BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ZURIJETA BEGIC, Claimant, vs. MONARCH MANUFACTURING CO., Employer, and COMMERCE & INDUSTRY INSURANCE COMPANY, Insurance Carrier, Defendants.	File No. 5014635.01 ALTERNATE MEDICAL CARE DECISION HEAD NOTE NO: 2701

This is a contested case proceeding under Iowa Code chapters 85 and 17A. The expedited procedures of rule 876 IAC 4.48, the "alternate medical care" rule, are invoked by claimant, Zurijeta Begic.

This alternate medical care claim came on for hearing on October 30, 2019. The proceedings were recorded digitally and constitute the official record of the hearing. By an order filed by the workers' compensation commissioner, this decision is designated final agency action. Any appeal would be a petition for judicial review under Iowa Code section 17A.19.

The record in this case consists of Claimant's Exhibits1 and Defendants' Exhibits A-B.

ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of the implantation of a new spinal cord stimulator (SCS) with services provided by Andrzej Szczepanek, M.D.

FINDING OF FACTS

Defendants accept liability for an injury to claimant's low back occurring on May 10, 2004.

In a September 11, 2019 letter, Dr. Szczepanek indicated he has cared for claimant for many years. He indicated claimant had a SCS implanted and had done well. In January of 2019 claimant was evaluated by Dr. Szczepanek with SCS complications. (Exhibit 1, page 1)

Dr. Szczepanek indicated the SCS battery had not been charging properly and required a new SCS to be implanted. On January 8, 2019 claimant and Dr. Szczepanek discussed a new spinal cord stimulator implant and claimant indicated she wanted a new implant. (Ex. 1, p. 1)

Dr. Szczepanek indicated the insurer, Commerce and Industry, (also referred to as AIG), had approved the new SCS. He indicated his office had asked AIG how much AIG would allow for payment. Dr. Szczepanek indicated the SCS had to be purchased prior to the surgery. To his knowledge, AIG had not provided that information.

Dr. Szczepanek attached a list of fees to his letter asking those fees to be approved by AIG. A list of the fees is found at Exhibit 1, pages 2-3.

Exhibit 1, pages 4-5 are notes from, what appears to be, a staff person from Dr. Szczepanek's office regarding communications between the office and AIG regarding payment of the SCS. The notes indicate Dr. Szczepanek's office has been in communication with AIG since March of 2019 regarding payment of the SCS.

In an October 7, 2019 email from defendants' counsel to claimant's counsel, defendants' attorney indicates the SCS was approved several months prior. Defendants' counsel indicates AIG was unable to pre-approve charges or pricing with Dr. Szczepanek's office. Because of the issues regarding Dr. Szczepanek's office, defense counsel suggested claimant have the treatment provided by Christopher Stalvey, D.O. (Ex. A)

In an October 28, 2019 affidavit, David Sargeant testified he is a senior claims representative with AIG and is the claims representative for claimant's work injury. He noted that on January 16, 2019 he approved the procedure recommended by Dr. Szczepanek. (Ex. B)

Mr. Sargeant indicated communication went back and forth between Dr. Szczepanek's office and AIG regarding payment of the SCS. Mr. Sargeant indicated he told Dr. Szczepanek's office to get the procedure priced through First Health PPO. (Ex. D) Mr. Sargeant indicated he believed Dr. Szczepanek and his surgery center (Westown Ambulatory Center) wanted AIG to guarantee payment in full, which AIG is

unable to do. Mr. Sargeant suggested claimant's care be transferred to Dr. Stalvey who implanted claimant's current SCS in January of 2015.

In a professional statement, claimant's counsel indicates claimant is happy with the care she has received with Dr. Szczepanek. Claimant has treated for a number of years with Dr. Szczepanek. Claimant wants to continue to treat with Dr. Szczepanek.

CONCLUSION OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

Iowa Code section 85.27(4) provides, in relevant part:

> For purposes of this section, the 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.

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

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). 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.

Dr. Szczepanek is authorized to treat claimant. The new implantation of the SCS has been approved by AIG since January 16, 2019. Since January 16, 2019, the provider and the insurer have been arguing how AIG is to pay for the authorized treatment. Because defendant AIG and the provider have been discussing, since January of 2019, how the authorized care is to be paid, the authorized treatment has not been provided.

Defense counsel contends this case is about payment of bills and that an alternate medical care procedure is not an appropriate remedy for the payment of medical bills. It is true an alternate medical care procedure is not the proper procedure for the payment of bills. However, claimant does not have any issue with how bills are paid in this case. Claimant wants the authorized care to be provided. This is not a case about the payment of bills. This is a case where care has been authorized, but not provided, for 10 months.

Defendants contend claimant is colluding with the provider regarding the payment of bills. (Defendants' Brief, paragraph 9) There is no evidence in the record that supports this argument.

I can appreciate defendant insurer's position in this case. However, the care at issue was authorized since January of 2019. The care has not been provided. It is unreasonable for defendants to delay the authorized care for ten months, while defendant insurer argues with the provider how the charges are to be paid. Claimant should not be caught between the insurer and the provider in this situation to wait for almost a year for an authorized service to be provided.

Defendants suggest the care be transferred to Dr. Stalvey. It appears from the record Dr. Stalvey performed the implantation of the current SCS in January of 2015. There is no evidence in the record Dr. Stalvey still provides those services or is willing to provide those services. The only reason defendants suggest transferring care to Dr. Stalvey is because AIG believes it can reach an agreement with the pricing of services with Dr. Stalvey. This is not a reasonable ground for transfer of care in this case.

Given this record claimant has carried her burden of proof the delay of the authorized care for ten months is unreasonable. Defendants are ordered to provide the authorized care with Dr. Szczepanek.

ORDER

Therefore, it is ordered:

Claimant's petition for alternate medical care is granted. Defendants shall provide the authorized treatment with Dr. Szczepanek.

Signed and filed this 31st day of October, 2019.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Robert McKinney (via WCES)
Aaron Oliver (via WCES)