative treatment at WorkWell with Megan Hart-Fernandez, DNP. Treatment included physical therapy and some injections. On September 24, 2019 a right shoulder arthrogram revealed some tearing and fraying of some tendons. The arthrogram also revealed evidence of a prior distal clavicular resection. The clinical note stated that the arthrogram findings could not entirely be explained by the reported mechanism of injury. No further physical therapy or any other treatment has been recommended since that time. The only recommendation is a referral to an orthopedic surgeon; this recommendation is contained in the September 27, 2019 WorkWell clinical note. (Cl. testimony, Cl. Ex. 1)

On October 1, 2019 Ms. Blahnik was informed that Nordstrom would see if the University of Iowa Orthopedics Department would see her. Defendant promptly provided the records to the University of Iowa. Upon reviewing the records, the physician at the University noted that Ms. Blahnik had prior shoulder surgery and requested to review those surgical records before scheduling an appointment for Ms. Blahnik. (Cl. Ex. 3)

Defendant had taken claimant's recorded statement on August 8, 2019. At that time, claimant failed to disclose any prior shoulder problems, including prior shoulder surgery. Prior to the September 24, 2019 arthrogram Ms. Blahnik did not disclose her prior surgery to the defendant because she forgot about the surgery. Ms. Blahnik has not been able to provide the name of the surgeon to Nordstrom. However, on October 2, Ms. Blahnik did provide the name of the Colorado hospital where she had the prior shoulder surgery. The very next day defendant wrote to St. Anthony's Hospital in Lakewood, Colorado and requested the medical records. To date, the requested records have not been received by the defendant. (Cl. Testimony; Cl. Ex. 3)

I find that the treatment being offered by the defendant is reasonable. Defendant has been promptly offering the recommended treatment. Any current delay was not caused by the defendant. Defendant promptly acted to send Ms. Blahnik to the orthopedic department at the University. As soon as defendant learned the location of the claimant's prior surgery the defendant promptly requested the treatment records. Defendant has acted promptly and diligently to try to obtain an orthopaedic appointment for Ms. Blahnik, as recommended by WorkWell. I find claimant has failed to carry her burden of proof to show that the treatment offered by defendant is unreasonable.

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).

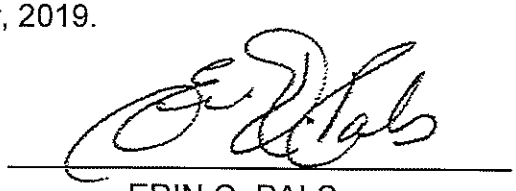
Based on the above findings of fact, I conclude that the treatment offered by the defendant is not unreasonable.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's petition for alternate medical care is denied.

Signed and filed this 30th day of October, 2019.



ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

James Peters (via WCES)
William Nicholson (via WCES)