BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SHERRI SADLER,

Claimant,

vs.

EXPRESS EMPLOYMENT PROFESSIONALS,

Employer,

and

NEW HAMPSHIRE INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 5049974

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, Sherri Sadler. Claimant appeared personally and by her attorney, James Hoffman. Defendants appeared through their attorney, Caroline Westerhold.

The alternate medical care claim came on for hearing on May 13, 2015. The proceedings were digitally recorded, which constitutes the official record of this proceeding. By order filed February 16, 2015, this ruling is designated final agency action.

The record consists of the digital recording, including testimony of the claimant, and defendants' exhibit A, page 1-2.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of treatment at Iowa Specialty Hospital and Clinics in Clarion, Iowa.

FINDINGS OF FACT

Sherri Sadler was an employee of Express Employment Professionals when she sustained an injury on July 14, 2014. As a result of that injury Ms. Sadler has most recently been receiving authorized treatment from Dr. Parenteau at Mary Greeley Medical Center in Ames, Iowa. Ms. Sadler testified that the drive from her home to Mary Greeley takes approximately 90 minutes each way. According to her petition she is seeking to have "a doctor closer to where she lives, namely a pain clinic, namely Iowa Specialty Hospital, Clarion, Iowa." (Alternate Care Petition) Ms. Sadler stated that the Clarion hospital is approximately 45 minutes from her home.

According to Ms. Sadler, she is seeking the alternate care because she believes it would help her condition if she did not have to travel in the car for so long. Ms. Sadler must travel approximately 90 miles each way for treatment in Ames. She would only need to travel approximately 60 miles for treatment in Clarion. Additionally, Ms. Sadler testified that she does not drive and therefore, she must find a driver, usually her daughter, to take her to the appointments. Ms. Sadler began treating with Dr. Parenteau in December of 2014. At that time, claimant advised the medical case manager, Ms. Harper, that she had difficulty in traveling so far for treatment. Ms. Sadler testified that she was also dissatisfied with her care because she believes that Dr. Parenteau's professional manner is not at the highest level. Ms. Sadler has seen Dr. Parenteau three times since December; approximately once every month. The last appointment she attended was March 4, 2015. At that time, she received her third injection from the doctor. She was scheduled for a follow-up appointment on May 12, 2015, but cancelled that appointment and advised Dr. Parenteau's office that she was seeking treatment elsewhere. She has not yet received treatment anywhere else. (Testimony)

Defendants have denied that claimant is entitled to alternate medical care because she has failed to meet the requirements of Iowa Code section 85.27(4). Specifically, defendants contend that claimant failed to provide notice to the defendants of her alleged dissatisfaction with the authorized medical treatment prior to filing her original notice and petition for alternate medical care. In support of their position defendants offered the affidavit of Brittany Harper. Ms. Harper is the claims adjuster in this workers' compensation matter. According to Ms. Harper since July 14, 2014, medical care has been provided and directed as related to the "accident-related conditions." (Exhibit A, page 1) Ms. Harper stated that neither "claimant nor her counsel has ever communicated dissatisfaction with the authorized medical treatment prior to filing the Original Notice and Petition for Alternate Medical Care." (Ex. A, p. 2)

With regard to the issue of whether claimant provided notice of dissatisfaction of care I find claimant's live testimony that she spoke with Ms. Harper and expressed her dissatisfaction with her care to be more persuasive than the affidavit of Ms. Harper. It is credible that upon learning that her treatment was 90 minutes away that Ms. Sadler would express concern about having to travel 90 miles each direction. Therefore, I find

that claimant did provide notice of her dissatisfaction of care prior to filing her petition for alternate care.

Defendants further contend that claimant has failed to meet her burden of proof to show that the authorized care is unreasonable or creates an undue inconvenience for the claimant. Ms. Sadler testified that because she does not drive she must find a driver to take her to her appointments. Ms. Sadler said that driver is usually her daughter, who must take off work to bring her to the appointments. Each appointment requires claimant to travel 180 miles round trip. I find that claimant has shown that treatment which requires her to travel 180 miles round trip is unduly inconvenient. Due to the distance claimant must travel I find that the authorized treatment with Dr. Parenteau is unduly inconvenient.

Unfortunately, there is not enough information in the record to determine if the specific treatment claimant is seeking is reasonable. Rather than traveling to Ames to treat with Dr. Parenteau, a pain medicine specialist, claimant is seeking treatment in Clarion, Iowa at the Iowa Specialty Hospital. There is no information contained in the record to show that there are any qualified pain medicine doctors at this facility. There may very well be qualified pain medicine specialists at this facility; there is just no evidence of this in the record and therefore, I find claimant has not shown that the treatment she is seeking is appropriate.

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. 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., 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).

A claimant's dissatisfaction with the chosen care – without more – is not sufficient grounds for granting an application for alternate medical care. Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995). To succeed on an application for alternate medical care, the claimant must show the chosen care was not reasonable, was not offered promptly, or was unduly inconvenient. Id. "[T]he employer's obligation under the statute turns on the question of reasonable necessity, not desirability." Long, 528 N.W.2d at 124. Generally, care should be provided within a reasonable distance from claimant's residence. Trade Professionals, Inc. v. Shriver, 661 N.W.2d 119, 124 (Iowa 2003) (more than 100 miles is an undue inconvenience); Schrock v. Corkery Waste Disposal, Inc., File No. 1133725 (Alt. Med. Care Dec. June 26, 1996) (120 mile round trip excessive); Schulte v. Vocational Services of Area Residential Care, File No. 1134342 (Alt. Med. Care Dec. September 6, 1996) (care more than 70 miles away unreasonable). A 50-mile radius is generally considered a reasonable distance to travel

for treatment in workers' compensation cases. Bitner v. Cedar Falls Construction Co., File No. 5013852 (Alt. Med. Care Dec. September 24, 2004). However, it depends on what is reasonable under the circumstances in a particular case. See Warner v. City of Hawarden, File No. 5039478 (Arb. June 27, 2013).

In this case, claimant has failed to show that the care being offered by defendants is not reasonable or that it was not promptly offered. However, in this case claimant has shown that treatment which requires her to travel 180 miles round trip is unduly inconvenient. I find that the authorized treatment with Dr. Parenteau is unduly inconvenient due to the distance claimant must travel.

Claimant is seeking treatment in Clarion at Iowa Specialty Hospital. However, based on the record it is not clear whether pain medicine treatment at this facility is reasonable or appropriate. Thus, at this time, I cannot conclude that it is reasonable for claimant to be treated at the Iowa Specialty Hospital.

ORDER

THEREFORE IT IS ORDERED:

Claimant's petition for alternate care is granted in part and denied in part. Defendants are ordered to provide to claimant a reasonable treatment from a pain medicine physician within a 60 mile radius of claimant's residence.

Signed and filed this 13th day of May, 2015.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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