

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DEREK FRIEDOW

Claimant,

vs.

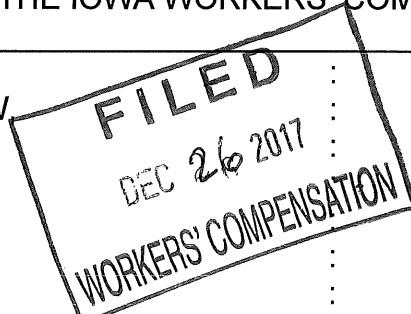
OSAGE EXPRESS, INC.,

Employer,

and

SAGAMORE INS. CO.,

Insurance Carrier,
Defendants.



File No. 5060483

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, Derek Friedow.

The alternate medical care claim came on for hearing on December 26, 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 1 – 3 and claimant's testimony.

The defendants did not file an answer or contact this agency indicating any desire to participate in this proceeding.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of shoulder surgery.

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 August 18, 2017.

Claimant has requested shoulder surgery from the defendants. Defendants have not authorized surgery. Claimant has expressed dissatisfaction to the defendants for the failure to authorize shoulder surgery.

Claimant was employed with Osage Express on August 18, 2017 when he hit a deer while driving. (Exhibit 2, page 1) The claimant's supervisor at Osage Express, Mark Low, directed claimant to an occupational health clinic of the Mason City Mercy Hospitals system where he saw Howard Kim, M.D. Dr. Kim was authorized by defendants to provide medical care to claimant. Dr. Kim referred claimant to Richard Rattay, M.D. On November 29, 2017 Dr. Rattay examined claimant. Dr. Rattay's impression was

This is a pleasant 40-year-old gentleman who is being seen in my office for the first time for evaluation of the right shoulder. Clinically and by imaging he has right shoulder rotator cuff tear with acromioclavicular joint pain and probable labral biceps and glenohumeral wear and tear. His injury occurred approximately 3-1/2 months ago.

(Ex. 2, p. 3) Dr. Rattay recommended surgery. His specific recommendation was,

I recommended a right shoulder arthroscopic subacromial decompression, distal clavicle resection, labral biceps and glenohumeral wear and tear debridement and treated as indicated and rotator cuff tear repair.

(Ex. 2, p. 3) A clinic note of December 7, 2017 by Paul Pulford, OPA-C of December 7, December 8 and December 11, 2017 indicates that the workers' compensation carrier had not approved payment of the surgery. On December 19, 2017 Dr. Rattay again recommended right shoulder surgery. (Ex. 3, p. 1)

Email between the claimant's attorney and the insurance adjuster shows that the adjuster received a request for authorization for shoulder surgery. On December 8, 2017 the adjuster emailed claimant's attorney and stated that defendants will be ordering an independent medical examination. (Ex. 1, p. 1) The defendants did not authorize payment for the shoulder surgery. After receiving the email that did not authorize care, claimant's counsel replied and informed defendants as to the dissatisfaction of the care being provided. (Ex. 1, p. 3)

Claimant testified in this case. Claimant said that he spoke to his supervisor, Mark Low about his injury and that on or about December 20, 2017 Mr. Low told him he had received a certified letter from claimant's counsel. Mr. Low did not indicate whether the defendants were going to participate in the alternate medical proceeding. Page two of the original notice for alternate care shows that a copy of the petition for alternate

care was mailed, via certified mail on December 12, 2017 to the employer at 1755 15th Street S.W., Mason City, Iowa.

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.

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

Defendants do have a right to have claimant examined for an independent medical examination pursuant to Iowa Code section 85.39. However, they have the obligation to provide reasonable medical care pursuant to Iowa Code section 85.27. The provision of reasonable medical care is not to be delayed because of a request for an independent medical examination.

Dr. Kim, who was an authorized physician referred claimant to Dr. Rattay. Due to this referral, Dr. Rattay was an authorized treating physician.

The defendants are not allowed to second guess the medical recommendations of their authorized physician. Dr. Rattay recommended shoulder surgery and tentatively scheduled the surgery for December 20, 2017.

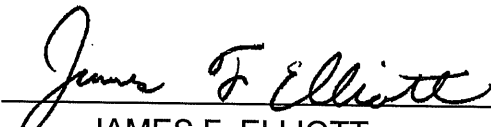
The defendants are interfering with care. By refusing or delaying the surgery the defendants are not providing reasonable medical care.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is granted. Within ten (10) days of this ruling the defendants shall authorize payment to Dr. Rattay to perform shoulder surgery.

Signed and filed this 26th day of December, 2017.


JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies To:

Richard R. Schmidt
Attorney at law
2423 Ingersoll Ave.
Des Moines, IA 50312-5233
Rick.schmidt@sbsattorneys.com

Osage Express, Inc.
1755 – 15th St. S.W.
Mason City, IA 50401

Sagamore Insurance Company
111 Congressional Blvd., Ste. 500
Carmel, IN 46032

JFE/sam