

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JACK DECKER,

Claimant,

vs.

THE AMERICAN BOTTLING CO.,

Employer,

and

NEW HAMPSHIRE INS. CO.,

Insurance Carrier,
Defendants.

File No. 20008991.02

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, Jack Decker. Claimant appeared personally and through attorney, Rocco Motto. Defendants appeared through their attorney, John Densberger.

The alternate medical care petition was filed on December 16, 2022, and came on for hearing on December 30, 2022. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's 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 record consists claimant's exhibits 1 and 2 and defense exhibits A and B, which were received without objection. In addition the claimant testified under oath. The defendants do not dispute liability for claimant's June 30, 2020, work injury.

ISSUE

The issue presented for resolution is whether the care offered by defendants is reasonable.

FINDINGS OF FACT

The claimant sustained an injury to his left elbow on or about June 30, 2020. He has undergone significant authorized medical treatment. Mr. Decker testified live and under oath at the telephone hearing. I find his testimony credible.

Mr. Decker no longer works for American Bottling. Since December 2021, he has worked for a trucking company called J.B. Hunt, where he is a regional driver. Until February 2022, he resided with his girlfriend, Becky, in Dubuque, Iowa. In February 2022, she passed away and Mr. Decker no longer had a place to live. He chose not to seek other housing and decided to live out of his work truck. He testified he now considers Chicago his home because he has a hub there. He has friends and social connections in Chicago and has very little social connection to Iowa. His medical providers for non-work related conditions, such as skin cancer, are also in Chicago. Mr. Decker testified that he essentially lives in his truck, working long hours until he is required to do a "34 hour reset," which he then does in Chicago. He testified that the "34 hour reset" is essentially a period of time where he recuperates from working long hours where he is not allowed to work. He testified that he has access to excellent facilities in Chicago for him to do his "34 hour reset."

Mr. Decker's treating physician for his June 2020, work injury is Joseph Buckwalter, M.D., at the University of Iowa Hospitals and Clinics, in Iowa City, Iowa. Dr. Buckwalter recommended surgery for his left elbow condition which was eventually scheduled for January 4, 2023. (Claimant's Exhibit 1, pages 6-9) Dr. Buckwalter actually recommended this surgery in June 2022. (Cl. Ex. 1, p. 5) He opined the following, "Jack T Decker will be unable to work from the day of surgery until re-evaluated at the first post-op appointment, approximately 10-14 days after surgery." (Cl. Ex. 1, p. 5) Mr. Decker testified that Dr. Buckwalter told him he could release him to work 6 to 8 weeks after the surgery. This is not documented in Dr. Buckwalter's notes and claimant acknowledged at hearing that there is no assurance that he will be released without restrictions at that time.

Mr. Decker further testified that he will not be allowed to continue his current living arrangements while he is recuperating from his surgery. He testified that it is a violation of law, or at least Department of Transportation regulations, for him to do so. At a minimum, he testified, his employer, J.B. Hunt, will not allow it under their work rules.

On December 5, 2022, he saw a physician's assistant at Dr. Buckwalter's office. The following is documented:

Jack T Decker is a 58 y.o. male who returns to the clinic today for pre-operative evaluation. He has a complicated history in regard to his left upper extremity related to a work injury. He most recently was indicated for left ulnar nerve decompression and transposition, left radial nerve

decompression and left carpal tunnel release. His consent was reviewed today in clinic and no changes were made. Surgical risks were reviewed and include but are not limited to bleeding, infection, damage to surrounding structures, continued pain and stiffness and possible need for additional procedures. After long discussion he would like to proceed with surgical intervention. We discussed routine postoperative course. Patient did indicate that he does not have anyone to bring him to and from surgery or to stay with him for the first day after surgery. Plans to take an Uber to and from surgery. We discussed that he needs an adult to transport him to and from surgery and to stay with him for the first 24 hours after surgery. He does not feel that he has anyone that is able to do this. We plan to reach out to his work comp case manager to discuss this and make a plan for this. Nor further clearances are required.

