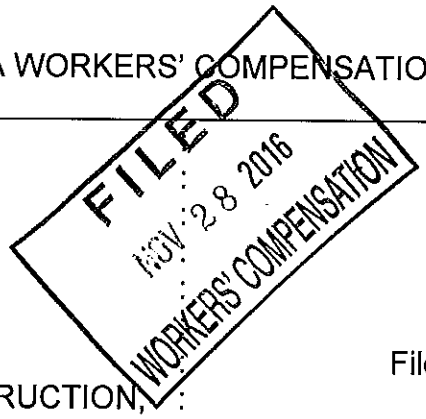
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



JOSEPH GIELLIS, Claimant, vs. MERCER CUSTOM CONSTRUCTION, Employer, and TRAVELERS IDEMNITY CO., Insurance Carrier, Defendants.	File No. 5062688 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, Joseph Giellis.

The alternate medical care claim came on for hearing on November 28, 2016. The proceedings were digitally recorded which constitutes the official record of this proceeding. This ruling is designated final agency action and any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code 17A.

The record consists of testimony of the claimant and claimant's Exhibit 1.

Neither Mercer Custom Construction nor Travelers Indemnity Company appeared for the telephone hearing. No answer and exhibits were provided by the defendants. Administrative notice was taken of the claim file.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of transfer of care from the University of Iowa Hospitals and Clinics Pain Clinic in Iowa City, Iowa to Finley Hospital Pain Clinic in Dubuque, Iowa.

FINDINGS OF FACT

The undersigned having considered all of the testimony and evidence in the record finds:

Claimant was injured on April 1, 2014. The claimant has been receiving medical care at the University of Iowa Hospitals and Clinics (UIHC) for his neck injury. Claimant had surgery on his neck and has received injections. Defendants have been paying for this treatment. The Claim Information Sheet, which is part of the administrative file, shows that defendants first paid workers' compensation benefits on July 15, 2015. I find that defendants have admitted liability for the medical care that claimant is requesting in this alternate medical care proceeding.

Claimant has had to use the emergency room at Finley Hospital for treatment of his work injury. Finley Hospital is 32 blocks from claimant's home.

Claimant has no vehicle, and travel to the UIHC is not convenient for him. When he travels to the UIHC he has to use a taxi. The distance between Dubuque and Iowa City is approximately 84 miles one-way.

http://www.distance-cities.com/search?from=Dubuque%2C+IA&to=Iowa+City%2C+IA%2C+United+States&country=us

A trial spinal cord stimulator has been recommended for the claimant by the UIHC. Claimant wants to discuss this procedure with his physician before he goes ahead with this process. Claimant has one last appointment in Iowa City on December 2, 2016 and after that appointment wants to have his care transferred to Finley Hospital Pain Clinic.

I find that the distance between claimant's home in Dubuque, Iowa and the UIHC makes claimant's care unduly inconvenient.

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

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. v. Reynolds, 562 N.W.2d 433 (Iowa 1997), 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" 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.

I find that defendants are not providing reasonable care to the claimant. The defendants shall offer care to the claimant by authorizing the Finley Hospital Pain Clinic to provide treatment for the claimant's work injury after December 2, 2016.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is granted

Signed and filed this 28th day of November, 2016.

JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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