BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FAUSTINO MENDEZ, Claimant, vs. MIDSTATES PRECAST PRODUCTS, Employer, and AMERISURE INSURANCE, Insurance Carrier, Defendants.	File No. 19005718.03 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, Faustino Mendez.

This alternate medical care claim came on for hearing on December 11, 2020. 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 by petition for judicial review under Iowa Code section 17A.19.

The record in this case consists of Claimant's Exhibits 1-2; Defendants' Exhibits A and B, and the testimony of claimant.

ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of authorization of Rahul Rastogi's M.D., referral of claimant to Joseph Buckwalter, M.D., and a spine surgeon.

FINDINGS OF FACT

Defendants accept liability for a work-related injury occurring on May 24, 2019.

Claimant injured his right upper extremity when he lifted a steel beam and felt a pop in the right forearm and wrist. (Alternate Medical Care, October 2, 2020)

On July 6, 2020, claimant was evaluated by Benjamin Paulson, M.D. Dr. Paulson is an orthopedic surgeon specializing in hand surgery. Claimant had right wrist and forearm pain. Claimant had been diagnosed with complex regional pain syndrome (CRPS) Dr. Paulson noted claimant's CRPS was not well controlled. Dr. Paulson noted

"I do not see any soon surgical interventions and would consider him at MMI when the pain specialists say [sic] he has plateued [sic]" (Exhibit A, page 3)

On October 19, 2020, claimant was evaluated by Rahul Rastogi, M.D., a pain management specialist. Claimant was assessed as having CRPS. Claimant was prescribed medications. Dr. Rastogi also made referrals for claimant to see Joseph Buckwalter, M.D., and an orthopedic spine specialist. (Ex. 1, p. 4)

On November 10, 2020, claimant's counsel emailed defendants' counsel asking the referrals from Dr. Rastogi be approved. That request was repeated by email on November 19, 2020. (Ex. 2)

In a December 1, 2020 email, claimant's counsel was notified claimant had an appointment with Dr. Paulson on December 7, 2020. Claimant's counsel asked for the appointment to be postponed until after the alternate medical care hearing. (Ex. B)

CONCLUSIONS 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 Rule of Appellate Procedure 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.

Claimant has been assessed as having CRPS from an upper extremity injury. On July 6, 2020, Dr. Paulson, an orthopedic surgeon noted: "I do not see any soon surgical interventions and would consider him at MMI when the pain specialists say [sic] he has plateued [sic]." (Ex. A, p. 3)

On November 19, 2020, claimant saw Dr. Rastogi, the pain specialist. Dr. Rastogi did not opine claimant had plateaued. He referred claimant to Dr. Buckwalter and an orthopedic spine specialist. (Ex. 1, p. 4)

Dr. Paulson, an authorized provider, deferred to the opinions of a pain specialist regarding claimant reaching MMI. When claimant saw Dr. Rastogi on October 19, 2020, he did not opine claimant was at MMI, but instead referred claimant to Dr. Buckwalter and a spine specialist. The orthopedic hand surgeon, chosen by defendants, deferred to the pain specialist. The pain specialist, also chosen by defendants, referred claimant to Dr. Buckwalter and a spine specialist. Given this record, defendants' refusal to follow the recommendations of both authorized providers is found unreasonable. Based on this finding, claimant has carried his burden of proof he is entitled to the requested alternate medical care recommended by Dr. Rastogi.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's petition for alternate medical care is granted. Defendants shall authorize the referrals made by Dr. Rastogi.

Signed and filed this 11th day of December, 2020.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Nick Platt (via WCES)

Caitlin Kilburg (via WCES)