(Cl. Ex. 1, p. 9) Mr. Decker testified that following his surgery, he was advised he will need to keep his surgical wound dry and clean to avoid infection.

Even prior to this medical visit, claimant's counsel had been in communication with defense counsel regarding the complicating factors of claimant's lack of housing and transportation issues. Claimant's counsel was specifically trying to resolve the housing and transportation issues. (Def. Ex. A, pp. 4-5) He followed up on December 9, 2022, "Sorry to keep brining [sic] this up. I just want to make sure something is in place prior to his surgery and prior to Christmas/holidays." (Def. Ex. A, p. 3) He specifically asked what the employer would authorize with respect to housing and transportation following his surgery. On December 14, 2022, defense counsel responded that the employer would authorize transportation to and from Chicago, as well as two nights in a hotel. (Def. Ex. A, p. 2) Claimant's counsel, on the same date, expressed dissatisfaction with this offer of care and continued to attempt to resolve the housing issue. (Def. Ex. A, pp. 1-2) Defense counsel responded, in essence, that Mr. Decker's housing issues were not the defendants' problem. (Def. Ex. A, p. 1) Claimant filed the alternate medical care petition on December 16, 2022, requesting transportation and lodging to recuperate.

At hearing, Mr. Decker testified regarding the symptoms he continues to have in his left elbow from his work injury. He testified that he has significant, disabling pain which causes him to use his left arm as little as possible, even while working. He testified that he takes 7 to 10 Tylenol per day and that, prior to switching to Tylenol, he developed an ulcer from using Aleve. He was emotional during this testimony and testified that Dr. Buckwalter opined that this surgery could alleviate the elbow pain he has now. Mr. Decker also testified that it would take him about a year to save the money needed to provide his own temporary lodging services.

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. Iowa Code Section 85.27 (2013).

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See 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).

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).

An employer's statutory right is to select the providers of care and the employer may consider cost and other pertinent factors when exercising its choice. Long, at 124. An employer (typically) is not a licensed health care provider and does not possess medical expertise. Accordingly, an employer does not have the right to control the methods the providers choose to evaluate, diagnose and treat the injured employee. An employer is not entitled to control a licensed health care provider's exercise of professional judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988). An employer's failure to follow recommendations of an authorized physician in matters of treatment is commonly a failure to provide reasonable treatment. Boggs v. Cargill, Inc., File No. 1050396 (Alt. Care Dec. January 31, 1994).

The first issue in this case is whether the claimant expressed dissatisfaction with the care being offered prior to filing his alternate care petition. "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 employee may agree to alternate care reasonably suited to treat the injury." Iowa Code section 85.27(4) (2021).

In this case, the claimant identified significant barriers (transportation and lodging) to his treatment and proactively communicated with the employer (through defense counsel) to resolve the problem well in advance of filing his alternate care petition. The parties had been actively negotiating the medical care beginning in at least November 2022. When the employer finally offered specific care related to the

transportation and housing issues on December 14, 2022, claimant's counsel immediately expressed dissatisfaction, prior to filing his petition. There are no magic words which are required. I find that the December 14, 2022, email was an expression of dissatisfaction as required by the statute. (Def. Ex. A, pp. 1-2)

The more substantive question is whether the claimant is entitled to temporary lodging as an "appliance" or "service" under Iowa Code section 85.27(1). Mr. Decker has had no permanent residence since his girlfriend passed away in February 2022. Prior to February 2022, he lived with his girlfriend, Becky, in Dubuque, Iowa. He testified that, prior to her passing, he would do his "34 hour resets" in Dubuque with her. After she passed, he was forced to move out of her residence. Since then he has essentially lived in his work vehicle. He apparently works significant hours and now does his "34 hour resets" in Chicago. Mr. Decker has testified that this arrangement makes the most sense for him since he would rarely be at his residence if he paid for one.

The authorized treating medical provider instructed Mr. Decker that he would need to have an "adult to transport him to and from surgery and to stay with him for the first 24 hours after surgery." (Cl. Ex. 1, p. 9) He testified that he was advised that he would need to be off work approximately 6 to 8 weeks following the surgery to recuperate. He testified, in essence, that if the employer does not provide a place for him to recuperate, he will not be able to have the surgery. I find this testimony compelling.

