

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

COBIE BREWSTER,

Claimant,

vs.

CITY OF CEDAR RAPIDS,

Employer,
Self-Insured,
Defendant.

File No. 5059969.03

ALTERNATE MEDICAL CARE

DECISION

Head Note: 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, Cobie Brewster. Claimant appeared through his attorney, MaKayla Augustine. Defendant appeared through their attorney, Elizabeth Jacobi.

The alternate medical care claim came on for hearing on September 3, 2021. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the 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 evidentiary record consists of Claimant's Exhibit 1, pages 1-9, and the testimony of Jody Gealow during the telephonic hearing. During the course of the hearing defendant accepted liability for the February 14, 2014, work injury and for the bilateral knee and left shoulder conditions for which claimant is seeking treatment.

ISSUE

The issue for resolution is whether the claimant is entitled to alternate medical care.

FINDINGS OF FACT

Claimant, Cobie Brewster, sustained an injury to his bilateral knees and left shoulder. Claimant's petition for alternate care contends that there has been an unreasonable delay and failure to authorize treatment recommended by authorized

treating physicians, Sunny Kim, M.D. and Stanley Mathew, M.D. Claimant seeks authorization and scheduling of the treatment recommended by Dr. Kim and Dr. Mathew or in the alternative, claimant would like to direct and seek his own care at defendant's cost. (Petition)

Claimant is seeking treatment as set forth in the "Plan" section of the May 27, 2021 clinical notes from Dr. Kim's office. (Claimant's Exhibit 1, p. 3) Jody Gealow, is employed by EMC Risk Services, LLC, the third-party administrator of workers' compensation claims for the City of Cedar Rapids. Ms. Gealow testified that throughout Mr. Brewster's claim they have authorized treatment for him. Defendant is not opposed to authorizing treatment recommended by Dr. Kim or Dr. Mathew, but at this time, they simply do not have enough information regarding the treatment. Defendant needs more information regarding the specific treatment sought by claimant. For example, claimant is seeking treatment as recommended by Dr. Mathew. However, Dr. Mathew's most recent clinical notes are not available. Therefore, there is no evidence in the record regarding the specific treatment he is recommending. With regard to the treatment recommendations by Dr. Kim, the notes are not entirely clear on what specific treatment he recommends or the timing of the treatment. I find that the evidence in the record regarding Dr. Kim's treatment recommendations is not specific or clear. Ms. Gealow indicated that defendant has been authorizing treatment with Dr. Kim and Dr. Mathew. Defendant desires more specific and detailed information about any current treatment recommendations. I find that the record does not contain specific evidence regarding treatment sought by claimant at this time. I further find that claimant has failed to demonstrate that defendant's authorized care is unreasonable.

REASONING AND CONCLUSIONS OF LAW

Under Iowa law, the employer is required to provide care to an injured employee and is permitted to choose the care. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

[T]he 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.

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. 6.904(3)(e); 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., 562 N.W.2d at 433, 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" care 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.

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).

Reasonable care includes care necessary to diagnose the condition and defendants are not entitled to interfere with the medical judgment of its own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening Decision June 17, 1986).

Under the Iowa Workers' Compensation Act, the employer has the right to choose the provider of care. The employer is obligated to provide reasonable and necessary treatment. Determining what care is reasonable under the statute is a question of fact. The employer's obligation turns on the question of reasonable necessity, not desirability. While, in this case, the claimant may desire to direct and seek his own care at defendant's cost, I conclude that the care offered by defendant is reasonable. Defendant has been authorizing treatment with Dr. Kim and Dr. Mathew.

At this time, the record is not clear as to the specific treatment and timing of the treatment recommended by Dr. Kim and/or Dr. Mathew. Thus, I conclude claimant has failed to carry his burden of proof at this time to demonstrate that the care offered by defendant is not reasonable.

I encourage the claimant and the employer to work together to gather additional information on the specific treatment recommended by Dr. Kim and Dr. Mathew. Because defendant has accepted liability for the bilateral knees and left shoulder, prompt and reasonable medical treatment should be provided by the defendant.

ORDER

THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care is denied at this time.

Signed and filed this 7th day of September, 2021.

A handwritten signature in black ink, appearing to read 'E. Pals', is written over a horizontal line.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

MaKayla Augustine (via WCES)

Elizabeth Jacobi (via WCES)