BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DAVID MICHAEL STEVENSON, Claimant, vs. STEWART STAINLESS SUPPLY, INC., Employer, and THE HARTFORD, Insurance Carrier, Defendants.	File No. 5064511 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, David Stevenson.

The alternate medical care claim came on for hearing on August 15, 2018. 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 claimant's Exhibit 1 and defendants' Exhibit A.

ISSUE

The issue presented for resolution is whether the care offered by defendants is unreasonable and claimant is entitled to alternate medical care of surgery with Kirk Hutton, M.D.

FINDINGS OF FACT

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

Defendants admitted liability for the injury occurring on July 3, 2017 and the current condition for which claimant seeks alternate medical care concerning his right shoulder.

Claimant seeks an order for alternate medical care compelling defendant to provide surgery for his right shoulder with Dr. Hutton.

Claimant's right shoulder injury occurred on July 3, 2017. The claim was originally processed as a Nebraska workers' compensation claim and claimant chose his own medical provider. This led to treatment and eventual surgery with Mark Franco, M.D. on or about November 1, 2017. (Ex. A, p. 3) Post surgery, claimant underwent physical therapy with "slower than average" recovery. (Ex. A, p. 4) "[A]lthough he made some progress, he did plateau." (Id.) A post-surgery MRI confirmed that his full thickness rotator cuff tear had only partially healed. But, Dr. Franco stated that "a repeat attempt at further suture repair was unlikely to dramatically improve the healing response," and as of July 2, 2018, he did not believe that future surgery was anticipated, "but if symptoms progress he may ultimately be a candidate for an attempt at revision surgery . . . ." (Id.)

Claimant was asked at hearing if his symptoms had improved, stayed the same, or become worse over the prior six weeks, or since about July 2, 2018. Claimant responded that his symptoms have stayed the same. I therefore find that claimant's symptoms have not progressed since July 2, 2018.

Claimant testified that he went to see Dr. Hutton, at Ortho Nebraska Clinics at the suggestion of his physical therapist. On May 11, 2018, Dr. Hutton stated that claimant has a frozen shoulder "and may benefit from arthroscopic debridement and lysis of subdeltoid adhesions," and that if this orthoscopic surgery was done, it would also be appropriate to "evaluate the rotator cuff and determine whether or not there was something more that needed to be done in terms of revision repair." (Ex. 1, p. 3)

Claimant testified that under his current restrictions from Dr. Franco that he is unable to return to work and that he would like to have surgery with Dr. Hutton in hope that he would have improvement that will allow him to return to work.

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.

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).

In this case, claimant received authorized medical care, including surgery with Dr. Franco with limited improvement. The treating physician, Dr. Franco has not recommended any additional surgery at this time. (Ex. A, p. 4) Dr. Hutton has stated that additional surgery is an option. (Ex. 1, p. 3) On July 2, 2018, Dr. Franco stated that surgery may be helpful if claimant's symptoms progress, but that has not occurred according to claimant. Dr. Hutton has described the optional additional surgery by stating that it would be one more attempt at arthroscopy to try to make the shoulder better. (Ex. 1, p. 3) The record does not indicate that the surgery is more likely than not to be helpful or beneficial to claimant.

Dr. Franco does not state in his July 2, 2018 letter that no further care is needed, but rather that he does not anticipate additional surgery, unless symptoms progress. Dr. Franco's letter is in response specifically to an inquiry concerning assessment of functional impairment and maximum medical improvement. I do not interpret the letter as a statement that no additional medical care will be provided. If indeed no additional

care is provided by defendants, or if claimant's symptoms had progressed as explained by Dr. Franco the outcome of this matter would likely be different.

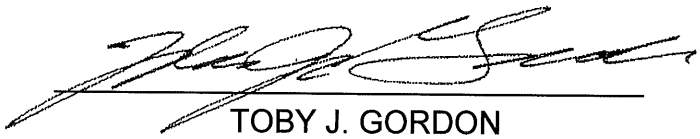
However, as it is, based on the current state of the evidence, I conclude that claimant has failed to carry his burden of proof that the care offered by defendants is unreasonable.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is denied.

Signed and filed this 16th day of August, 2018.



TOBY J. GORDON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Jeff Carter
Attorney at Law
300 Walnut St., Ste. 260
Des Moines, IA 50309
jeff@jeffcarterlaw.com

Jessica Ruth Voelker
Attorney at Law
7400 College Blvd., Ste. 550
Overland, Park, KS 66210-4031
Jessica.voelker@thehartford.com

TJG/kjw