

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOHN D. THOMPSON,

Claimant,

vs.

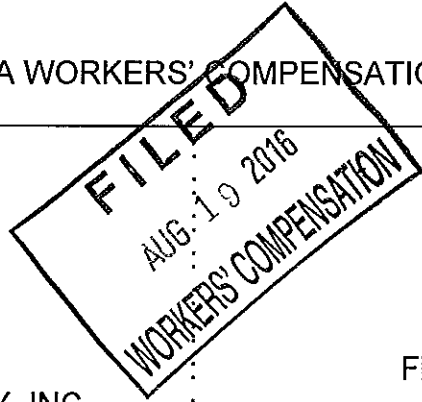
CHAMNESS TECHNOLOGY, INC.,

Employer,

and

BERKSHIRE HATHAWAY HOMESTATE
INSURANCE CO.,

Insurance Carrier,
Defendants.



File No. 5055513

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. Claimant sustained a work injury in the employ of defendant Chamness Technology, Inc. on October 18, 2013. He now seeks an award of alternate medical care under Iowa Code section 85.27 and 876 Iowa Administrative Code 4.48.

The case was heard by telephone conference call and fully submitted on August 19, 2006. The record consists of claimant's Exhibits 1-5, defendants' Exhibits A-B, and the testimony of the claimant. The entire hearing was recorded via digital tape, which constitutes the official record of proceedings. By standing order of the workers' compensation commissioner, the undersigned was delegated authority to issue final agency action.

ISSUE

Liability is established on this claim. The sole issue presented for resolution is whether or not the claimant is entitled to an award of alternate medical care.

FINDINGS OF FACT

The claimant was employed by Chamness on October 18, 2013 when he suffered back and hip injuries. The claimant seeks pain management treatment from

Thomas D. Hansen, M.D. The claimant had seen Dr. Hansen on at least three occasions previously.

Bradley Scott, D.O., and David J. Boarini, M.D., have both provided care to the claimant in connection with the work injury. Dr. Scott does not recommend pain management, but would defer to Dr. Boarini. Dr. Boarini opines that pain management is not necessary. (Exhibit A, page 2)

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, 526 2 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. 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" 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.

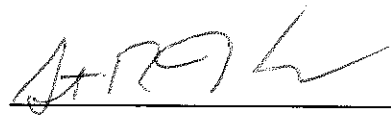
The record does not contain medical evidence of the need for pain management. In fact the evidence points the other way (Drs. Scott and Boarini). The request cannot be approved on this record.

ORDER

THEREFORE, IT IS ORDERED:

The application for alternate medical care is denied.

Signed and filed this 19th day of August, 2016.



STAN MCELDERRY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies To:

Ryan T. Beattie
Attorney at Law
4300 Grand Ave.
Des Moines, IA 50312-2426
ryan.beattie@beattielawfirm.com

Robert C. Gainer
Attorney at Law
1307 - 50th St
West Des Moines, IA 50266
rgainer@cutlerfirm.com

SRM/sam