

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

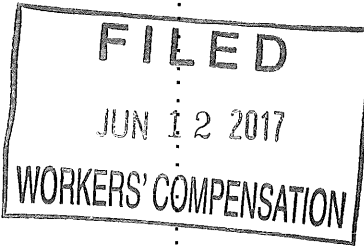
GILBERT SAM WEBB, II,
Claimant,

vs.

OLIVET BAPTIST CHURCH,
Employer,

and

CHURCH MUTUAL INSURANCE,
Insurance Carrier,
Defendants.



File No. 5053248

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, Gilbert Webb, II (Sam).

The alternate medical care claim came on for hearing on June 9, 2017. 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 Exhibits A through E and Defendants' Exhibits F, and G. Claimant and his wife, Brenda Webb testified. The parties consented to closing the record and argument at the end of the telephone hearing.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of payment for the expenses associated with the costs of a service dog.

FINDINGS OF FACT

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

Defendants admitted liability for an injury occurring on April 7, 2013. Sam worked as a pastor at the Olivet Baptist Church. He suffered a traumatic brain injury while at work. Claimant has informed defendants of dissatisfaction of the care being offered.

A progress note of Timothy Murry, MC, LPC noted on August 20, 2015 that Sam was considering obtaining a service dog. (Ex. G, p. 1) On December 16, 2015 Sam, his wife, and another counselor discussed obtaining a service dog. (Ex. G, p. 3) On January 17, 2017, a therapy note stated that Sam had his service dog. The note stated, "The service dog is still in training and will be able to perform eighteen tasks." (Ex. G, p. 11) On February 9, 2017 Sam's counselor noted, "Sam is spending a lot of time with in training with his dog in the metropolitan area. His dog seems to be at the top of his class at this time and is already doing some remarkable things." (Ex. G, p. 12)

Robert Lundell, D.O., wrote a prescription for a service dog stating, "It is my opinion that it is in the best interest of the mental health of Mr. Webb to have a service animal." (Ex. A)

Sam testified that he has balance issues and falls a lot. He has anxiety, depression and memory loss. Sam is not left alone. Due to his memory problem he gets lost easily. His wife Brenda is his driver and either she or other family members are with him or in the vicinity of Sam all the time.

Sam, with the help and referral of counselors was put in contact with the Foundation for Service Dog Support, Inc. This agency is willing to provide a service dog for Sam, at no cost to the defendants. A golden retriever, Doug, has been assigned to Sam. (Ex. E, p. 1) Doug has been training with Sam. The "graduation" ceremony for the training is scheduled for July 29, 2017.

Brenda Webb has been present during the training of Doug. Mrs. Webb has done so, so that Doug is familiar with her. That way, if Sam needs help, Doug will go to her. She also is Sam's driver. She has stopped working part-time to help her husband.

On April 5, 2017, defendant advised claimant the defendants were declining to provide payment of the cost associated with a service dog. Defendants were aware from at least that date that claimant was requesting payment of the cost associated with a service dog. Defendant was provided estimates as to the average costs for owning a service dog. (Ex. C, D, E)

I find the service dog will assist Sam in functioning he has lost as a result of his work injury. Doug will assist with balance, prevent falls, help recover from falls, assist claimant in crowds, ease claimant's anxiety and depression, get help or assistance if Sam needs help, retrieve Sam's cell phone if he needs help and will pick up items that he cannot pick up due to his balance.

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).

Iowa Code section 85.27 provides.

The employer, for all injuries compensable under this chapter or chapter 85A, shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance and hospital services and supplies therefor and shall allow reasonably necessary transportation expenses incurred for such services. The employer shall also furnish reasonable and necessary crutches, artificial members and appliances but shall not be required to furnish more than one set of permanent prosthetic devices.

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.

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 June 17, 1986).

The record shows that a service dog has been prescribed by a physician. Sam's mental health counselor is supportive of his service dog. The testimony of Sam is that the service dog provides valuable services that assist his functioning at home and in public.

There was no medical evidence provided by the defendants that a service dog is not reasonable. Defendants have not offered a service dog or other similar care.

Defendants argue that a service dog expenses are not covered by Iowa Code section 85.27. The Iowa Supreme court has interpreted Iowa code 85.27 in a number of cases. The Iowa Supreme Court has interpreted appliance to include any device that furnishes an action or affords a function impaired or lost as a result of the employee's injury, or that treats or remedies a condition resulting from the injury.

In Manpower Temporary Services v. Sioson 529 N.W.2d 259, 263, 264 (Iowa, 1995) the Supreme Court held:

We believe and hold "care" in the procedure paragraph also includes services and supplies, as suggested in the first paragraph of the same statute. There is nothing in the Code to indicate the legislature intended the narrow construction of the term advocated by Manpower. See Mortimer, 502 N.W.2d at 14 (courts must avoid strained, impractical or absurd results in favor of sensible, logical construction; workers' compensation statutes are to be construed liberally). The term "care" in medical context means "prevention or alleviation of a physical or mental defect or illness." See, e.g., Browning v. Burt, 66 Ohio St.3d 544, 613 N.E.2d 993, 1003 (1993). The term includes such things as crutches, artificial members, and appliances because these things, just as services by health care professionals, prevent or alleviate physical or mental defects or illnesses.

....

In another context, like other courts, we have agreed with the dictionary definition that describes the term "appliance" as "a means to an end." Murray v. Royal Indem. Co., 247 Iowa 1299, 1301, 78 N.W.2d 786, 787 (1956). The "end" of the van is merely an extension of Miya's 300-pound wheelchair. Without a van she is, more than need be, a prisoner of her severe paralysis. The commissioner could thus reasonably view the van as an appliance, a necessary part of Miya's care.

The service dog can be considered either part of physical therapy or medical or supplies or an appliance under 85.27(1). The service dog reduces anxiety and depression and extends Sam's mobility in home and in the public, and reduces risk of falls and provides help in an emergency. Regardless of the specific category we use under 85.27(1), this service dog restores functions as result of a work-related medical condition.

The defendant's argue the costs are not reasonable. First, it is noted Sam has obtained the dog for free. Services dogs can cost \$10,000. The defendants complain that a pure breed dog is susceptible to more medical costs. Defendants have not offered a genetically healthier replacement. The cost of a service dog is certainly cheaper than hiring human staff to provide the services the service dog provides. The service dog is available 24 hours a day. I find the estimated costs are reasonable and the anticipated costs are reasonable.

Finally, defendants argue that the defendants should not have to pay the ongoing expenses and should be a cost the claimant should pay. That the payment for food, vet care etc., is the equivalent of having to pay for gas for a van. The service dog is there to provide services 24 hours a day. It is not a pet. There is no other use for this specially trained service dog. I find defendants' analogy incorrect.

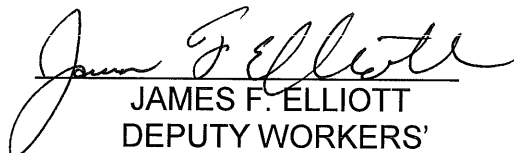
I find defendants are not providing reasonable care. Defendants shall pay all cost related to the service dog.

ORDER

THEREFORE IT IS ORDERED:

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

Signed and filed this 12th day of, 2017.


JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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