

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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KENNETH HOSTETLER,

Claimant,

vs.

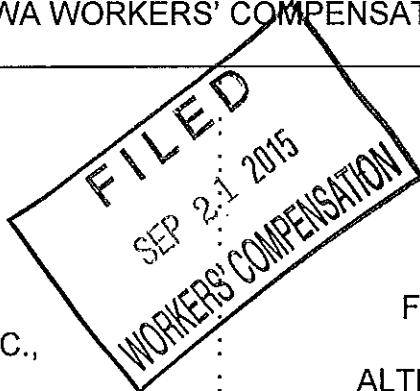
ADVANCE SERVICES, INC.,

Employer,

and

ACE AMERICAN INSURANCE  
COMPANY,

Insurance Carrier,  
Defendants.



File No. 5052925

ALTERNATE MEDICAL  
CARE DECISION

HEAD NOTE NO: 2701,

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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, Kenneth Hostetler. Claimant appeared personally and through his attorney, Thomas J. Currie. Defendants appeared through their attorney, Timothy Wegman. 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 September 21, 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 through 3. All exhibits were offered without objection and received into evidence. One witness testified electronically. Defendants elected not to call any witnesses to testify at the time of hearing.

#### FINDINGS OF FACT

Claimant sustained an injury that arose out of and in the course of his employment on November 8, 2013. Defendants authorized treatment with Ann C. McKinstry, M.D., and also at the Sedlacek Pain Clinic in Cedar Rapids, Iowa. (Exhibit

1) Dr. McKinstry prescribed various medications for claimant's low back condition. Dr. Sedlacek administered an epidural steroid injection.

On May 21, 2015, Dr. McKinstry authored a report and provided claimant with a permanent impairment rating. (Ex. 1, p. 2) The report stated in relevant portion:

The patient has contacted his case manager and has requested to end care. He does not want another epidural or any other testing or treatment. The case manager has requested an impairment rating with regard to his injuries to his low back, right forearm, and right toes. I have only provided treatment of his low back injury and will therefore only provide a rating with regard to his low back. Dr. Switzer has assessed an impairment with regard to his right arm and right toe fractures.

His examination at his most recent visit on 5/11/15 revealed significantly limited lumbar extension due to low back pain, although lumbar flexion was within normal limits. His MRI showed some mild degenerative changes, including a small annular tear at L4-L5.

At his alternate medical care hearing, claimant denied he made those statements to Dr. McKinstry about ending his medical treatment. Claimant testified he said he did not want another epidural steroid injection because the first injection did not relieve his back pain. Claimant testified he is in need of prescriptions for medication to treat his continuing back pain. Claimant is now requesting an appointment with the authorized treating physician, Dr. McKinstry. Claimant admitted he is also willing to attend the Sedlacek Pain Clinic too, but he does not believe another epidural steroid injection will benefit him.

#### 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 Rule of Appellate Procedure 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).

It is entirely reasonable for claimant to return to Dr. McKinstry for followup care. She is the authorized treating physician and she has been prescribing claimant's medications. Claimant's petition for alternate medical care is sustained.


ORDER

THEREFORE, IT IS ORDERED:

Claimant's petition for alternate medical care is granted.

Within ten (10) days of the filing of this decision, defendants shall schedule an appointment for claimant with Ann C. McKinstry, M.D., the authorized treating physician.

Signed and filed this 21<sup>st</sup> day of September, 2015.



MICHELLE A. MCGOVERN  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

Copies To:

Thomas J. Currie  
Attorney at Law  
1853 - 51<sup>st</sup> St. N.E., Ste. 1  
Cedar Rapids, IA 52402  
[tcurrie@currieliabo.com](mailto:tcurrie@currieliabo.com)

Timothy W. Wegman  
Attorney at Law  
6800 Lake Dr., Ste. 125  
West Des Moines, IA 50266  
[tim.wegman@peddicord-law.com](mailto:tim.wegman@peddicord-law.com)

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