The defendants' position, stated bluntly, is that claimant's housing situation is not their problem. Mr. Decker chose not to seek new housing following the death of his girlfriend. Had he done so, none of this would be an issue.

In support of his claim for alternate care, claimant cited the unpublished Court of Appeals decision, Huff v. CRST Expedited, Inc., No. 18-0336, 2019 WL 1056812 (Iowa Ct. App. Mar. 6, 2019). The claimant in Huff was requesting handicap-accessible housing, transportation, and home assistance for his work injury. The agency denied alternate medical care on the basis that the claimant did not have any specific medical evidence that the care claimant was requesting was necessitated by his work injury.

The Court of Appeals summarized its' ruling as follows:

CRST Expedited, Inc. and AIG Insurance Co. (collectively, CRST) appeal the ruling by the district court reversing and remanding Richard Huff's alternate-care decision of the Iowa Workers' Compensation Commission. CRST asserts the court erred in finding medical evidence is not required for an award of alternate care under Iowa Code section 85.27 (2017). It further asserts Huff is not entitled to the specific appliances and services he seeks. We agree with the district court that the lack of medical evidence is not a bright-line bar to an award of alternate-medical-care benefits. However, the court's determination that the specific appliances

and services Huff requests are available to him relies on factual findings that must be made by the agency. Because the agency used the wrong legal standard, the case must be remanded for the agency to make factual determinations, notwithstanding the lack of medical evidence to support his requests.

Huff, at page 1. On remand, the agency wrote a lengthy decision which denied alternate care based upon the specific facts of that case. Huff v. CRST Expedited, File No. 5063162 (Remand, 12/13/19). The facts of Huff are significantly distinguishable in multiple respects.

The key point from the unpublished Court of Appeals decision in Huff is that a specific medical opinion ordering a specific modality of treatment is not required to award alternate medical care. I conclude that temporary lodging may be considered an “appliance” or “service” under Section 85.27(1), depending upon the facts of the case.

This is an unusual and unique case. Mr. Decker has been essentially homeless since his girlfriend passed away in February 2022. He has been able to manage this by working long hours, essentially living in his work truck and controlling his “34 hour reset periods.” In this narrow and unique circumstance, however, he will be unable to receive his necessary medical care if he does not have lodging services. I find it is unreasonable for the defendants to refuse to provide temporary lodging service expenses during his recovery in these unique circumstances. To do so, in this highly fact-specific circumstance, is essentially the same as denying the surgery itself. After hearing Mr. Decker’s testimony and reviewing all of the evidence, I am convinced that he will be unable to access his needed treatment unless these services are provided.

In this case, therefore I find that Mr. Decker’s need for temporary lodging is a necessary “service” required for his treatment under Iowa Code section 85.27(1). The bottom line is this; if Mr. Decker does not have temporary lodging services following his surgery, he will be unable to receive the treatment which is needed for his injury. Based upon the evidence before me, he needs this treatment badly to alleviate his symptoms of pain and disability.

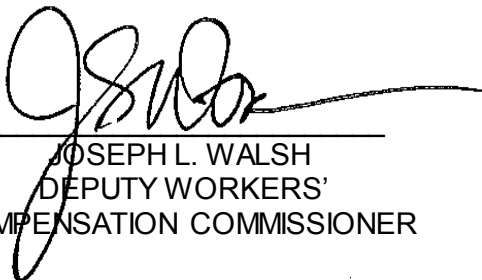
While Mr. Decker has requested that I order the temporary lodging expenses be ordered specifically in Chicago, which he currently considers his “home,” I decline to do so. It is not unreasonable for the defendants to provide this service in Iowa City, which is closer to his treatment provider at the University of Iowa Hospitals and Clinics.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is GRANTED subject to the limitations set forth herein.

Signed and filed this 30th day of December 2022.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Rocco Motto (via WCES)

John Densberger (via WCES)